

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

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended March 31, 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: 001-36913

**Zevra Therapeutics, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of Incorporation or Organization)

20-5894398  
(I.R.S. Employer Identification No.)

1180 Celebration Boulevard, Suite 103, Celebration, FL  
(Address of Principal Executive Offices)

34747  
(Zip Code)

(321) 939-3416  
(Registrant's Telephone Number, Including Area Code)

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

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	ZVRA	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T 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 May 3, 2024, the registrant had 41,853,494 shares of common stock outstanding.

## INDEX

ZEVRA THERAPEUTICS, INC.  
FORM 10-Q

	<u>PAGE</u>
<b><u>PART I — FINANCIAL INFORMATION</u></b>	
ITEM 1.	<b><u>UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS</u></b>
	<u>UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS AS OF MARCH 31, 2024, AND DECEMBER 31, 2023</u> 4
	<u>UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS FOR THE THREE MONTHS ENDED MARCH 31, 2024, AND 2023</u> 5
	<u>UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS FOR THE THREE MONTHS ENDED MARCH 31, 2024, AND 2023</u> 6
	<u>UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY FOR THE THREE MONTHS ENDED MARCH 31, 2024, AND 2023</u> 7
	<u>UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS FOR THE THREE MONTHS ENDED MARCH 31, 2024, AND 2023</u> 9
	<u>NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS</u> 10
ITEM 2.	<u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u> 27
ITEM 3.	<u>QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u> 40
ITEM 4.	<u>CONTROLS AND PROCEDURES</u> 40
<b><u>PART II — OTHER INFORMATION</u></b>	
ITEM 1.	<u>LEGAL PROCEEDINGS</u> 41
ITEM 1A.	<u>RISK FACTORS</u> 41
ITEM 2.	<u>UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS</u> 42
ITEM 3.	<u>DEFAULTS UPON SENIOR SECURITIES</u> 42
ITEM 4.	<u>MINE SAFETY DISCLOSURES</u> 42
ITEM 5.	<u>OTHER INFORMATION</u> 42
ITEM 6.	<u>EXHIBITS</u> 43
	<u>SIGNATURES</u> 44

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## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

*This Quarterly Report on Form 10-Q, including the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations," contains forward-looking statements regarding future events and our future results that are subject to the safe harbors created under the Securities Act of 1933, as amended, or the Securities Act, and the Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements relate to future events or our future financial performance. We generally identify forward-looking statements by terminology such as "may," "will," "would," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "assume," "intend," "potential," "continue" or other similar words or the negative of these terms. We have based these forward-looking statements largely on our current expectations about future events and financial trends that we believe may affect our business, financial condition and results of operations. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described in Part II, Item 1A. "Risk Factors" and elsewhere in this Quarterly Report on Form 10-Q and Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC on April 1, 2024. Accordingly, you should not place undue reliance upon these forward-looking statements. We cannot assure you that the events and circumstances reflected in the forward-looking statements will be achieved or occur; the timing of events and circumstances and actual results could differ materially from those anticipated in the forward-looking statements. Forward-looking statements contained in this report include, but are not limited to, statements about:*

- *our ability to integrate Acer (as defined below) into our business successfully or realize the anticipated synergies and related benefits of the Merger (as defined below);*
- *the progress of, outcome or and timing of any regulatory approval for any of our product candidates and the expected amount or timing of any payment related thereto under any of our collaboration agreements;*
- *our ability to remediate the material weakness we have identified and the timing thereof;*
- *our ability to continue as a going concern;*
- *the progress of, timing of and expected amount of expenses associated with our research, development and commercialization activities;*
- *our ability to raise additional funds on commercially reasonable terms, or at all, in order to support our continued operations;*
- *the sufficiency of our cash resources to fund our operating expenses and capital investment requirements for any period;*
- *the expected timing of our clinical trials for our product candidates and the availability of data and results of those trials;*
- *our expectations regarding federal, state and foreign regulatory requirements;*
- *the potential therapeutic benefits and effectiveness of our products and product candidates;*
- *the size and characteristics of the markets that may be addressed by our products and product candidates;*
- *our intention to seek to establish, and the potential benefits to us from, any strategic collaborations or partnerships for the development or sale of our products and product candidates; if approved;*
- *our expectations as to future financial performance, expense levels and liquidity sources;*
- *the timing of commercializing our products and product candidates, if approved;*
- *senior leadership and board member transitions and refreshments; and*
- *other factors discussed elsewhere in this report.*

*The forward-looking statements made in this report relate only to events as of the date on which the statements are made. We have included or made reference to important factors in the cautionary statements included in this report, particularly in the section entitled "Risk Factors" where we make reference to Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC on April 1, 2024, that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make. Except as required by law, we do not assume any intent to update any forward-looking statements after the date on which the statement is made, whether as a result of new information, future events or circumstances or otherwise.*

## NOTE REGARDING COMPANY REFERENCE

*Unless the context otherwise requires, we use the terms "Zevra," "Company," "we," "us" and "our" in this Quarterly Report on Form 10-Q to refer to Zevra Therapeutics, Inc., formerly known as KemPharm, Inc. prior to February 21, 2023. We have proprietary rights to a number of trademarks used in this Quarterly Report on Form 10-Q that are important to our business, including LAT® and the Zevra logo. All other trademarks, trade names and service marks appearing 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 Quarterly Report on Form 10-Q are referred to without the ® and ™ symbols, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto.*

*On August 30, 2023, the Company and Aspen Z Merger Sub, Inc., an indirect wholly-owned subsidiary of Zevra ("Merger Sub") entered into an Agreement and Plan of Merger (the "Merger Agreement") with Acer Therapeutics Inc. ("Acer"). On November 17, 2023 (the "Closing Date"), we completed the acquisition of Acer. Pursuant to the Merger Agreement, on the Closing Date, Merger Sub was merged with and into Acer (the "Merger"), with Acer continuing as the surviving entity and as a wholly-owned subsidiary of Zevra.*

## PART I — FINANCIAL INFORMATION

## ITEM 1. UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

**ZEVRA THERAPEUTICS, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS**  
(in thousands, except share and par value amounts)

	March 31, 2024	December 31, 2023
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 42,849	\$ 43,049
Securities at fair value	9,868	24,688
Accounts and other receivables	8,305	17,377
Prepaid expenses and other current assets	1,868	1,824
Total current assets	62,890	86,938
Inventories	12,426	9,841
Property and equipment, net	695	736
Operating lease right-of-use assets	1,086	790
Goodwill	4,701	4,701
Intangible assets, net	67,699	69,227
Other long-term assets	1,786	94
Total assets	\$ 151,283	\$ 172,327
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 22,785	\$ 28,403
Line of credit payable	—	37,700
Current portion of operating lease liabilities	583	543
Current portion of discount and rebate liabilities	4,452	4,550
Other current liabilities	2,089	2,524
Total current liabilities	29,909	73,720
Secured promissory note	5,059	5,066
Line of credit payable	37,939	—
Warrant liability	11,535	16,100
Operating lease liabilities, less current portion	705	456
Discount and rebate liabilities, less current portion	8,781	7,663
Other long-term liabilities	8,537	7,458
Total liabilities	102,465	110,463
Commitments and contingencies (Note D)		
Stockholders' equity:		
Preferred stock:		
Undesignated preferred stock, \$0.0001 par value, 10,000,000 shares authorized, no shares issued or outstanding as of March 31, 2024 or December 31, 2023	—	—
Common stock, \$0.0001 par value, 250,000,000 shares authorized, 43,426,186 shares issued and 41,850,494 shares outstanding as of March 31, 2024; 43,110,360 shares issued and 41,534,668 shares outstanding as of December 31, 2023	4	4
Additional paid-in capital	476,056	472,664
Treasury stock, at cost	(10,983)	(10,983)
Accumulated deficit	(416,400)	(399,778)
Accumulated other comprehensive income (loss)	141	(43)
Total stockholders' equity	48,818	61,864
Total liabilities and stockholders' equity	\$ 151,283	\$ 172,327

*See accompanying notes to unaudited condensed consolidated financial statements.*

**ZEVRA THERAPEUTICS, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(in thousands, except share and per share amounts)**

	<b>Three months ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Revenue, net	\$ 3,425	\$ 3,176
Cost of product revenue (excluding \$1,528 in intangible asset amortization for the three months ended March 31, 2024, shown separately below)	175	125
Intangible asset amortization	1,528	—
Operating expenses:		
Research and development	12,277	8,655
Selling, general and administrative	9,931	7,227
Total operating expenses	22,208	15,882
Loss from operations	(20,486)	(12,831)
Other income (expense):		
Interest expense	(735)	(182)
Fair value adjustment related to warrant and CVR liability	3,627	(1,545)
Fair value adjustment related to investments	(27)	196
Interest and other income, net	929	1,042
Total other income (expense)	3,794	(489)
Loss before income taxes	(16,692)	(13,320)
Income tax benefit	70	103
Net loss	\$ (16,622)	\$ (13,217)
Basic and diluted net loss per share of common stock:		
Net loss	\$ (0.40)	\$ (0.38)
Weighted average number of shares of common stock outstanding:		
Basic and diluted	41,778,774	34,466,542

*See accompanying notes to unaudited condensed consolidated financial statements.*

**ZEVRA THERAPEUTICS, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
**(in thousands)**

	<b>Three months ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Net loss	\$ (16,622)	\$ (13,217)
Other comprehensive loss:		
Foreign currency translation adjustment	184	(176)
Other comprehensive loss:	184	(176)
Comprehensive loss	<u>\$ (16,438)</u>	<u>\$ (13,393)</u>

*See accompanying notes to unaudited condensed consolidated financial statements.*

**ZEVRA THERAPEUTICS, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
**(in thousands)**

	<b>Common Stock</b>	<b>Additional Paid-in Capital</b>	<b>Treasury Stock, at cost</b>	<b>Accumulated Deficit</b>	<b>Other Comprehensive Income (loss)</b>	<b>Total Stockholders' Equity</b>
Balance as of January 1, 2024	\$ 4	\$ 472,664	\$ (10,983)	\$ (399,778)	\$ (43)	\$ 61,864
Net loss	—	—	—	(16,622)	—	(16,622)
Stock-based compensation expense	—	2,119	—	—	—	2,119
Issuance of common stock in exchange for consulting services	—	56	—	—	—	56
Issuance of common stock as part of the Employee Stock Purchase Plan	—	71	—	—	—	71
Issuance of common stock for options exercised	—	1,146	—	—	—	1,146
Other comprehensive loss	—	—	—	—	184	184
Balance as of March 31, 2024	<u>\$ 4</u>	<u>\$ 476,056</u>	<u>\$ (10,983)</u>	<u>\$ (416,400)</u>	<u>\$ 141</u>	<u>\$ 48,818</u>

*See accompanying notes to unaudited condensed consolidated financial statements.*

**ZEVRA THERAPEUTICS, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY, CONTINUED**  
(in thousands)

	<b>Common Stock</b>	<b>Additional Paid-in Capital</b>	<b>Treasury Stock, at cost</b>	<b>Accumulated Deficit</b>	<b>Other Comprehensive Income</b>	<b>Total Stockholders' Equity</b>
Balance as of January 1, 2023	\$ 3	\$ 436,269	\$ (7,536)	\$ (353,729)	\$ 113	\$ 75,120
Net loss	—	—	—	(13,217)	—	(13,217)
Stock-based compensation expense	—	945	—	—	—	945
Shares repurchased as part of the Share Repurchase Program	—	—	(3,447)	—	—	(3,447)
Issuance of common stock in exchange for consulting services	—	42	—	—	—	42
Other comprehensive loss	—	—	—	—	(176)	(176)
Balance as of March 31, 2023	<u>\$ 3</u>	<u>\$ 437,256</u>	<u>\$ (10,983)</u>	<u>\$ (366,946)</u>	<u>\$ (63)</u>	<u>\$ 59,267</u>

*See accompanying notes to unaudited condensed consolidated financial statements.*



**ZEVRA THERAPEUTICS, INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	<b>Three months ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (16,622)	\$ (13,217)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	2,119	945
Non-cash interest expense	239	—
Depreciation and amortization expense	1,562	79
Fair value adjustment related to warrant and CVR liability	(3,627)	1,545
Fair value adjustment related to investments	27	(196)
Consulting fees paid in common stock	56	42
Loss (gain) on foreign currency exchange	229	(240)
Change in assets and liabilities:		
Accounts and other receivables	9,072	477
Prepaid expenses and other assets	(44)	703
Inventories	(2,585)	51
Operating lease right-of-use assets	123	80
Accounts payable and accrued expenses	(7,306)	3,836
Discount and rebate liability	1,020	1,528
Operating lease liabilities	(130)	(107)
Other liabilities	(298)	429
Net cash used in operating activities	(16,165)	(4,045)
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	—	(29)
Maturities (purchases) of investments	14,793	(17,526)
Net cash provided by (used in) investing activities	14,793	(17,555)
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of debt	—	12,914
Repayment of debt	—	(12,800)
Payments to repurchase shares as part of the Share Repurchase Program	—	(3,447)
Proceeds from issuance of stock	1,217	—
Payment of principal on insurance financing arrangements	—	(415)
Repayment of principal on finance lease liabilities	—	(2)
Net cash provided by (used in) financing activities	1,217	(3,750)
Effect of exchange rate changes on cash and cash equivalents	(45)	65
Net decrease in cash and cash equivalents	(200)	(25,285)
Cash and cash equivalents, beginning of period	43,049	65,466
Cash and cash equivalents, end of period	\$ 42,849	\$ 40,181
<b>Supplemental cash flow information:</b>		
Cash paid for interest	\$ 140	\$ 68
<b>Supplemental disclosure of noncash financing activities:</b>		
Cost accrued in connection with the Credit Agreement (Note D)	1,726	—

*See accompanying notes to unaudited condensed consolidated financial statements.*

**ZEVRA THERAPEUTICS, INC.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**A. Description of Business, Basis of Presentation, and Significant Transactions**

***Organization***

Zevra Therapeutics, Inc. (the "Company") is a rare disease company combining science, data and patient needs to create transformational therapies for diseases with limited or no treatment options. The Company has a diverse portfolio of products and product candidates, which includes preclinical development programs, clinical stage pipeline and commercial stage assets. The Company's pipeline includes arimoclomol, an orally-delivered, first-in-class investigational product candidate being developed for Niemann-Pick disease type C ("NPC"), which has been granted orphan drug designation, Fast-track designation, Breakthrough Therapy designation and rare pediatric disease designation for the treatment of NPC by the U.S. Food and Drug Administration ("FDA") and orphan medical product designation for the treatment of NPC by the European Medicines Agency ("EMA"). The arimoclomol NDA for NPC was resubmitted to the FDA on December 21, 2023, and has been assigned a PDUFA date of September 21, 2024. KP1077 is the Company's lead clinical development product candidate which is being developed as a treatment for idiopathic hypersomnia ("IH"), a rare neurological sleep disorder, and narcolepsy. KP1077 is comprised solely of serdexmethylphenidate ("SDX"), the Company's proprietary prodrug of d-methylphenidate ("d-MPH"). The FDA has granted KP1077 orphan drug designation for the treatment of IH. OLPRUVA® (sodium phenylbutyrate) for oral suspension is approved by the FDA for the treatment of urea cycle disorders ("UCDs"). The Company also has a pipeline of investigational product candidates, including celiprolol for the treatment of vascular Ehlers-Danlos syndrome in patients with a confirmed type III collagen mutation.

The Company changed its name from KemPharm, Inc. to Zevra Therapeutics, Inc. effective as of February 21, 2023. On March 1, 2023, following its name change, the Company's common stock began trading on the Nasdaq Global Select Market under the ticker symbol "ZVRA".

***Going Concern***

The accompanying unaudited condensed consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. During the three months ended March 31, 2024, and 2023, the Company incurred a net loss of \$16.6 million and \$13.2 million, respectively, and as of March 31, 2024, has an accumulated deficit of \$416.4 million. The Company has sustained operating losses for the majority of its corporate history and expects to continue to incur operating losses and negative operating cash flows until revenues reach a level sufficient to support ongoing operations.

The Company's ability to continue operating as a going concern is contingent upon its ability to generate revenue from approved products or obtain product candidate regulatory approvals, which would generate revenue, milestones, and cash flow sufficient to support ongoing operations and the satisfaction of financial covenants. These factors raise substantial doubt as to the Company's ability to continue as a going concern for at least one year from the date the unaudited condensed consolidated financial statements are being issued. The unaudited condensed consolidated financial statements do not include any adjustments that might result from the outcome of these uncertainties.

The Company's liquidity needs will be largely determined by the success of operations through the progression of its products and product candidates in the future. The Company also may consider other sources to fund operations including: (1) out-licensing rights to certain of its technologies and product candidates, pursuant to which the Company would receive cash royalties and milestones; (2) raising additional capital through equity or debt financings or from other sources; (3) obtaining product candidate regulatory approvals, which would generate revenue, milestones and cash flow; (4) reducing spending on one or more research and development programs, including by discontinuing development; and/or (5) restructuring operations to change its overhead structure. The Company is in the early stages of its commercialization effort for OLPRUVA and does not yet have a substantial basis to project future earnings, and its other sources of revenue are not sufficient to sustain its present activities on their own. Accordingly, the Company's ability to continue as a going concern may require it to obtain additional financing to fund its operations.

***Basis of Presentation***

The Company prepared the unaudited condensed consolidated financial statements in accordance with U.S. GAAP and the rules and regulations of the Securities and Exchange Commission ("SEC") and, in the Company's opinion, reflect all adjustments, including normal recurring items that are necessary.

***Merger***

On August 30, 2023, the Company and Aspen Z Merger Sub, Inc., a wholly-owned subsidiary of Zevra ("Merger Sub"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with Acer Therapeutics Inc. ("Acer"), a pharmaceutical company focused on development and commercialization of therapies for rare and life-threatening diseases. On November 17, 2023 (the "Closing Date"), the Company completed the acquisition of Acer. Pursuant to the Merger Agreement, on the Closing Date, Merger Sub was merged with and into Acer (the "Merger"), with Acer continuing as the surviving entity and as a wholly-owned subsidiary of Zevra. In connection therewith, Zevra also purchased Acer's secured debt from Nantahala Capital Management, LLC ("NCM"), certain of its affiliates and certain other parties (collectively with NCM, "Nantahala") through a series of transactions and Zevra agreed to provide Acer with a bridge loan facility for up to \$18.0 million ("Bridge Loan"), subject to certain terms and conditions. The Merger expanded Zevra's rare disease portfolio, as well as increased and diversified its revenues with the addition of a U.S. commercial asset, OLPRUVA, indicated for the treatment of UCDs. See Note L for further discussion related to the Merger.

***Amendment to Registration Statement on Form S-3***

In connection with the Merger, Zevra and Nantahala concurrently entered into a registration rights agreement, pursuant to which Zevra agreed to file a resale registration statement with respect to the resale of the Zevra common stock issuable to Nantahala. On February 5, 2024, Zevra filed a registration statement on Form S-3 (File No. 333-276856) registering an aggregate of 2,269,721 shares of Zevra's common stock.

On April 5, 2024, we filed an amendment to the registration statement on Form S-3 (File No. 333-250945) covering the issuance of the shares of our common stock issuable upon the exercise of warrants issued in connection with the Merger (Note L) and remaining unexercised as of the date of the amendment, which was declared effective on April 8, 2024.

***Entry into 2021 ATM Agreement***

On July 2, 2021, the Company entered into an equity distribution agreement (the "2021 ATM Agreement") with JMP Securities LLC ("JMP") and RBC Capital Markets, LLC ("RBCCM") under which the Company may offer and sell, from time to time at its sole discretion, shares of its common stock having an aggregate offering price of up to \$75.0 million through JMP and RBCCM as its sales agents. The issuance and sale, if any, of common stock by the Company under the 2021 ATM Agreement will be made pursuant to a registration statement on Form S-3. JMP and RBCCM may sell the common stock by any method permitted by law deemed to be an "at the market offering" as defined in Rule 415 of the Securities Act of 1933, as amended. JMP and RBCCM will use commercially reasonable efforts to sell the common stock from time to time, based upon instructions from the Company (including any price, time or size limits or other customary parameters or conditions the Company may impose). The Company will pay JMP and RBCCM a commission equal to 3.0% in the aggregate of the gross sales proceeds of any common stock sold through JMP and RBCCM under the 2021 ATM Agreement. The Company filed a registration statement on Form S-3 covering the sale of the shares of its common stock up to \$350.0 million, \$75.0 million of which was allocated to the sales of the shares of common stock issuable under the 2021 ATM Agreement, which was declared effective on July 12, 2021. As of March 31, 2024, no shares have been issued or sold under the 2021 ATM Agreement.

***Share Repurchase Program***

On December 20, 2021, the Company initiated a share repurchase program (the "Share Repurchase Program") pursuant to which the Company was able to repurchase up to \$50 million of shares of its common stock through December 31, 2023. On December 31, 2023, the Share Repurchase Program ended, and the Company had repurchased 1,575,692 shares of its common stock for approximately \$11.0 million.

**B. Summary of Significant Accounting Policies**

***Use of Estimates***

The preparation of financial statements in conformity with U.S. GAAP requires the Company to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

On an ongoing basis, the Company evaluates its estimates and assumptions, including those related to revenue recognition, the useful lives of property and equipment, the recoverability of long-lived assets, the incremental borrowing rate for leases, and assumptions used for purposes of determining stock-based compensation, income taxes, the fair value of investments and the fair value of the derivative and warrant liability and discount and rebate liabilities, among others. The Company bases its estimates on historical experience and on various other assumptions that it believes to be reasonable, the results of which form the basis for making judgments about the carrying value of assets and liabilities.

### ***Investments***

The Company maintains investment securities that are classified as available-for-sale securities for which the Company has elected the fair value option under ASC 825, *Financial Instruments* ("ASC 825"). As such, these securities are carried at fair value with unrealized gains and losses included in fair value adjustment related to investments on the unaudited condensed consolidated statements of operations. The securities primarily consist of U.S. Treasury securities and are included in securities at fair value in the unaudited condensed consolidated balance sheets. As of March 31, 2024, and December 31, 2023, the Company held securities with an aggregate fair value of \$9.9 million and \$24.7 million, respectively, that contained aggregate unrealized (losses) gains of approximately (\$0.1) million and \$0.2 million, respectively. Applying fair value accounting to these debt securities more accurately represents the Company's investment strategy due to the fact that excess cash is currently being invested for the purpose of funding future operations. Interest income is recognized as earned using an effective yield method giving effect to the amortization of premium and accretion of discount and is based on the economic life of the securities. Interest income is included in interest and other income, net in the unaudited condensed consolidated statements of operations.

### ***Variable Interest Entities***

The primary beneficiary of a variable interest entity ("VIE") is required to consolidate the assets and liabilities of the VIE. When the Company obtains a variable interest in another entity, it assesses at the inception of the relationship and upon occurrence of certain significant events whether the entity is a VIE, and if so, whether the Company is the primary beneficiary of the VIE based on its power to direct the activities of the VIE that most significantly impact the VIE's economic performance and the Company's obligation to absorb losses or the rights to receive benefits from the VIE that could potentially be significant to the VIE.

To assess whether the Company has the power to direct the activities of the VIE that most significantly impact the VIE's economic performance, the Company considers all the facts and circumstances, including the Company's role in establishing the VIE and the Company's ongoing rights and responsibilities. The assessment includes identifying the activities that most significantly impact the VIE's economic performance and identifying which party, if any, has the power to direct those activities. In general, the parties that make the most significant decisions affecting the VIE (management and representation on the Board of Directors) are deemed to have the power to direct the activities of a VIE.

To assess whether the Company has the obligation to absorb losses of the VIE or the rights to receive benefits from the VIE that could potentially be significant to the VIE, the Company considers all of its economic interests that are deemed to be variable interests in the VIE.

This assessment requires judgement in determining whether these interests, in the aggregate, are considered potentially significant to the VIE. As of March 31, 2024, and December 31, 2023, the Company identified Acer to be the Company's sole interest in a VIE (Note L). As Zevra is the final decision maker for all of Acer's research, development, and commercialization of drug candidates that it is producing, the Company directs the activities of Acer that most significantly impact its performance. Therefore, the Company is the primary beneficiary of this VIE for accounting purposes.

### **Revenue Recognition**

The Company recognizes revenue in accordance with the provisions of ASC 606, *Revenue from Contracts with Customers* (“ASC 606”) and, as a result, follows the five-step model when recognizing revenue: 1) identifying a contract; 2) identifying the performance obligations; 3) determining the transaction price; 4) allocating the price to performance obligations; and 5) recognizing revenue when the performance obligations have been fulfilled.

### **Licensing Agreements**

The terms of the Company’s licensing agreements typically include one or more of the following: (i) upfront fees; (ii) milestone payments related to the achievement of development, regulatory, or commercial goals; and (iii) royalties on net sales of licensed products. Each of these payments may result in licensing revenues.

As part of the accounting for these agreements, the Company must develop estimates and assumptions that require judgment to determine the underlying stand-alone selling price for each performance obligation which determines how the transaction price is allocated among the performance obligations. Generally, the estimation of the stand-alone selling price may include such estimates as independent evidence of market price, forecasted revenues or costs, development timelines, discount rates, and probability of regulatory success. The Company evaluates each performance obligation to determine if they can be satisfied at a point in time or over time, and it measures the services delivered to the licensee which are periodically reviewed based on the progress of the related program. The effect of any change made to an estimated input component and, therefore revenue or expense recognized, would be recorded as a change in estimate. In addition, variable consideration (e.g., milestone payments) must be evaluated to determine if it is constrained and, therefore, excluded from the transaction price.

*Up-front Fees:* If a license to the Company’s intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenues from the transaction price allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other promises, the Company utilizes judgment to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time.

*Milestone Payments:* At the inception of each arrangement that includes milestone payments (variable consideration), the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. Milestone payments that are not within the Company’s or the licensee’s control, such as non-operational developmental and regulatory approvals, are generally not considered probable of being achieved until those approvals are received. At the end of each reporting period, the Company re-evaluates the probability of achievement of milestones that are within its or the licensee’s control, such as operational developmental milestones and any related constraint, and if necessary, adjusts its estimate of the overall transaction price. Any such adjustments are recorded on a cumulative catch-up basis, which would affect collaboration revenues and earnings in the period of adjustment. Revisions to the Company’s estimate of the transaction price may also result in negative licensing revenues and earnings in the period of adjustment.

### **Product Revenues, Net**

Net revenues from product sales is recognized at the transaction price when the customer obtains control of the Company’s products, which occurs at a point in time, typically upon receipt of the product by the customer.

The Company’s net revenues represent total revenues adjusted for discounts and allowances, including estimated cash discounts, chargebacks, rebates, returns, copay assistance, data fees and wholesaler fees for services. These adjustments represent variable consideration under ASC 606 and are recorded as a reduction of revenue. These adjustments are established by management as its best estimate based on available information and will be adjusted to reflect known changes in the factors that impact such allowances. Adjustments for variable consideration are determined based on the contractual terms with customers, historical trends, communications with customers and the levels of inventory remaining in the distribution channel, as well as expectations about the market for the product and anticipated introduction of competitive products.

## ***Inventories***

The value of inventory is recorded at its net realizable value. The Company determines the cost of its other inventories, which includes amounts related to materials and manufacturing overhead, on a first-in, first-out basis.

The Company may scale-up and make commercial quantities of its product candidates prior to the date it anticipates that such product will receive final regulatory approval. The scale-up and commercial production of pre-launch inventory involves the risk that such products may not be approved for marketing on a timely basis, or ever. This risk notwithstanding, the Company may scale-up and build pre-launch inventory of product that have not received final regulatory approval when the Company believes such action is appropriate in relation to the commercial value of the product launch opportunity. Inventory manufactured prior to regulatory approval is recorded as research and development expense until regulatory approval for the product is obtained. Inventory used in clinical trials is also expensed as research and development expense, when selected for such use. Inventory that can be used in either the production of clinical or commercial products is expensed as research and development costs when identified for use in a clinical manufacturing campaign. The cost of finished goods inventory that is shipped to a customer to support the Company's patient assistance programs is expensed when those shipments take place. As of March 31, 2024, and December 31, 2023, the Company did not have pre-launch inventory that qualified for capitalization.

The Company performs an assessment of the recoverability of capitalized inventory during each reporting period and writes down any excess and obsolete inventory to its net realizable value in the period in which the impairment is first identified. Such impairment charges, should they occur, are recorded as a component of cost of product sales in the statements of operations and comprehensive loss. The determination of whether inventory costs will be realizable requires the use of estimates by management. If actual market conditions are less favorable than projected by management, additional write-downs of inventory may be required. Additionally, the Company's product is subject to strict quality control and monitoring that it performs throughout the manufacturing process. In the event that certain batches or units of product do not meet quality specifications, the Company will record a charge to cost of product sales, to write-down any unmarketable inventory to its estimated net realizable value.

## ***Foreign currency***

Assets and liabilities are translated into the reporting currency using the exchange rates in effect on the unaudited consolidated condensed balance sheet dates. Equity accounts are translated at historical rates, except for the change in retained earnings during the year, which is the result of the income statement translation process. Revenue and expense accounts are translated using the weighted average exchange rate during the period. The cumulative translation adjustments associated with the net assets of foreign subsidiaries are recorded in accumulated other comprehensive income/loss in the accompanying unaudited condensed consolidated statements of stockholders' equity.

## ***Warrants***

The Company accounts for warrants as either equity-classified or liability-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in FASB ASC Topic 480, Distinguishing Liabilities from Equity (ASC 480) and FASB ASC Topic 815, Derivatives and Hedging (ASC 815). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to our own stock and whether the warrant holders could potentially require "net cash settlement" in a circumstance outside of the company's control, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent quarterly period end date while the warrants are outstanding.

For warrants that meet all criteria for equity classification, the warrants are required to be recorded as a component of additional paid-in capital, on the unaudited condensed consolidated statement of stockholders' deficit at the time of issuance. For warrants that do not meet all the criteria for equity classification, the warrants are required to be recorded at their initial fair value on the date of issuance, and on each balance sheet date thereafter. Changes in the estimated fair value of the warrants are recognized as a non-cash gain or loss in other expense, net, on the unaudited condensed consolidated statement of operations. The fair value of the warrants was estimated using the Black-Scholes option pricing model.

## ***New Accounting Pronouncements Not Yet Adopted***

### *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*

In November 2023, the FASB issued ASU 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures, which modifies the disclosure and presentation requirements of reportable segments. The amendments in the update require the disclosure of significant segment expenses that are regularly provided to the chief operating decision maker ("CODM") and included within each reported measure of segment profit and loss. The amendments also require disclosure of all other segment items by reportable segment and a description of its composition. Additionally, the amendments require disclosure of the title and position of the CODM and an explanation of how the CODM uses the reported measure(s) of segment profit or loss in assessing segment performance and deciding how to allocate resources. This update is effective for annual periods beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company is currently evaluating the impact that this guidance will have on the presentation of its consolidated financial statements and accompanying notes.

### *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which expands disclosures in an entity's income tax rate reconciliation table and disclosures regarding cash taxes paid both in the U.S. and foreign jurisdictions. The update will be effective for annual periods beginning after December 15, 2024. The Company is currently evaluating the impact that this guidance will have on the presentation of its consolidated financial statements and accompanying notes.

### C. Inventories

	March 31, 2024	December 31, 2023
Raw materials	\$ 4,044	\$ 2,938
Work in progress	3,309	1,884
Finished goods	5,073	5,019
Total inventory	<u>\$ 12,426</u>	<u>\$ 9,841</u>

### D. Debt Obligations

#### Secured Promissory Note

In connection with the Merger (Note L), on August 30, 2023, the Company and Nantahala, entered into a secured promissory note payable by Zevra to Nantahala in the original principal amount of \$5.0 million (the "Nantahala Note"). The Nantahala Note initially bore interest at 9.0% per annum, payable quarterly in arrears in cash. The interest rate increased to 12.0% per annum effective March 1, 2024, as the Nantahala Note remained unpaid six months from its issue date. The additional 3.0% interest would have been paid in shares of Zevra's common stock based on the volume weighted average trading price ("VWAP") of Zevra's common stock during the twenty consecutive trading days ending on the date before such interest payment date. Beginning on the first interest payment date following the second anniversary of the Nantahala Note, and on each interest payment date thereafter, Zevra was required to make \$0.6 million amortization payments on the Nantahala Note until it was paid in full. All principal and unpaid interest on the Nantahala Note would have been due on August 30, 2026, the third anniversary of the Nantahala Note. Zevra was entitled to prepay the Nantahala Note at any time without penalty. The Nantahala Note was secured by Zevra's interest in (i) the loan assets under the Loan Purchase Agreement described in Note L; (ii) the note assets under the Note Purchase Agreement described in Note L; (iii) the Bridge Loan described in Note L; and (iv) the proceeds therefrom. The Company used the proceeds from the Nantahala Note, along with \$12.0 million in cash and 98,683 shares of Zevra's common stock, to acquire Acer's term loans, as more fully described in Note L. In April 2024, the Nantahala Note was repaid in full and terminated. At the time of repayment, Nantahala elected to receive a cash payment in lieu of shares of Zevra's common stock in exchange for the additional 3.0% interest accrued for the period from March 1, 2024, through April 5, 2024. The outstanding balance under the Nantahala Note is included in long-term liabilities as of March 31, 2024, as it was refinanced with long-term debt after the balance sheet date, but prior to issuance of the unaudited condensed consolidated financial statements.

As of March 31, 2024, and December 31, 2023, the Company had a secured promissory note outstanding, in the aggregate principal amount, as follows (in thousands):

	March 31, 2024	December 31, 2023
Secured promissory note	\$ 5,000	\$ 5,000
Unamortized original issue premium	132	148
Less: debt issuance costs	(73)	(82)
Secured promissory note, net	<u>\$ 5,059</u>	<u>\$ 5,066</u>

Future minimum principal payments under the secured promissory note as of March 31, 2024, were as follows (in thousands):

Year Ending December 31,	
2024	\$ —
2025	1,200
2026	3,800
Total minimum payments	5,000
Plus: unamortized debt premium and debt issuance costs	59
Secured promissory note, net	<u>\$ 5,059</u>

#### Line of Credit

On January 26, 2023, the Company and Wells Fargo, as lender, entered into a revolving margin account agreement. The Company's investments are used as collateral for the loan and the amount the Company is able to borrow is limited to 80-90% of its outstanding investment balance held with Wells Fargo. The margin account bore interest at the Prime rate minus 225 basis-points. As of March 31, 2024, and December 31, 2023, \$37.9 million and \$37.7 million was outstanding under the margin account, respectively. In April 2024, the Company repaid the outstanding balance under the margin account with Wells Fargo, and upon such repayment, the margin capabilities were removed from the account. The outstanding balance under the margin account is included in long-term liabilities as of March 31, 2024, as it was refinanced with long-term debt after the balance sheet date, but prior to issuance of the unaudited condensed consolidated financial statements. As of March 31, 2024, the remaining borrowing capacity under the margin account was approximately \$3.8 million.

## **Term Loans**

As a subsequent event, on April 5, 2024 (the "Term Loans Closing Date"), the Company entered into a credit agreement (the "Credit Agreement") with HCR Stafford Fund II, L.P., HCR Potomac Fund II, L.P., and Perceptive Credit Holdings IV, LP (collectively, the "Lenders"), and Alter Domus (US) LLC, as administrative agent (the "Administrative Agent").

Under the terms of the Credit Agreement, the Lenders provided a senior secured loan facility to the Company in the aggregate principal amount of \$100.0 million, which is divided into three tranches as follows: (i) \$60.0 million which was funded in full on the Term Loans Closing Date; (ii) \$20.0 million which is available to the Company in up to two drawings, each in an amount not to exceed \$10.0 million, at the Company's option until 18 months following the Term Loans Closing Date; and (iii) \$20.0 million which is available to the Company upon approval by the FDA of the NDA for arimocloamol for the treatment of NPC, at the Company's option until December 31, 2024 (collectively, the "Term Loans").

The principal amount of the Term Loans outstanding (the "Outstanding Principal Amount") will bear interest at a rate equal to 3-Month Term SOFR *plus* 7.00% per annum. If the net product sales for the calendar year ending December 31, 2025, exceed \$100.0 million, the Outstanding Principal Amount will bear interest at 3-Month Term SOFR *plus* 6.00% per annum. If the net product sales for the calendar year ending December 31, 2025, do not exceed \$100.0 million, then for any subsequent period of four consecutive fiscal quarters ending on or after March 31, 2026, in which net product sales exceed \$125.0 million, the Outstanding Principal Amount will bear interest at 3-Month Term SOFR *plus* 6.50% per annum. In all cases, the 3-Month Term SOFR rate will be subject to a floor of 4.00% per annum. Interest will be payable quarterly in arrears on the last day of each calendar quarter. The Company has the option to pay up to 25% of the interest in-kind beginning on the Term Loans Closing Date, through and including March 31, 2026. The Term Loans will mature on the fifth anniversary of the Term Loans Closing Date. In connection with the Credit Agreement, the Company incurred approximately \$1.7 million of costs, which primarily consisted of underwriting, legal and other professional fees, and is included in other long-term assets in the unaudited condensed consolidated balance sheet as of March 31, 2024.

The Credit Agreement contains customary affirmative and negative covenants by the Company, which among other things, will require the Company to provide certain financial reports to the Lenders, meet certain minimum net product sales amounts, and limit the ability of the Company to incur or guarantee additional indebtedness, engage in certain transactions, and effect a consolidation or merger, without consent. The obligations of the Company under the Credit Agreement may be accelerated upon customary events of default, including non-payment of principal, interest, fees and other amounts, covenant defaults, insolvency, material judgments, or inaccuracy of representations and warranties. The Term Loans are secured by a first priority perfected lien on, and security interest in, substantially all current and future assets of the Company. The proceeds of the Term Loans shall be used to refinance certain existing indebtedness of the Company and its subsidiaries. The Company will use the remaining proceeds to pay fees and expenses related to the Debt Financing and fund the development and commercialization of OLPRUVA and arimocloamol.

## **E. Revenue, net**

### *Licensing Agreements*

#### **AZSTARYS License Agreement**

The Company entered into a Collaboration and License Agreement (the "AZSTARYS License Agreement") with Commave Therapeutics SA ("Commave"), an affiliate of GPC. Under the AZSTARYS License Agreement, as amended, the Company granted to Commave an exclusive, worldwide license to develop, manufacture and commercialize the Company's product candidates containing SDX and d-MPH, including AZSTARYS, or any other product candidates containing SDX and developed to treat ADHD or any other CNS disorder. Corium was tasked by Commave to lead all commercialization activities for AZSTARYS under the AZSTARYS License Agreement. Pursuant to the AZSTARYS License Agreement, Commave agreed to pay milestone payments up to an aggregate of \$590.0 million upon the occurrence of specified regulatory milestones related to AZSTARYS, additional fixed payments upon the achievement of specified U.S. sales milestones, and quarterly, tiered royalty payments based on a range of percentages of net sales (as defined in the AZSTARYS License Agreement). Commave is obligated to make such royalty payments on a product-by-product basis until expiration of the royalty term for the applicable product.

The AZSTARYS License Agreement is within the scope of ASC 606, as the transaction represents a contract with a customer where the participants function in a customer / vendor relationship and are not exposed equally to the risks and rewards of the activities contemplated under the AZSTARYS License Agreement.

The Company concluded that these regulatory milestones, sales milestones and royalty payments each contain a significant uncertainty associated with a future event. As such, these milestone and royalty payments are constrained at contract inception and are not included in the transaction price as the Company could not conclude that it is probable a significant reversal in the amount of cumulative revenue recognized will not occur surrounding these milestone payments. At the end of each reporting period, the Company updates its assessment of whether the milestone and royalty payments are constrained by considering both the likelihood and magnitude of the potential revenue reversal. For the three months ended March 31, 2024, and 2023, the Company recognized \$1.2 million and \$0.6 million of revenue under the AZSTARYS License Agreement, respectively, primarily related to royalties. There was no deferred revenue related to this agreement as of March 31, 2024, or December 31, 2023.

In accordance with the terms of the Company's Termination Agreement with Aquestive Therapeutics dated March 20, 2012, Aquestive Therapeutics ("Aquestive") has the right to receive an amount equal to 10% of any royalty or milestone payments made to the Company related to AZSTARYS or KP1077 under the AZSTARYS License Agreement.

#### **Relief Exclusive License Agreement**

As a condition to entering into the Merger Agreement, Acer and Relief Therapeutics, Inc. ("Relief") entered into an exclusive license agreement on August 30, 2023 (the "Relief License Agreement"). Pursuant to the Relief License Agreement, Relief will hold exclusive development and commercialization rights for OLPRUVA in the European Union, Liechtenstein, San Marino, Vatican City, Norway, Iceland, Principality of Monaco, Andorra, Gibraltar, Switzerland, United Kingdom, Albania, Bosnia, Kosovo, Montenegro, Serbia and North Macedonia ("Geographical Europe"). The Company will have the right to receive a royalty of up to 10.0% of the net sales of OLPRUVA in Geographical Europe. For the three months ended March 31, 2024, the Company did not recognize any revenue under the Relief License Agreement. There was no deferred revenue related to this agreement as of March 31, 2024, and December 31, 2023. For further discussion of the Relief License Agreement, see Note L.



## Product Revenues, Net

### Arimoclomol Expanded Access Program

Net revenue includes revenue from the sale of arimoclomol for the treatment of NPC under the remunerated expanded access compassionate use program in France ("French nATU"). An expanded access compassionate use program is a program giving specific patients access to a drug, which is not yet approved for commercial sale. Only drugs targeting serious or rare indications and for which there is currently no appropriate treatment are considered for expanded access compassionate use programs. Further, to be considered for the expanded access compassionate use program, the drug must have proven efficacy and safety and must either be undergoing price negotiations or seeking marketing approval.

In accordance with ASC 606, the Company recognizes revenue when fulfilling its performance obligation under the Arimoclomol Expanded Access Program ("Arimoclomol EAP") by transferring control of promised goods or services to its customer, in an amount that reflects the consideration that the Company expects to receive in exchange for those goods or services. In determining when the customer obtains control of the product, the Company considers certain indicators, including whether the Company has a present right to payment from the customer, whether title and/or significant risks and rewards of ownership have transferred to the customer and whether the customer acceptance has been received. Revenue is recognized net of sales deductions, including discounts, rebates, applicable distributor fees, and revenue-based taxes.

The French Health Authorities and the manufacturer have agreed to a price for sales during the French nATU, but the final transaction price depends on the terms and conditions in the contracts with the French Health Authorities and is subject to price negotiations with the French Health Authorities, following market approval. Any excess in the price charged the manufacturer compared to the price agreed with the health authorities once the drug product is approved in France must be repaid. The repayment is considered in the clawback liability (rebate). An estimate of net revenue and clawback liability are recognized using the 'expected value' method. Accounting for net revenue and clawback liability requires determination of the most appropriate method for the expected final transaction price. This estimate also requires assumptions with respect to inputs into the method, including current pricing of comparable marketed products within the rare disease area in France. Management has considered the expected final sales price as well as the price of similar drug products. The Company is operating within a rare disease therapeutic area where there is unmet treatment need and hence a limited number of comparable commercialized drugs products. The limited available relevant market information for directly comparable commercialized drugs within rare disease increases the uncertainty in management's estimate.

For the three months ended March 31, 2024, the Company recognized revenue related to the Arimoclomol EAP in France of \$2.2 million, which is net of a clawback liability of \$1.3 million, and other gross to net adjustments. For the three months ended March 31, 2023, the Company recognized revenue related to the Arimoclomol EAP in France of \$2.0 million, which is net of a clawback liability of \$1.3 million, and other gross to net adjustments. The total estimated reserve liability as of March 31, 2024, and December 31, 2023, was \$13.2 million and \$12.2 million, respectively. As of March 31, 2024, and December 31, 2023, this estimated reserve liability is recorded as discount and rebate liabilities in the unaudited condensed consolidated balance sheets and is separated into current and long-term based upon the timing of the expected payment to the French regulators.

### OLPRUVA Product Sales

On December 27, 2022, the FDA approved OLPRUVA (sodium phenylbutyrate), a prescription medicine used along with certain therapy, including changes in diet, for the long-term management of adults and children with UCIDs weighing 44 pounds (20 kg) or greater and with a body surface area of 1.2m<sup>2</sup> or greater. On November 17, 2023, the Company acquired OLPRUVA in connection with the Merger (Note L). To commercialize OLPRUVA for oral suspension in the U.S. the Company is building marketing, sales, medical affairs, distribution, managerial and other non-technical capabilities or making arrangements with third parties to perform these services. The Company's current distributor for sales of OLPRUVA is a single specialty pharmacy provider. However, the Company intends to establish additional distributors such as other retail pharmacies and certain medical centers or hospitals. In addition to distribution agreements, the Company enters into arrangements with health care providers and payors that provide for government mandated and/or privately negotiated rebates with respect to the purchase of its products.

For the three months ended March 31, 2024, and 2023, sales of OLPRUVA were de minimis due to limited shipments to our specialty pharmacy in Q1 2024.

### Accounts and Other Receivables

Accounts and other receivables consist of receivables from product sales, receivables under the AZSTARYS License Agreement and Arimoclomol EAP, as well as income tax receivables and other receivables due to the Company. Receivables under the AZSTARYS License Agreement are recorded for amounts due to the Company related to reimbursable third-party costs and royalties on product sales. Receivables under the Arimoclomol EAP are recorded for product sales under the French nATU. These receivables are evaluated to determine if any reserve or allowance should be established at each reporting date. As of March 31, 2024, the Company had receivables related to the Arimoclomol EAP of \$4.8 million, AZSTARYS License Agreement of \$1.2 million, income tax receivables of \$0.1 million and other receivables of \$2.2 million. As of December 31, 2023, the Company had receivables related to the Arimoclomol EAP of \$4.7 million, AZSTARYS License Agreement of \$11.4 million, and other receivables of \$1.3 million. As of March 31, 2024, and December 31, 2023, no reserve or allowance for doubtful accounts had been established.

**F. Commitments and Contingencies**

From time to time, the Company is involved in various legal proceedings arising in the normal course of business. For some matters, a liability is not probable, or the amount cannot be reasonably estimated and, therefore, an accrual has not been made. However, for such matters when it is probable that the Company has incurred a liability and can reasonably estimate the amount, the Company accrues and discloses such estimates.

*Stockholder Litigation Related to the Merger*

On October 12, 2023, Brodsky & Smith, purporting to act as counsel for Jerry Beavee, who was asserted to be a stockholder of Acer, filed a complaint entitled *Jerry Beavee v. Acer Therapeutics Inc., et al.*, No. 1:23-cv-08995 in the United States District Court for the Southern District of New York (the "Action") alleging that defendants violated Section 14(a) and 20(a) of the Securities Exchange Act of 1934 by filing the Preliminary Merger Registration Statement which allegedly omitted certain information that such counsel asserts is material to Acer's required disclosure. On October 30, 2023, Acer filed with the SEC a Schedule DEF14A that contained additional information regarding the Merger, which mooted the disclosure claims alleged in the Action. On December 8, 2023, Jerry Beavee filed with the court a notice of dismissal of the Action without prejudice.

On October 20, 2023, Long Law, LLC and Acocelli Law, PLLC, purporting to act as counsel for Kevin Turner, who was asserted to be a stockholder of Acer, filed a complaint entitled *Kevin Turner v. Acer Therapeutics Inc., et al.*, No. 1:23-cv-01185 in the United States District Court for the District of Delaware alleging that defendants violated Section 14(a) and 20(a) of the Securities Exchange Act of 1934 as well as SEC Rule 14a-9 by filing the Definitive Proxy Statement which allegedly omitted certain information that such counsel asserts is material to Acer's required disclosure. The complaint prays that, if asserted omissions are not adequately corrected, then Turner will seek to enjoin Acer from holding a stockholder meeting to approve the Merger and, if the Merger closes, will seek to rescind it and seek an award of damages.

On October 20, 2023, Long Law, LLC, purporting to act as counsel for Matthew Jones, who was asserted to be a stockholder of Acer, filed a complaint entitled *Matthew Jones v. Acer Therapeutics Inc., et al.*, No. 1:23-cv-01186 in the United States District Court for the District of Delaware alleging that defendants violated Section 14(a) and 20(a) of the Securities Exchange Act of 1934 as well as SEC Rule 14a-9 by filing the Definitive Proxy Statement which allegedly omitted certain information that such counsel asserts is material to the Acer's required disclosure. The complaint prays that, if asserted omissions are not adequately corrected, then Jones will seek to enjoin Acer from holding a stockholder meeting to approve the Merger and, if the Merger closes, will seek to rescind it and seek an award of damages.

As of March 31, 2024, and December 31, 2023, no accruals have been made related to commitments and contingencies. The Company intends to vigorously defend these lawsuits and believes that it has meritorious defenses to each. However, litigation is inherently uncertain, and any judgment or injunctive relief entered against the Company or any adverse settlement could adversely affect the Company's business, results of operations and financial condition.

**G. Stock and Warrants***Authorized, Issued, and Outstanding Common Shares*

As of March 31, 2024, and December 31, 2023, the Company had authorized shares of common stock of 250,000,000 shares. Of the authorized shares, 43,426,186 and 43,110,360 shares of common stock were issued as of March 31, 2024, and December 31, 2023, respectively, and 41,850,494 and 41,534,668 shares of common stock were outstanding as of March 31, 2024, and December 31, 2023, respectively.

As of March 31, 2024 and December 31, 2023, the Company had reserved authorized shares of common stock for future issuance as follows:

	<b>March 31, 2024</b>	<b>December 31, 2023</b>
Outstanding awards under equity incentive plans	9,324,407	8,023,142
Outstanding common stock warrants	5,603,729	5,603,729
Possible future issuances under equity incentive plans	4,366,537	1,728,885
Possible future issuances under employee stock purchase plans	1,340,172	1,340,172
<b>Total common shares reserved for future issuance</b>	<b>20,634,845</b>	<b>16,695,928</b>

*Common Stock Activity*

The following table summarizes common stock activity for the three months ended March 31, 2024:

	<b>Shares of Common Stock</b>
Balance as of January 1, 2024	41,534,668
Common stock issued as compensation to third parties	9,000
Common stock issued as a result of stock options exercised	306,826
<b>Balance as of March 31, 2024</b>	<b>41,850,494</b>

*Authorized, Issued, and Outstanding Preferred Stock*

As of March 31, 2024, and December 31, 2023, the Company had 10,000,000 shares of authorized preferred stock, none of which were designated, issued, or outstanding.

### Warrants to Purchase Common Stock

The Company has issued warrants to purchase common stock to various third parties, of which 5,603,729 remain outstanding as of March 31, 2024, and are immediately exercisable. These warrants qualify as participating securities under ASC Topic 260, *Earnings per Share*, and are treated as such in the net loss per share calculation (Note H). The Company may be required to redeem these warrants for a cash amount equal to the Black-Scholes value of the portion of the warrants to be redeemed (the "Put Option").

In connection with the Merger (Note L), in November 2023, the Company directly issued to certain investors an aggregate of 1,382,489 shares of its common stock, par value \$0.0001 per share, and accompanying warrants to purchase up to 1,382,489 shares of its common stock (the "2023 Warrants") at a combined offering price of \$4.34 per share of common stock and the Warrants and an aggregate of 917,934 shares of its common stock in exchange for the cancellation of a warrant to purchase 2,920,306 shares of common stock of Acer. The Warrants are immediately exercisable and expire on November 22, 2028. The Company used the net proceeds of approximately \$6.0 million from the offering for general corporate purposes. These warrants are separately exercisable by the warrant holders. While the warrants are outstanding (but unexercised), the warrant holders will participate in any dividend or other distribution of the Company's assets to its common stockholders by way of return of capital or otherwise. As of March 31, 2024, and December 31, 2023, none of the warrants have been exercised. The warrants have been evaluated to determine the appropriate accounting and classification pursuant to ASC Topic 480, Distinguishing Liabilities from Equity, and ASC Topic 815, Derivatives and Hedging. Generally, freestanding warrants should be classified as (i) liabilities if the warrant terms allow settlement of the warrant exercise in cash and (ii) equity if the warrant terms only allow settlement in shares of common stock.

The Company determined that its outstanding warrants and the Put Option should be recorded as a liability and stated at fair value at each reporting period. Changes to the fair value of the warrant liability are recorded through the unaudited condensed consolidated statements of operations as a fair value adjustment related to warrant and CVR liability. As of March 31, 2024, and December 31, 2023, the fair value of the liability associated with these warrants and the Put Option was approximately \$11.5 million and \$16.1 million, respectively. The fair value adjustment related to these warrants and the Put Option was approximately \$4.6 million of income and \$1.5 million of expense for the three months ended March 31, 2024, and 2023, respectively.

### H. Stock-Based Compensation

The Company maintains a stock-based compensation plan (the "Incentive Stock Plan") that governs stock awards made to employees and directors prior to completion of the IPO.

In November 2014, the Board of Directors of the Company ("the Board"), and in April 2015, the Company's stockholders, approved the Company's 2014 Equity Incentive Plan (the "2014 Plan"), which became effective in April 2015. The 2014 Plan provides for the grant of stock options, other forms of equity compensation, and performance cash awards. In June 2021, the Company's stockholders approved an Amended and Restated 2014 Equity Incentive Plan (the "A&R 2014 Plan"), following its adoption by the Board in April 2021, which among other things added 4,900,000 shares to the maximum number of shares of common stock to be issued under the plan and extended the annual automatic increases (discussed further below) until January 1, 2031 and eliminated individual grant limits that applied under the 2014 Plan to awards that were intended to comply with the exemption for "performance-based compensation" under Code Section 162(m). The maximum number of shares of common stock that may be issued under the A&R 2014 Plan is 9,932,883 as of March 31, 2024. The number of shares of common stock reserved for issuance under the A&R 2014 Plan will automatically increase on January 1 of each year, until and including January 1, 2031, by 4% of the total number of shares of the Company's capital stock outstanding on December 31 of the preceding calendar year, or a lesser number of shares determined by the Board. Pursuant to the terms of the 2014 Plan, on January 1, 2024, the common stock reserved for issuance under the 2014 Plan automatically increased by 1,661,386 shares.

During the three months ended March 31, 2024, 716,875 stock options were exercised. During the three months ended March 31, 2023, no stock options were exercised.

In June 2021, the Company's stockholders approved an Employee Stock Purchase Plan (the "ESPP"), following its adoption by the Board in April 2021. The maximum number of shares of common stock that may be issued under the ESPP is 1,500,000. The first offering period under the ESPP began on October 1, 2021, and the first purchase date occurred on May 31, 2022. As of March 31, 2024, 159,828 shares have been issued under the ESPP.

In January 2023, the Board approved the 2023 Employment Inducement Award Plan (the "2023 Plan"). The maximum number of shares of common stock that were initially available for issuance under the 2023 Plan was 1,500,000. In February 2024, our Board approved an amendment to the 2023 Plan to increase the aggregate number of shares of common stock available for issuance under the 2023 Plan from 1,500,000 to 4,500,000 shares.

In May 2023, the Board approved the Ninth Amended and Restated Non-Employee Director Compensation Policy (the "Non-Employee Director Compensation Policy"). The equity compensation made pursuant to the Non-Employee Director Compensation Policy will be granted under the A&R 2014 Plan.

Stock-based compensation expense recorded under the Incentive Stock Plan, A&R 2014 Plan, ESPP and 2023 Plan is included in the following line items in the accompanying unaudited condensed consolidated statements of operations (in thousands):

	<b>Three months ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Research and development	\$ 853	\$ 572
Selling, general and administrative	1,266	19
<b>Total stock-based compensation expense</b>	<b>\$ 2,119</b>	<b>\$ 591</b>

There was no stock-based compensation expense related to performance-based awards recognized during the three months ended March 31, 2024, and 2023.

## I. Fair Value of Financial Instruments

The accounting standard for fair value measurements provides a framework for measuring fair value and requires disclosures regarding fair value measurements. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, based on the Company's principal or, in absence of a principal, most advantageous market for the specific asset or liability.

The Company uses a three-tier fair value hierarchy to classify and disclose all assets and liabilities measured at fair value on a recurring basis, as well as assets and liabilities measured at fair value on a non-recurring basis, in periods subsequent to their initial measurement. The hierarchy requires the Company to use observable inputs when available, and to minimize the use of unobservable inputs, when determining fair value. The three tiers are defined as follows:

- Level 1—Observable inputs that reflect quoted market prices (unadjusted) for identical assets or liabilities in active markets;
- Level 2—Observable inputs other than quoted prices in active markets that are observable either directly or indirectly in the marketplace for identical or similar assets and liabilities; and
- Level 3—Unobservable inputs that are supported by little or no market data, which require the Company to develop its own assumptions.

The carrying amounts of certain financial instruments, including cash and cash equivalents, investments, and accounts payable and accrued expenses, approximate their respective fair values due to the short-term nature of such instruments.

### Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Company evaluates its financial assets and liabilities subject to fair value measurements on a recurring basis to determine the appropriate level in which to classify them for each reporting period. This determination requires significant judgments to be made. The following table summarizes the conclusions reached regarding fair value measurements as of March 31, 2024, and December 31, 2023 (in thousands):

	Balance as of March 31, 2024	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
CVR liability (Note L)	8,200	\$ —	\$ —	\$ 8,200
Warrant liabilities	11,535	—	—	11,535
Total liabilities	\$ 19,735	\$ —	\$ —	\$ 19,735
Securities:				
U.S. Treasury securities	9,868	9,868	—	—
Total assets	\$ 9,868	\$ 9,868	\$ —	\$ —
	Balance as of December 31, 2023	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
CVR liability (Note L)	\$ 7,262	\$ —	\$ —	\$ 7,262
Warrant liabilities	16,100	—	—	16,100
Total liabilities	\$ 23,362	\$ —	\$ —	\$ 23,362
Securities:				
U.S. Treasury securities	\$ 24,688	\$ 24,688	\$ —	\$ —
Total assets	\$ 24,688	\$ 24,688	\$ —	\$ —

The common stock warrant liabilities were recorded at fair value using the Black-Scholes option pricing model. The following assumptions were used in determining the fair value of the warrant liabilities valued using the Black-Scholes option pricing model as of March 31, 2024, and December 31, 2023:

	March 31, 2024	December 31, 2023
Risk-free interest rate	4.14% - 4.57%	3.76% - 4.12%
Volatility	59.43% - 92.76%	62.01% - 92.42%
Dividend yield	0%	0%
Expected term (years)	1.8 - 4.6	2.0 - 4.9
Weighted average fair value	2.17	2.94

The following table is a reconciliation for the common stock warrant liabilities measured at fair value using Level 3 unobservable inputs (in thousands):

Balance as of December 31, 2023	\$	16,100
Change in fair value measurement		(4,565)
Balance as of March 31, 2024	\$	<u>11,535</u>

For the three months ended March 31, 2024, and 2023, the changes in fair value of the warrant liabilities primarily resulted from the volatility of the Company's common stock and the change in the risk-free interest rates.

#### J. Net Loss Per Share

For all periods presented herein, the Company did not use the two-class method to compute net loss per share of common stock, even though it had issued securities, other than common stock, that contractually entitled the holders to participate in dividends and earnings, because these holders are not obligated to participate in a loss. The two-class method requires earnings for the period to be allocated between common stock and participating securities based upon their respective rights to receive distributed and undistributed earnings.

Under the two-class method, for periods with net income, basic net income per share of common stock is computed by dividing the undistributed net income by the weighted average number of shares of common stock outstanding during the period. Undistributed net income is computed by subtracting from net income the portion of current period earnings that participating securities would have been entitled to receive pursuant to their dividend rights had all of the period's earnings been distributed and subtracting the actual or deemed dividends declared. No such adjustment to earnings is made during periods with a net loss as the holders of the participating securities have no obligation to fund losses. Diluted net income per share of common stock is computed under the two-class method by using the weighted average number of shares of common stock outstanding plus the potential dilutive effects of stock options, warrants and other outstanding convertible securities. In addition to analyzing under the two-class method, the Company analyzes the potential dilutive effect of stock options and warrants, under the treasury-stock method and other outstanding convertible securities under the if-converted method when calculating diluted income (loss) per share of common stock, in which it is assumed that the stock options, warrants and other outstanding convertible securities convert into common stock at the beginning of the period or date of issuance, if the stock option, warrant or other outstanding convertible security was issued during the period. The Company reports the more dilutive of the approaches (two-class or treasury-stock/if-converted) as its diluted net income (loss) of common stock during the period.

As noted above, for all periods presented herein, the Company did not utilize the two-class approach as the Company was in a net loss position and the holders of the participating securities have no obligation to fund losses. The Company did analyze diluted net loss per share of common stock under the treasury-stock/if-converted method and noted that all outstanding stock options and warrants were anti-dilutive for the periods presented. For all periods presented, basic net loss per share of common stock was the same as diluted net loss per share of common stock.

The following securities, presented on a common stock equivalent basis, have been excluded from the calculation of weighted average number of shares of common stock outstanding because their effect is anti-dilutive:

	<b>Three months ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Awards under equity incentive plans	4,366,537	6,024,889
Common stock warrants	5,603,729	4,252,490
Total securities excluded from the calculation of weighted average number of shares of common stock outstanding	<u>9,970,266</u>	<u>10,277,379</u>

A reconciliation from net loss to basic and diluted net loss per share of common stock for the three months ended March 31, 2024, and 2023, is as follows (in thousands):

	<b>Three months ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
<b>Basic and diluted net loss per share of common stock:</b>		
<b>Net loss, basic and diluted</b>	\$ (16,622)	\$ (13,217)
Weighted average number of shares of common stock outstanding, basic and diluted	41,779	34,467
Basic and diluted net loss per share of common stock	<u>\$ (0.40)</u>	<u>\$ (0.38)</u>

**K. Leases**

The Company has operating and finance leases for office space, laboratory facilities and various laboratory equipment, furniture and office equipment and leasehold improvements. The Company determines if an arrangement is a lease at contract inception. Lease assets and lease liabilities are recognized based on the present value of lease payments over the lease term at the commencement date. The Company does not separate lease and non-lease components. Leases with a term of 12 months or less at commencement are not recorded on the unaudited condensed consolidated balance sheets. Lease expense for these arrangements is recognized on a straight-line bases over the lease term. The Company's leases have remaining lease terms of less than 1 year to approximately 3 years, some of which include options to extend the leases for up to 5 years, and some which include options to terminate the leases within 1 year.

Effective June 1, 2021, the Company agreed to sublease office space in Florida, comprised of one of the two contiguous suites, under a non-cancelable operating lease, which expires in February 2026.

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

Lease Cost	Three months ended March 31,	
	2024	2023
Finance lease cost:		
Amortization of right-of-use assets	\$ 12	\$ 32
Interest on lease liabilities	—	—
Total finance lease cost	12	32
Operating lease cost	93	113
Short-term lease cost	59	55
Variable lease cost	13	13
Less: sublease income	(39)	(39)
Total lease costs	\$ 138	\$ 174

Supplemental cash flow information related to leases was as follows (in thousands):

	Three months ended March 31,	
	2024	2023
Cash paid for amounts included in the measurement of lease liabilities:		
Financing cash flows from finance leases	\$ —	\$ 2
Operating cash flows from operating leases	123	142
Operating cash flows from short-term leases	59	55
Operating cash flows from variable lease costs	13	13
Right-of-use assets obtained in exchange for lease liabilities:		
Finance leases	\$ —	\$ —
Operating leases	419	—

Supplemental balance sheet information related to leases was as follows (in thousands, except weighted average remaining lease term and weighted average discount rate):

	March 31, 2024	December 31, 2023
<b>Finance Leases</b>		
Property and equipment, at cost	\$ 1,031	\$ 1,031
less: accumulated depreciation and amortization	(894)	(882)
Property and equipment, net	<u>\$ 137</u>	<u>\$ 149</u>
Other current liabilities	\$ —	\$ —
Other long-term liabilities	—	—
Total finance lease liabilities	<u>\$ —</u>	<u>\$ —</u>
<b>Operating Leases</b>		
Operating lease right-of-use assets	\$ 1,086	\$ 790
Total operating lease right-of-use assets	<u>\$ 1,086</u>	<u>\$ 790</u>
Current portion of operating lease liabilities	\$ 583	\$ 543
Operating lease liabilities, less current portion	705	456
Total operating lease liabilities	<u>\$ 1,288</u>	<u>\$ 999</u>
<b>Weighted Average Remaining Lease Term</b>		
Operating leases (in years)	3	2
<b>Weighted Average Discount Rate</b>		
Finance leases	0.0%	14.3%
Operating leases	9.3%	7.6%

Maturities of lease liabilities were as follows (in thousands):

Year Ending December 31,	Finance Leases	Operating Leases
2024 (excluding the three months ended March 31, 2024)	\$ —	\$ 531
2025	—	511
2026	—	142
2027	—	132
2028	—	155
Thereafter	—	40
Total lease payments	—	1,511
Less: future interest expense	—	(223)
Lease liabilities	<u>\$ —</u>	<u>\$ 1,288</u>

## L. Merger

On August 30, 2023, in connection with the Merger Agreement with Acer, the following transactions occurred prior to Closing:

- *Bridge Loan* - Zevra and Acer entered into a bridge loan agreement (the "Bridge Loan Agreement"), providing for Zevra to make loans (collectively, the "Bridge Loan") to Acer up to an aggregate principal amount of \$16.5 million. The Bridge Loan was provided to Acer to support its termination agreement with Relief Therapeutics Holding SA ("Relief") and to provide Acer with working capital, including for payments of accounts payable to support the commercial launch of OLPRUVA and the development of celiprolol pending the Merger's closure. On October 31, 2023, the Company and Acer entered into an amendment to the Bridge Loan Agreement, which increased the aggregate principal amount available under the loan from \$16.5 million to \$18.0 million.
- *Purchase of Acer's Term Loans* - Zevra purchased certain indebtedness of Acer held by Nantahala Capital Management, LLC ("Nantahala"). Under the loan purchase with Nantahala, certain of its affiliates and certain other parties (collectively with Nantahala, "Nantahala Holders") Zevra purchased (i) an original senior secured term loan facility made available to Acer in an aggregate amount of \$6.5 million and funded on March 14, 2022, and (ii) an additional senior secured term loan made to Acer in an aggregate amount of \$7.0 million in a single borrowing which funded on January 31, 2023 for (1) \$12.0 million in cash; (2) 98,683 shares of Zevra Common Stock; and (3) a secured Promissory Note payable by Zevra to Nantahala in the original principal amount \$5.0 million. These were recorded as receivables from Acer and were treated as a settlement of a preexisting relationship in connection with the closing of the transaction and recorded as a component of purchase consideration.
- *Purchase of Acer's Convertible Notes* ("Marathon Convertible Notes")- Under the Note Purchase Agreement with the Nantahala Holders, Zevra purchased the Marathon Convertible Notes that Nantahala had acquired on June 16, 2023. Zevra acquired the Marathon Convertible Notes in exchange for the issuance of 2,171,038 shares of Zevra Common Stock at \$5.0667 per share for a total purchase price of \$11.0 million.
- *Amendment to IP License Agreement and IP Termination Agreement*: As a condition to entering into the Merger Agreement, Acer and Relief Therapeutics Holding AG ("Relief") entered into the Exclusive License Agreement and the Termination Agreement terminating the collaboration and license agreement, dated March 19, 2021, by and between Acer and Relief. Pursuant to the Exclusive License Agreement, Relief holds exclusive development and commercialization rights for OLPRUVA in the European Union, Liechtenstein, San Marino, Vatican City, Norway, Iceland, Principality of Monaco, Andorra, Gibraltar, Switzerland, United Kingdom, Albania, Bosnia, Kosovo, Montenegro, Serbia and North Macedonia (Geographical Europe). Acer has the right to receive a royalty of up to 10.0% of the net sales of OLPRUVA in Geographical Europe. In accordance with the terms of the Termination Agreement, Relief received an upfront payment from Acer of \$10.0 million (which payment was funded with the Bridge Loan described above) with an additional payment of \$1.5 million due on the first-year anniversary of the \$10.0 million payment. Acer also agreed to pay a 10.0% royalty on net sales of OLPRUVA worldwide, excluding Geographical Europe, and 20.0% of any value received by Acer from certain third parties relating to OLPRUVA licensing or divestment rights, all of the foregoing which are capped at \$45.0 million, for total payments to Relief of up to \$56.5 million.

In connection with the closing of the Merger on November 17, 2023, each share of common stock of Acer was converted into the right to receive (i) 0.1210 fully paid and non-assessable shares of common stock of Zevra, par value \$0.0001 per share, and (ii) one non-transferable contingent value right ("CVR") to be issued by Zevra, which will represent the right to receive one or more contingent payments up to an additional \$76 million upon the achievement, if any, of certain commercial and regulatory milestones for Acer's OLPRUVA and celiprolol products within specified time periods. Certain additional cash payments are also possible pursuant to the CVRs with respect to milestones involving Acer's early-stage program ACER-2820 (emetine).



The assets acquired and liabilities assumed were recorded based on their acquisition date fair values. Consideration for the Merger was \$72.6 million and consists of (i) approximately 2.96 million shares of Zevra common stock valued at \$12.8 million, (ii) the Bridge Loan advances of \$17.8 million, (iii) \$12.0 million in cash paid to Nantahala; (iv) 2.27 million shares of Zevra Common Stock issued to Nantahala valued at \$11.5 million based on the VWAP of shares of Zevra Common Stock during the 20 consecutive trading days ending on the trading date prior to August 30, 2023; (v) a secured promissory note payable by Zevra to Nantahala in the original principal amount of \$5.0 million, as disclosed in Note C, (vi) \$8.5 million in the estimated fair value of contingent consideration related to the CVRs, (vii) approximately 0.9 million shares of Zevra Common Stock issued to a former holder of Acer warrants valued at \$4.0 million based on Zevra's common stock price on the Effective Date and (viii) \$1.0 million in notes payable paid by the Company on Acer's behalf. In addition, effective as of immediately prior to the Effective Time, all of the outstanding and unexercised Acer stock options were automatically cancelled and ceased to exist without any cash or other consideration being paid or provided in respect thereof. The following purchase price allocation reflects the preliminary estimates of and assumptions related to the fair values of assets acquired and liabilities assumed:

<b>Assets</b>	
Cash	\$ 575
Prepaid expenses	278
Other current assets	11
Inventory	9,376
Property, plant, and equipment	35
Other noncurrent assets	209
Approved product - OLPRUVA	68,000
IPR&D - celiprolol	2,000
Goodwill acquired	4,701
	<u>85,185</u>
<b>Liabilities</b>	
Accounts payable and accrued expenses	\$ 10,881
Deferred collaboration funding	1,500
Operating lease liabilities	175
	<u>12,556</u>
<b>Fair Value of Net Assets Acquired</b>	<u>\$ 72,629</u>

The preliminary fair values assigned to the tangible and intangible assets acquired and liabilities assumed were determined using an income approach based on management's estimates and assumptions, as well as other information compiled by management, including third-party valuations that utilize customary valuation procedures and techniques. These preliminary fair values are subject to change within the one-year measurement period. The estimated fair values were developed by discounting future net cash flows to their present value at market-based rates of return. The goodwill acquired represents the excess of the purchase price and related costs over the value assigned to the net tangible and identifiable intangible assets of the business acquired. The useful lives of the intangible assets for amortization purposes were determined by considering the period of expected cash flows used to measure the fair values of the intangible assets adjusted as appropriate for entity-specific factors including legal, regulatory, contractual, competitive, economic and other factors that may limit the useful life. The marketed product asset is amortized on a straight-line basis over its estimated useful life. As of March 31, 2024, the IPR&D project had not been completed or abandoned and, therefore, the IPR&D intangible asset is not currently subject to amortization.

The results of operations and changes in stockholders' equity for Acer were included in the Company's consolidated financial statements beginning November 18, 2023.

The following pro forma combined results of operations present the acquisition as if it had occurred on January 1, 2023. The pro forma combined results of operations do not necessarily represent the Company's consolidated results of operations had the acquisition occurred on the date assumed, nor are these results necessarily indicative of the Company's future consolidated results of operations. The Company expects to realize certain benefits from integrating Acer into the Company and to incur certain one-time costs. The pro forma combined results of operations do not reflect these benefits or costs.

	<b>Three Months Ended March 31, 2023</b>
Pro forma revenue	\$ 3,176
Pro forma net loss	(20,652)

**Cancellation of Acer Warrant**

On November 22, 2023, the Company sold an aggregate of 917,934 shares of its common stock to a healthcare focused investment fund (the "Investor") to cancel a warrant held by the Investor to purchase 2,920,306 shares of common stock of Acer. The shares of common stock were offered and sold to the Investor in a registered direct offering without an underwriter or placement agent.

**Contingent Consideration**

Contingent consideration liabilities relate to our liabilities arising in connection with the CVRs issued as a result of the Merger. The contingent consideration is classified as Level 3 in the fair value hierarchy. The fair value is measured based on a Monte Carlo simulation or a scenario-based method, depending on the earn-out achievement objectives, utilizing projections about future performance. Significant inputs include volatility and projected financial information, including projections representative of a market participant's view of the expected cash payments associated with the agreed upon regulatory milestones based on probabilities of technical success, timing of the potential milestone events for the compounds, and estimated discount rates.

The following table provides a reconciliation of the beginning and ending balances related to the contingent consideration liabilities for the CVRs (dollars in thousands):

Balance at December 31, 2023	\$ 7,262
Change in fair value recognized in earnings	938
Balance at March 31, 2024	<u>\$ 8,200</u>

For the three months ended March 31, 2024, the Company recorded a \$0.9 million loss on the change in fair value of contingent consideration, primarily due to changes in market data and revenue projections.

**M. Goodwill & Intangible Assets**

The Company's goodwill balance was \$4.7 million as of March 31, 2024, and December 31, 2023.

As of March 31, 2024, and December 31, 2023, non-amortizable intangible assets include IPR&D of \$2.0 million

As of March 31, 2024, and December 31, 2023, the Company had a definite-lived intangible asset, net related to the acquisition of OLPRUVA as a result of the Merger of \$65.7 million and \$67.2 million, respectively. This is amortized on a straight-line basis over its estimated economic life of eleven years and is reviewed periodically for impairment. Amortization expense is recorded as a component of cost of revenue in the unaudited condensed consolidated statements of operations and was \$1.5 million for the three months ended March 31, 2024. No amortization expense related to definite-lived intangible assets was recognized for the three months ended March 31, 2023.

For intangible assets subject to amortization, estimated amortization expense for the five fiscal years subsequent to March 31, 2024, is expected to be \$6.2 million per year.

**N. Subsequent Events**

The Company evaluated events and transactions occurring subsequent to March 31, 2024, through May 9, 2024, the date the accompanying unaudited condensed consolidated financial statements were issued. During this period, other than entering into the Credit Agreement and the repayment of the margin account and the Nantahala Note, as disclosed in Note D, there were no subsequent events that required recognition in the accompanying unaudited condensed consolidated financial statements, nor were there any additional non-recognized subsequent events that required disclosure.

## 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 together with our unaudited condensed consolidated financial statements and related notes thereto included elsewhere in this Quarterly Report on Form 10-Q. Some of the information contained in this discussion and analysis or set forth elsewhere in this Quarterly Report on Form 10-Q, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. As a result of many factors, including those factors set forth in Part II, Item 1A. "Risk Factors" of this Quarterly Report on Form 10-Q and Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC on April 1, 2024, our actual results could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

### Overview

We are a rare disease company combining science, data and patient need to create transformational therapies for diseases with limited or no treatment options. Our mission is to bring life changing therapeutics to people living with rare diseases. With unique, data-driven development and commercialization strategies, we are overcoming complex drug development challenges to make new therapies available to the rare disease community. We have a diverse portfolio of products and product candidates, which includes preclinical developmental programs, clinical stage pipeline and commercial stage assets. Our team has specialized expertise and a track record of success in advancing promising therapies that face complex clinical and regulatory challenges with an approach that balances science and data with patient need.

Following the U.S. approval of AZSTARYS® (further described below) in March 2021, we undertook a strategic process to evaluate how to leverage and potentially augment the Company's existing capabilities while also considering where to invest in our pipeline to generate long-term shareholder value. With a track record of drug development success leading to approvals for products which had either difficult pathways to approval or where approvals were won following a complete response letter ("CRL") from the U.S. Food and Drug Administration ("FDA"), the Company determined to focus its expertise on rare disease indications, as well as seeking value-creating opportunities by building and directly commercializing product candidates in lieu of an out-licensing model. We are executing on this balanced approach by building a culture that is patient-focused and driven by our commitment to developing and making available therapies which address the myriad unmet needs within the rare disease community.

As part of our commitment to serving the rare disease community, in February 2023, we changed our name to Zevra Therapeutics, Inc. Our name, Zevra, is the Greek word for zebra, which is the internationally recognized symbol for rare disease. This name reflects our intense focus and dedication to developing transformational, patient-focused therapies for rare diseases with limited or no treatment options available, or treatment areas with significant unmet needs.

In May 2022, we purchased all of the assets and operations of Orphazyme A/S related to arimocloamol, settled all of Orphazyme's actual outstanding liabilities to its creditors with a cash payment of \$12.8 million, and agreed to assume an estimated reserve liability of \$5.2 million related to revenue generated from Orphazyme's Expanded Access Program in France (the "Arimocloamol EAP").

On November 17, 2023, Zevra completed the acquisition of Acer. Pursuant to the Merger Agreement, Acer continues as a wholly-owned subsidiary of Zevra. The Merger included the acquisition of OLPRUVA® (sodium phenylbutyrate) for oral suspension, which was approved by the U.S. Food and Drug Administration (FDA) on December 27, 2022, for the treatment of urea cycle disorders ("UCDs"). Acer also had a pipeline of investigational product candidates, including celioprolol for the treatment of Vascular Ehlers-Danlos syndrome ("VEDS") in patients with a confirmed type III collagen (COL3A1) mutation. At the effective time of the Merger (the "Effective Time"), each share of common stock of Acer, par value \$0.0001 per share, issued and outstanding immediately prior to the Effective Time (excluding cancelled shares and any shares held by holders who have exercised their appraisal rights) were converted into the right to receive (i) 0.1210 fully paid and non-assessable shares of common stock of Zevra, par value \$0.0001 per share, and (ii) one non-transferable contingent value right ("CVR") issued by Zevra, which represents the right to receive one or more contingent payments up to an additional \$76.0 million upon the achievement, if any, of certain commercial and regulatory milestones for Acer's OLPRUVA and celioprolol products within specified time periods. Certain additional cash payments are also possible pursuant to the CVRs with respect to milestones involving Acer's early-stage program ACER-2820 (emetine).

In order to accomplish our mission, we are seeking to further expand our pipeline through both internal development and through our business development activities to collaborate, partner, and potentially acquire additional assets. We intend to target assets that will allow us to leverage the expertise and infrastructure that we have built in order to mitigate risk and enhance our probability of success. In addition, we may consider external opportunities within neurology and neurodegenerative diseases, psychiatric disorders, and other rare diseases, along with adjacent or related therapeutic categories. If we are successful, expanding our pipeline could be accretive to our value proposition and has the potential to create incremental long-term value for stockholders.

Our recurring operating losses and negative cash flows from operations raise substantial doubt about our ability to continue as a going concern. The Company's ability to continue operating as a going concern is contingent upon its ability to generate revenue from approved products or obtain product candidate regulatory approvals, which would generate revenue, milestones, and cash flow sufficient to support ongoing operations and the satisfaction of financial covenants. We are early in our commercialization effort for OLPRUVA and do not yet have a substantial basis to project future earnings, and our other sources of revenue are not sufficient to sustain our present activities on their own. Accordingly, our ability to continue as a going concern may require us to obtain additional financing to fund our operations. The perception of our inability to continue as a going concern may make it more difficult for us to obtain financing for the continuation of our operations and could result in the loss of confidence by investors, suppliers and employees. Adequate additional financing may not be available to us on acceptable terms, or at all. To the extent that we raise additional capital through the sale of equity or debt, the terms of these securities may restrict our ability to operate. If we raise additional funds through collaborations, strategic alliances or marketing, distribution or licensing arrangements with third parties, we may be required to relinquish valuable rights. If we are unable to raise capital when needed or on attractive terms, we could be forced to delay, reduce or altogether cease our research and development programs or future commercialization efforts.

## Our Product Candidates and Approved Products

We have built a diverse portfolio of products and product candidates through a combination of internal development and strategic investments through acquisition. For example, we have employed our proprietary Ligand Activated Technology ("LAT") platform to develop approved products (e.g., AZSTARYS), and clinical development candidates (KP1077IH and KP1077N). Through our business development efforts, we have added a commercial product (OLPRUVA), and clinical development candidates (arimoclolomol, celiprolol). We furthermore have a variety of product candidates and compounds that are early-stage, pre-clinical and clinical-stage designed to address a variety of rare diseases and other indications.

Currently active commercial products and development assets are summarized in the table below:

### Active Zevra Commercial and Development Assets

Parent Drug	Indication	Product / Candidate	Development Status	Next Milestone(s)
Sodium phenylbutyrate	Urea Cycle Disorders (UCD)	OLPRUVA	FDA Approved	Tracking Commercial Progress
Arimoclolomol	Niemann Pick disease type C (NPC)	Arimoclolomol	Pending FDA Review	PDUFA target date September 21, 2024
Celiprolol	Vascular Ehlers Danlos Syndrome (VEDS)	Celiprolol	Clinical - Phase 1/2	Phase 3 ongoing
Serdexmethylphenidate	Idiopathic Hypersomnia (IH)	KP1077IH	Clinical - Phase 2	Evaluation of potential Phase 3 Trial
Serdexmethylphenidate	Narcolepsy	KP1077N	Clinical - Phase 1/2	Evaluation of potential Phase 3 Trial
Serdexmethylphenidate and dexmethylphenidate	Attention Deficit and Hyperactivity Disorder (ADHD)	AZSTARYS	FDA Approved and Partnered	Collecting royalties and milestones

These anticipated milestones are based on information currently available to us. Our current plans and expectations are subject to a number of uncertainties, risks and other important factors that could materially impact our plans, including risks which are not solely within our control. See Part I, Item 1A. "Risk Factors" of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC on April 1, 2024, as updated by Part II, Item 1A. "Risk Factors" of this Quarterly Report on Form 10-Q.

### OLPRUVA

OLPRUVA (sodium phenylbutyrate) for oral suspension is approved in the U.S. as adjunctive therapy to standard of care, which includes dietary management, for the chronic management of UCDS involving deficiencies of carbamylphosphate synthetase (CPS), ornithine transcarbamylase (OTC), or argininosuccinic acid synthetase (AS). OLPRUVA is a proprietary and novel formulation of sodium phenylbutyrate powder, packaged in pre-measured single-dose envelopes, that has shown bioequivalence to existing sodium phenylbutyrate powder but with a pH-sensitive polymer coating that is designed to minimize dissolution of the coating for up to five minutes after preparation.

UCDs are a group of rare, genetic disorders that can cause harmful ammonia to build up in the blood, potentially resulting in brain damage and neurocognitive impairments, if ammonia levels are not controlled. Any increase in ammonia over time is serious. Therefore, it is important to adhere to any dietary protein restrictions and have alternative medication options to help control ammonia levels. Approximately 1 in 100,000 people have UCD, and there are an estimated 800 patients who are actively treated in the U.S. While there are therapies currently approved for the treatment of UCDS - specifically RAVICTI®, marketed by Amgen, Inc. (formerly Horizon Therapeutics) and PHEBURANE®, marketed by Medunik USA - there remain unmet needs for this community of patients. OLPRUVA offers benefits over other UCD treatments by eliminating issues with palatability, offering improved portability with its single-dose envelopes, and it comes in a dosage that personalized to the patient based on weight.

To commercialize OLPRUVA for oral suspension in the U.S. we are building marketing, sales, medical affairs, distribution, managerial and other non-technical capabilities or making arrangements with third parties to perform these services. During the quarter ended December 31, 2023, we began generating revenue from the sale of OLPRUVA in the U.S. For additional information regarding the Merger, see Note L of our unaudited consolidated condensed financial statements included elsewhere in this Quarterly Report on Form 10-Q. In addition, Zevra has a partnership with Relief Therapeutics who has rights to commercialize OLPRUVA in various EU countries, if approved. In addition, Zevra pays royalties of 10% of U.S. net sales plus milestones to Relief Therapeutics.

During the first quarter of 2024, we initiated the fully commercial launch of OLPRUVA in the U.S. We have concentrated our initial efforts on approximately 40 metabolic treatment centers of excellence across the United States as the first part of our strategy to build awareness with physicians regarding the differentiation that OLPRUVA can bring to people living with UCDS. In the three months since launch, our team has been able to engage with more than 90% of our customers. We have seen meaningful growth in reimbursement coverage, which was approximately 55% of U.S. covered lives at the time of acquisition, to now approximately 75%.

OLPRUVA summary:

- **OLPRUVA is available in the U.S. for the treatment of UCD.** OLPRUVA is an adjunctive therapy for long-term management of adults and children weighing 20kg or greater with UCD from deficiencies of CPS, OTC, or AS.
- **OLPRUVA is differentiated from currently available forms of phenylbutyrate.** OLPRUVA is formulated to improve palatability while providing patients with a portable and discrete pre-measured dose.
- **Zevra has assembled a team to support OLPRUVA and additional future commercial products.** We have established an efficient commercial team which is designed to fully service the patients and prescribers within the rare disease indications we are pursuing.

## ***Arimoclomol***

Arimoclomol is our product candidate being developed for the treatment of Niemann-Pick disease type C (NPC), an ultra-rare neurodegenerative lysosomal storage disorder (LSD). Arimoclomol is an orally delivered, first in-class investigational product candidate which has been granted orphan drug designation, Fast-Track designation, Breakthrough Therapy designation and rare pediatric disease designation for the treatment of NPC by the FDA, and orphan medicinal product designation for the treatment of NPC by the European Commission. The arimoclomol New Drug Application (NDA) was submitted to the FDA on December 21, 2023, and is currently undergoing review by the FDA. The FDA has assigned a PDUFA date of September 21, 2024. We believe that, if approved by the FDA, arimoclomol will be eligible to receive a Rare Pediatric Disease Priority Review Voucher (PRV), which is transferrable.

As an LSD, NPC is characterized by an inability of the body to transport cholesterol and lipids inside of cells. Symptoms of NPC include a progressive impairment of mobility, cognition, speech, and swallowing, often culminating in premature death. The incidence of NPC is estimated to be one in 100,000 to 130,000 live births. We estimate that there are approximately 1,800 individuals with NPC in the US and Europe, of these, approximately 300 have been diagnosed in the U.S. However, diagnostic challenges may affect the number of potential patients, and we believe that the availability of treatment options could increase awareness of the disease and assist in more accurately identifying patients. Effective therapies to treat NPC are desperately needed, and for this reason, arimoclomol is currently being made available to NPC patients in the United States, France, Germany, and other EU member states under various expanded access programs ("EAPs").

On September 16, 2020, the previous sponsor of the arimoclomol program, Orphazyme, submitted an NDA to the FDA, seeking approval for arimoclomol to treat NPC. In June 2021, the FDA issued a complete response letter ("CRL"), meaning it determined that it could not approve the NDA in its present form.

Zevra acquired the assets of Orphazyme A/S (Orphazyme) in May 2022, and took over the responsibility for arimoclomol, including the preparation and resubmission of the NDA designed to respond to the FDA's specific deficiencies identified in the CRL and feedback in subsequent meetings between the FDA and Orphazyme. Since that time, we have worked diligently to characterize the meaningful evidence of safety and efficacy of arimoclomol for its intended use and the substantial data generated since the CRL, including the recently completed four-year open-label safety trial, an interim analysis of which was presented at the 19th *WorldSymposium*<sup>TM</sup> in February 2023. Upon fulfilling the randomized double-blinded portion of the Phase 2/3 clinical trial, both placebo- and arimoclomol-treated patients were given the option to continue into the four-year (48 month) open-label-extension ("OLE"), phase of the study with arimoclomol treatment provided in addition to their current standard of care. We believe that the results from this analysis, based on up to four years of continuous treatment, suggest that arimoclomol may reduce the long-term progression of NPC.

In preparation of the arimoclomol NDA resubmission, we completed a meeting with the FDA in August 2023, receiving feedback that was used to finalize the NDA submission. The updated NDA package for arimoclomol was resubmitted to the FDA in December 2023. Zevra believes it has addressed the issues previously raised by the FDA in the 2021 CRL. Zevra has conducted additional studies to support the potential mechanism of action of arimoclomol. Additionally, new data was included in the resubmission as supportive evidence from multiple non-clinical studies, natural history comparisons, real-world data generated from the ongoing early access programs in the U.S. and the European Union, as well as data from the four-year open-label extension of the Phase 2/3 clinical trial (NCT02612129).

In January 2024, the FDA acknowledged receipt of the resubmission and, under the Prescription Drug User Fee Act ("PDUFA"), deemed the arimoclomol NDA resubmission to be a Class II complete response which has a six-month review period from the date of resubmission. On March 4, 2024, we announced that the FDA had extended the review period for the NDA for arimoclomol and set a new PDUFA date of September 21, 2024. The FDA also re-affirmed its intent to present the resubmission for discussion at an advisory committee meeting to be scheduled.

In April 2024, the Company presented new long-term, real-world data from the expanded access program (EAP: NCT04316637) for the treatment of NPC at the *Society for Inherited Metabolic Disorders*. The study demonstrated that adults treated with arimoclomol, including those with and without miglustat use, generally had a stable disease course with a clinically meaningful slowing of disease progression over two years of treatment and follow-up and the safety profile was consistent with that observed in the Phase 2/3 study where no new safety adverse events were identified.

Zevra holds the global rights for arimoclomol. We are evaluating the possibility of seeking regulatory approval and commercialization outside of the US.

Arimoclomol summary:

- ***Currently, no approved treatments for NPC in the U.S.*** There are no currently approved products in the U.S. to treat the underlying disease of NPC and we believe, if approved, arimoclomol could be considered a foundational therapy for patients in the U.S.
- ***Designed to address disease progression.*** Arimoclomol is designed to address the symptoms of NPC by slowing the progression of the disease itself, rather than serving as a symptomatic treatment only. The Phase 2/3 trial data for arimoclomol in NPC demonstrated reduced disease progression, and long-term data from the 4-year OLE of the Phase 2/3 trial suggest improved outcomes vs. historical controls.
- ***Ease of flexible administration as an oral treatment.*** Arimoclomol is administered as an oral capsule that can be swallowed whole, opened and contents mixed with foods or liquids, or delivered through a feeding tube.
- ***Extensive clinical experience with favorable safety data.*** No significant safety findings have been reported with more than 600 patients treated in various clinical trials and through our expanded access programs.
- ***Advantageous regulatory designations.*** Arimoclomol has been granted orphan drug designation, Fast Track designation, and Breakthrough Therapy designation for the treatment of NPC. If approved for the treatment of NPC, we believe arimoclomol will be eligible to receive a Pediatric Rare Disease Priority Review Voucher ("PRV").

## ***Celiprolol***

The Merger with Acer included the acquisition of celiprolol. We are advancing celiprolol as an investigational product candidate for the treatment of VEDS in patients with a confirmed type III collagen (*COL3A1*) mutation. Celiprolol is a selective adrenergic modulator (SAM) and, if we receive the first approval in the U.S. for celiprolol, we believe it would be deemed a new chemical entity (“NCE”) in the U.S. Celiprolol is currently approved in the European Union for the treatment of hypertension and angina.

Ehlers-Danlos Syndrome is an inherited disorder caused by mutations in the genes responsible for the structure, production, or processing of collagen, an important component of the connective tissues in the human body, or proteins that interact with collagen. VEDS causes abnormal fragility in blood vessels, which can give rise to aneurysms, abnormal connections between blood vessels known as arteriovenous fistulas, arterial dissections, and spontaneous vascular ruptures, all of which can be potentially life-threatening. Gastrointestinal and uterine fragility or rupture also commonly occur in VEDS patients. Spontaneous arterial rupture has a peak incidence in the third or fourth decade of life in VEDS patients but may occur earlier and is the most common cause of sudden death in VEDS patients. Arterial rupture or dissection events occur in about 25% of patients before the age of 20 but increase to roughly 90% of patients by the age of 40. The median survival age of VEDS patients in the U.S. is 51 years, with arterial rupture being the most common cause of sudden death. Pregnancy-related complications also occur in women with VEDS and include arterial dissection or rupture, uterine rupture, hemorrhage, premature rupture of membranes, lacerations, and complications during and after surgery. The incidence of VEDS is estimated to be one in 50,000 to 200,000 people. There are approximately 7,500 diagnosed patients in the U.S.

Currently, there are no approved therapies anywhere in the world for VEDS. However, celiprolol, prescribed off label, has become the standard of care therapy for VEDS in some Europe countries. Medical intervention for VEDS focuses on surgery, symptomatic treatment, genetic counseling, and prophylactic measures, such as avoiding intense physical activity, scuba diving, and violent sports. Arterial, digestive, or uterine complications in VEDS patients typically require immediate hospitalization, observation in an intensive care unit, and sometimes surgery. Pregnant women with VEDS are considered to be at risk and receive special care. While VEDS patients are encouraged to take steps to minimize the chances of an arterial rupture or dissection, there are no pharmacologic options to reduce the likelihood of such an event, and accordingly current treatments for VEDS focus on the repair of arterial ruptures or dissection. Therefore, patients must adopt a “watch and wait” approach following any confirmed diagnosis. Unfortunately, many of these arterial events have high mortality associated with them, and thus, a pharmacologic intervention that reduces the rate of events would be clinically meaningful.

Celiprolol has not been approved for any indication in the U.S. In the past, an NDA for celiprolol for the treatment for hypertension was submitted to the FDA by Rorer (subsequently acquired by Aventis Pharma SA (Aventis)) in June 1987, but was subsequently withdrawn prior to completion of the FDA review and therefore never approved. We have obtained the exclusive right in North and South America from Aventis to reference the celiprolol data included in the marketing authorization application dossier filed with and approved by the UK Medicines and Healthcare Products Regulatory Agency (“MHRA”). In addition, our wholly-owned subsidiary, Acer Therapeutics, Inc. (“Acer”) has licensed exclusive worldwide rights to the data from the Phase 3 clinical trial known as the BBEST trial which was sponsored by L’Assistance Publique Hôpitaux de Paris (“AP-HP”).

Celiprolol received orphan drug designation from the FDA for the treatment of VEDS in 2015. In October 2018, a new celiprolol NDA was submitted to the FDA by Acer based on data obtained from the BBEST trial and was subsequently accepted by the FDA in October 2018 with priority review status. Following FDA review, Acer received a CRL from the FDA stating that it will be necessary to conduct an adequate and well-controlled trial to determine whether celiprolol reduces the risk of clinical events in patients with VEDS. Subsequently, Acer appealed the FDA decision, and while the FDA denied the appeal, it described possible paths forward toward approval. In a May 2021 Type B meeting with the FDA, Acer discussed the conduct of an U.S.-based prospective, randomized, double-blind, placebo-controlled, decentralized clinical trial in patients with *COL3A1* positive VEDS, and sought the FDA’s opinion on various proposed design features of the study.

Based on FDA’s feedback during the Type B meeting, we adopted a decentralized (virtual) event-based clinical trial design and use of an independent centralized adjudication committee with a primary endpoint based on clinical events associated with disease outcome. In April 2022, the FDA granted celiprolol Breakthrough Therapy designation (“BTD”) in the U.S. for the treatment of patients with *COL3A1*-positive VEDS.

In July 2022, Acer initiated enrollment in a Phase 3 long-term event-driven clinical trial designed based on the discussions from the May 2021 Type B meeting with the FDA, also known as the DiSCOVER trial. The DiSCOVER trial intends to enroll 150 VEDS patients, with 100 patients receiving celiprolol and 50 patients receiving placebo. We have completed our preliminary evaluation of the celiprolol program for the treatment of VEDS and we recently restarted recruitment of the ongoing Phase 3 trial. We believe that celiprolol could address significant unmet needs as there are currently no approved treatments for VEDS in the U.S.

Celiprolol summary:

- ***Currently, no approved treatments for VEDS in the U.S.*** There are currently no approved treatments of VEDS in the U.S. and we believe that celiprolol, if approved, could be a significant innovation in the treatment of VEDS in the U.S. where current treatment options are focused primarily on surgical intervention.
- ***Unique pharmacological profile.*** Mechanism of action in VEDS patients is thought to be through vascular dilatation and smooth muscle relaxation, the effect of which is to reduce the mechanical stress on collagen fibers in the arterial wall, and thereby potentially less incidence of vascular ruptures.
- ***Evidence of efficacy in the E.U and extensive clinical experience from multiple trials.*** Celiprolol has become the primary treatment for VEDS patients in several European countries. BBEST Clinical Trial data showed 76% reduction in risk of arterial events observed in *COL3A1*+ subpopulation, with additional data from a long-term observational study in France.
- ***Regulatory designations.*** Celiprolol for VEDS would be considered an NCE in the U.S. and has been granted Orphan Drug designation and Breakthrough Therapy designation.
- ***Solid patent protection through 2038.*** Celiprolol is generally protected by U.S. patents that will expire, after utilizing all appropriate patent term adjustments but excluding possible term extensions, in 2038.

**KP1077**

KP1077 is being developed for the treatment of IH and narcolepsy. IH is a rare neurological sleep disorder affecting approximately 37,000 patients in the United States. The cardinal feature of IH is excessive daytime sleepiness ("EDS"), characterized by daytime lapses into sleep, or an irrepressible need to sleep that persists even with adequate or prolonged nighttime sleep. Additionally, those with IH have extreme difficulty waking, otherwise known as "sleep inertia," suffer from severe and debilitating brain fog, and may fall asleep unintentionally or at inappropriate times, also known as narcolepsy. These symptoms often further lead to reported memory problems, difficulty maintaining focus, and depression.

There is currently only one approved product for the treatment of IH, XYWAV®, developed by Jazz Pharmaceuticals. A second product, WAKIX®, developed by Harmony Biosciences and originally approved for the treatment of EDS or cataplexy in adult patients with narcolepsy, but in October 2023, Harmony announced that the difference in outcome for EDS when comparing WAKIX and placebo in its Phase 3 trial with IH patients did not reach statistical significance. Prescribers also utilize narcolepsy medications and various stimulant products "off-label" to treat IH symptoms, with methylphenidate, a stimulant which has been classified by the DEA as a Schedule II controlled substance, being one of the most commonly used stimulants for treating IH. While each of these medications can help to address certain IH symptoms, there are also potential shortcomings, including dosing inconvenience, serious adverse events, such as elevated blood pressure and heart rate, and significant drug-to-drug interactions ("DDIs"), including with medications used to manage contraception and depression. In addition, patients have indicated that the effectiveness of their current medication was poor.

Narcolepsy is a rare, chronic, debilitating neurologic disorder of sleep-wake state instability that impacts up to 200,000 Americans and is primarily characterized by EDS and cataplexy (sudden loss of muscle tone while a person is awake) along with other manifestations of rapid eye movement ("REM"), sleep dysregulation, which intrude into wakefulness. In most patients, narcolepsy is caused by the loss of hypocretin, a neuropeptide in the brain that supports sleep-wake state stability. Typical symptom onset occurs in adolescence or young adulthood, but it can take up to a decade to be properly diagnosed. Although there are several approved medications for narcolepsy, we believe a treatment option based on serdexmethylphenidate ("SDX"), our proprietary prodrug of d-methylphenidate ("d-MPH") which has previously been classified as a Schedule IV controlled substance, with superior exposure/duration characteristics and low abuse potential may be beneficial.

We reported top-line data from a Phase 1 proof-of-concept study of SDX in the fourth quarter of 2021 and final data for the Phase 1 proof-of-concept study of SDX in the first quarter of 2022. The proof-of-concept study was a dose-escalation study to evaluate the pharmacokinetics, pharmacodynamic stimulant effects, and safety of single oral doses of SDX in subjects with a history of high-dose stimulant use. In the trial, 240 mg and 360 mg doses of SDX were observed to be well-tolerated and produced d-MPH exposure that appeared to increase proportionally with dose. Mean d-MPH plasma concentrations showed a gradual increase after SDX administration, reaching a broad peak from eight to twelve hours post-dose, followed by a shallow decline thereafter. Increased wakefulness, alertness, hypervigilance, and insomnia effects were reported by study participants, which we believe suggests that SDX produced targeted pharmacodynamic effects that have the potential to benefit patients with IH and other sleep disorders. In November 2022, we announced that the FDA has granted the orphan drug designation to SDX for the treatment of IH.

In January 2022, we announced that we had selected KP1077 for the treatment of IH and narcolepsy as our lead clinical development candidate. KP1077 utilizes SDX, our prodrug of d-MPH, as its API. During the first quarter of 2022, we initiated a Phase 1 clinical trial comparing the cardiovascular safety of SDX to immediate-release and long-acting formulations of RITALIN®, a commonly prescribed CNS stimulant. In September 2022, we announced topline data from our exploratory Phase 1 clinical trial, which showed the potential for higher dose formulations of SDX to be safe and well tolerated while avoiding the potential for greater cardiovascular safety risk compared to immediate-release and long-acting formulations of Ritalin.

Based on the data, in December 2022, we announced the initiation of a double-blind, placebo-controlled, randomized-withdrawal, dose-optimizing, multi-center Phase 2 clinical trial evaluating the efficacy and safety of KP1077 for the treatment of IH. The trial concluded in March 2024 and provided meaningful information of the optimal dose and dosing regimen to inform Phase 3 trial design.

We enrolled 48 adult patients with IH in more than 30 centers in the United States. Part 1 of the trial consisted of a five-week open-label titration phase during which patients were optimized to one of four doses of SDX (80, 160, 240, or 320 mg/day). Part 2 of the trial entailed a two-week randomized, double-blind, withdrawal phase, during which two-thirds of the trial participants will continue to receive their optimized dose while the remaining one-third will receive placebo. Participants were further assigned into two evenly divided cohorts. The first cohort received a single daily dose just before bedtime, and the second cohort received half the daily dose shortly after awakening and half the daily dose prior to bedtime.

Clinically meaningful improvements were observed across all studied endpoints. The trial was not powered for statistical significance, and this was not the primary endpoint. The exploratory endpoints of sleep inertia and brain fog performed in-line with expectations and were stable when compared across a variety of other endpoints. Symptom improvements in patients receiving KP1077 were similar after both once-per-day, and twice-per-day dosing.

In the Phase 2 trial, KP1077 was observed to be well-tolerated at all dose levels and both dosing regimens, with adverse events that are typical for stimulants and mostly mild in severity. These results are consistent with data from the Phase 1 trial with serdexmethylphenidate (SDX) that indicated no greater cardiovascular safety risk despite higher overall exposure levels when compared to both immediate and long-acting methylphenidate products currently used off-label for the treatment of IH. The trial concluded in March 2024 and provided meaningful information of the optimal dose and dosing regimen to inform Phase 3 trial design.

In the second quarter of 2023, we initiated a Phase 1 clinical trial in healthy volunteers to assess proposed dosing regimen for the narcolepsy indication. This study was completed in September 2023. By leveraging the data from the IH program, Zevra is evaluating the potential to initiate a Phase 3 trial in narcolepsy.

KP1077 is subject to a right of first negotiation upon completion of a proof-of-concept study in favor of Commave, under the terms of the AZSTARYS License Agreement, but is not currently licensed to Commave, thereunder.

KP1077 Summary:

- **Dosing flexibility.** Designed to be delivered in either one or two doses daily, which is designed to address the two primary issues associated with IH: (i) nighttime dose would address sleep inertia, and (ii) morning dose would address daytime brain fog.
- **No drug-to-drug interactions.** We have not observed drug-to-drug interactions in clinical drug-drug interaction studies.
- **Potential for reduced abuse potential as a Schedule IV controlled substance.** All other methylphenidate-based products have been designated as Schedule II controlled substances, which indicates stricter control over the prescribing and use of such products. KP1077 is based on SDX, which has been designated a Schedule IV controlled substance.
- **No currently approved generic equivalent product.** KP1077 contains SDX, our proprietary prodrug of d-methylphenidate, also known as the new chemical name, serdexmethylphenidate, by the U.S. Adopted Names Council of the American Medical Association (“USAN”), which means that there may be no generic equivalent product for KP1077 in most states, making drug-equivalent substitution potentially difficult at the pharmacy.
- **Orphan drug designation.** Because small size of the IH patient population, the FDA has granted KP1077 orphan drug designation for the treatment of IH. We believe KP1077 may potentially be eligible for fast-track and breakthrough therapy designation, which may provide various regulatory benefits for the development program.



**AZSTARYS (Partnered product)**

AZSTARYS contains dexamethylphenidate (d-MPH) and our prodrug of dexamethylphenidate, serdexmethylphenidate (SDX). On March 2, 2021, the FDA approved AZSTARYS as a once-daily treatment for attention deficit hyperactivity disorder (ADHD), in patients age six years and older. AZSTARYS is currently being marketed in the U.S. under our September 2019 collaboration and license agreement, or the AZSTARYS License Agreement, with Commave Therapeutics SA (formerly known as Boston Pharmaceutical S.A.) ("Commave"), an affiliate of Gurnet Point Capital, L.P. Under the AZSTARYS License Agreement, we granted to Commave an exclusive, worldwide license, to develop, manufacture, and commercialize AZSTARYS and any of our product candidates containing SDX and used to treat ADHD or any other central nervous system ("CNS") disease.

Commave has tasked Corium, Inc. ("Corium"), another affiliate of Gurnet Point Capital, L.P., to lead all commercialization activities for AZSTARYS in the U.S. Corium commercially launched AZSTARYS in the U.S. during the third quarter of 2021. In December 2021, Commave entered into a sublicense of commercialization rights for AZSTARYS in greater China to Shanghai Ark Biopharmaceutical Ltd.

Pursuant to the AZSTARYS License Agreement, Commave agreed to pay up to \$63.0 million in milestone payments upon the occurrence of specified regulatory milestones related to the AZSTARYS, including FDA approval and specified conditions with respect to the final approval label. In addition, Corium agreed to make additional payments upon the achievement of specified U.S. sales milestones of up to \$420 million in the aggregate. Further, Commave will pay us quarterly, tiered royalty payments based on a percentage of net sales on a product-by-product basis. Corium also agreed to be responsible for and reimburse us for all of development, commercialization and regulatory expenses for any products or product candidates containing SDX, subject to certain limitations as set forth in the AZSTARYS License Agreement, including consultation fees to be paid to us for services provided to Corium in performing such activities.

In April 2021, we entered into the AZSTARYS Amendment. Pursuant to the AZSTARYS Amendment, we and Commave agreed to modify the compensation terms of the AZSTARYS License Agreement. Commave paid us \$10.0 million in connection with the execution of the AZSTARYS Amendment following the FDA approval of AZSTARYS in the United States. Corium also paid us \$10.0 million following the SDX scheduling determination by the DEA, which occurred on May 7, 2021. In addition, the AZSTARYS Amendment increased the total remaining future regulatory and sales milestone payments related to AZSTARYS up to an aggregate of \$590.0 million. The AZSTARYS License Agreement will continue on a product-by-product basis (i) until expiration of the royalty term for the applicable product candidate in the United States and (ii) perpetually for all other countries.

In May 2021, we announced that SDX, our proprietary prodrug of d-MPH and the primary active pharmaceutical ingredient ("API") in AZSTARYS, was classified as a Schedule IV controlled substance by the DEA. AZSTARYS is classified as a Schedule II controlled substance as its formulation includes a 70:30 mixture of SDX (Schedule IV) and d-MPH (Schedule II), respectively.

During the first half of 2023, annual net sales of AZSTARYS surpassed \$25 million, triggering the first annual net sales milestone payment of \$5.0 million under the AZSTARYS License Agreement, which was earned and recognized as revenue in the second quarter of 2023, and received after quarter-end. During the second half of 2023, annual net sales of AZSTARYS surpassed \$50 million, triggering the second milestone payment of \$10.0 million under the AZSTARYS License Agreement, which was earned and recognized in the fourth quarter of 2024.

## Other Third-Party Agreements

### Aquestive Termination Agreement

Under our March 2012 termination agreement with Aquestive, Aquestive has the right to receive a royalty amount equal to 10% of any value generated by AZSTARYS and any product candidates containing SDX. In connection with the AZSTARYS License Agreement, we paid Aquestive a royalty equal to 10% of the regulatory milestone and royalty payments we received in 2021 from AZSTARYS.

### Distributor Agreement

Our current single distributor for sales of our approved product, OLPRUVA is a specialty pharmacy provider, however the Company intends to establish additional distributors such as other retail pharmacies and certain medical centers or hospitals. In addition to distribution agreements, we enter into arrangements with health care providers and payors that provide for government mandated and/or privately negotiated rebates with respect to the purchase of our products.

### Relief Exclusive License Agreement

As a condition to entering into the Merger Agreement, Acer and Relief Therapeutics, Inc. ("Relief") entered into an exclusive license agreement on August 30, 2023 (the "Relief License Agreement"). Pursuant to the Relief License Agreement, Relief will hold exclusive development and commercialization rights for OLPRUVA in the European Union, Liechtenstein, San Marino, Vatican City, Norway, Iceland, Principality of Monaco, Andorra, Gibraltar, Switzerland, United Kingdom, Albania, Bosnia, Kosovo, Montenegro, Serbia and North Macedonia ("Geographical Europe"). The Company will have the right to receive a royalty of up to 10.0% of the net sales of OLPRUVA in Geographical Europe.

## Results of Operations

### Comparison of the three months ended March 31, 2024, and 2023 (in thousands):

	Three months ended March 31,		Period-to-
	2024	2023	Period Change
Revenue, net	\$ 3,425	\$ 3,176	\$ 249
Cost of product revenue (excluding \$1,528 in intangible assets amortization for the three months ended March 31, 2024, shown separately below)	175	125	50
Intangible asset amortization	1,528	—	1,528
Operating expenses:			
Research and development	12,277	8,655	3,622
Selling, general and administrative	9,931	7,227	2,704
Total operating expenses	23,911	16,007	7,904
Loss from operations	(20,486)	(12,831)	(7,655)
Other income (expense):			
Interest expense	(735)	(182)	(553)
Fair value adjustment related to warrant and CVR liability	3,627	(1,545)	5,172
Fair value adjustment related to investments	(27)	196	(223)
Interest and other income, net	929	1,042	(113)
Total other income (expense)	3,794	(489)	4,283
Loss before income taxes	(16,692)	(13,320)	(3,372)
Income tax benefit	70	103	(33)
Net loss	\$ (16,622)	\$ (13,217)	\$ (3,405)

### Net Loss

Net loss for the three months ended March 31, 2024, was \$16.6 million, compared to net loss of \$13.2 million for the three months ended March 31, 2023, an increase in net loss of \$3.4 million. The change was primarily attributable to an increase in loss from operations of \$7.7 million, partially offset by an increase in other income of \$3.6 million.

### Revenue

Revenue for the three months ended March 31, 2024, was \$3.4 million, compared to revenue of \$3.2 million for the three months ended March 31, 2023, an increase of \$0.2 million. Royalties and other reimbursements under the AZSTARYS License Agreement of \$1.2 million and French EAP reimbursements of \$2.2 million drove net revenue for the three months ended March 31, 2024. Revenue for the three months ended March 31, 2023, was primarily comprised of arimoclomol sales under the French EAP of \$3.0 million.

### Cost of products sold

Cost of products sold for the three months ended March 31, 2024, remained relatively consistent compared to cost of products sold for the three months ended March 31, 2023.

### Intangible asset amortization

Intangible asset amortization for the three months ended March 31, 2024, was due to \$1.5 million in amortization expense related to definite lived intangible assets acquired in the Merger.

### *Research and Development*

Research and development expenses increased by \$3.6 million, from \$8.7 million for the three months ended March 31, 2023, to \$12.3 million for the three months ended March 31, 2024. This increase was primarily driven by an increase in spending for the ongoing Phase 2 clinical study in KP1077 and an increase in personnel-related costs, partially offset by a decrease in third-party costs related to arimoclomol, and a decrease in expenses incurred during the three months ended March 31, 2023, to terminate the collaboration and license agreement with KVK Tech, Inc.

### *Selling, General and Administrative*

Selling, general and administrative expenses increased by \$2.7 million, from \$7.2 million for the three months ended March 31, 2023, to \$9.9 million for the three months ended March 31, 2024. The period-over-period increase was primarily related to an increase in personnel costs and fees associated with our commercial and business development activities.

### *Other Income (Expense)*

Other income (expense) changed by \$4.3 million, from \$0.5 million of expense for the three months ended March 31, 2023, to \$3.8 million of income for the three months ended March 31, 2024. This increase was primarily attributable to a change in the fair value adjustment related to warrant and CVR liability of \$5.2 million, offset by an increase in interest expense of \$0.6 million, and a decrease in fair value adjustment related to investments of \$0.2 million.

## **Liquidity and Capital Resources**

### *Sources of Liquidity*

Through March 31, 2024, we have funded our research and development and operating activities primarily through the issuance of debt and equity and from revenue received under the Arimoclomol EAP, AZSTARYS License Agreement, OLPRUVA product sales and consulting arrangements. As of March 31, 2024, we had cash, cash equivalents and investments of \$52.7 million.

To date, we have generated revenue from the Arimoclomol EAP, AZSTARYS License Agreement, reimbursement of out-of-pocket third-party costs, the performance of consulting services, and sales of OLPRUVA.

We have had recurring negative net operating cash flows and we anticipate that we may continue to incur minimal positive net cash flows from operations or negative net cash flows from operations for at least the next several years. We expect that our sources of revenue will be through payments arising from our license agreement with Commave, the Arimoclomol EAP, sales of OLPRUVA and other potential consulting arrangements and any other future arrangements related to one of our product candidates.

We filed a registration statement on Form S-3 covering the sale of the shares of our common stock up to \$350.0 million, \$75.0 million of which was allocated to the sales of the shares of common stock issuable under the Equity Distribution Agreement (described below). The Form S-3 was declared effective on July 12, 2021. As of March 31, 2024, no shares have been issued or sold under the Equity Distribution Agreement.

We have incurred operating losses since our inception and, as of March 31, 2024, had an accumulated deficit of \$416.4 million. Our recurring operating losses and negative cash flows from operations raise substantial doubt about our ability to continue as a going concern. The Company's ability to continue operating as a going concern is contingent upon its ability to generate revenue from approved products or obtain product candidate regulatory approvals, which would generate revenue, milestones, and cash flow sufficient to support ongoing operations and the satisfaction of financial covenants. We are early in our commercialization effort for OLPRUVA and do not yet have a substantial basis to project future earnings, and our other sources of revenue are not sufficient to sustain our present activities on their own. Accordingly, our ability to continue as a going concern may require us to obtain additional financing to fund our operations. The perception of our inability to continue as a going concern may make it more difficult for us to obtain financing for the continuation of our operations and could result in the loss of confidence by investors, suppliers and employees. Adequate additional financing may not be available to us on acceptable terms, or at all. To the extent that we raise additional capital through the sale of equity or debt, the terms of these securities may restrict our ability to operate. If we raise additional funds through collaborations, strategic alliances or marketing, distribution or licensing arrangements with third parties, we may be required to relinquish valuable rights. If we are unable to raise capital when needed or on attractive terms, we could be forced to delay, reduce or altogether cease our research and development programs or future commercialization efforts.

### *Equity Distribution Agreement*

On July 2, 2021, we entered into an Equity Distribution Agreement with JMP and RBCCM, under which we may offer and sell, from time to time at our sole discretion, shares of our common stock having an aggregate offering price of up to \$75.0 million through JMP and RBCCM as our sales agents. The issuance and sale, if any, of our common stock under the Equity Distribution Agreement will be made pursuant to a registration statement on Form S-3.

## ***Merger Transactions and Documents***

On August 30, 2023, in connection with the Merger Agreement with Acer, the following transactions occurred prior to Closing:

- *Bridge Loan* - Zevra and Acer entered into a bridge loan agreement (the "Bridge Loan Agreement"), providing for Zevra to make loans (collectively, the "Bridge Loan") to Acer up to an aggregate principal amount of \$16.5 million. The Bridge Loan was provided to Acer to support its termination agreement with Relief Therapeutics Holding SA ("Relief") and to provide Acer with working capital, including for payments of accounts payable to support the commercial launch of OLPRUVA and the development of celirolol pending the Merger's closure. On October 31, 2023, the Company and Acer entered into an amendment to the Bridge Loan Agreement, which increased the aggregate principal amount available under the loan from \$16.5 million to \$18.0 million.
- *Purchase of Acer's Term Loans* - Zevra purchased certain indebtedness of Acer held by Nantahala Capital Management, LLC ("Nantahala"). Under the loan purchase with Nantahala, certain of its affiliates and certain other parties (collectively with Nantahala, "Nantahala Holders") Zevra purchased (i) an original senior secured term loan facility made available to Acer in an aggregate amount of \$6.5 million and funded on March 14, 2022, and (ii) an additional senior secured term loan made to Acer in an aggregate amount of \$7.0 million in a single borrowing which funded on January 31, 2023 for (1) \$12.0 million in cash; (2) 98,683 shares of Zevra Common Stock; and (3) a secured Promissory Note payable by Zevra to Nantahala in the original principal amount \$5.0 million (the "Nantahala Note"). These were recorded as receivables from Acer and were treated as a settlement of a preexisting relationship in connection with the closing of the transaction and recorded as a component of purchase consideration. In April 2024, the Nantahala Note was repaid in full and terminated.
- *Purchase of Acer's Convertible Notes* ("Marathon Convertible Notes")- Under the Note Purchase Agreement with the Nantahala Holders, Zevra purchased the Marathon Convertible Notes that Nantahala had acquired on June 16, 2023. Zevra acquired the Marathon Convertible Notes in exchange for the issuance of 2,171,038 shares of Zevra Common Stock at \$5.0667 per share for a total purchase price of \$11.0 million.
- *Amendment to IP License Agreement and IP Termination Agreement*: As a condition to entering into the Merger Agreement, Acer and Relief Therapeutics Holding AG ("Relief") entered into the Exclusive License Agreement and the Termination Agreement terminating the collaboration and license agreement, dated March 19, 2021, by and between Acer and Relief. Pursuant to the Exclusive License Agreement, Relief holds exclusive development and commercialization rights for OLPRUVA in the European Union, Liechtenstein, San Marino, Vatican City, Norway, Iceland, Principality of Monaco, Andorra, Gibraltar, Switzerland, United Kingdom, Albania, Bosnia, Kosovo, Montenegro, Serbia and North Macedonia (Geographical Europe). Acer has the right to receive a royalty of up to 10.0% of the net sales of OLPRUVA in Geographical Europe. In accordance with the terms of the Termination Agreement, Relief received an upfront payment from Acer of \$10.0 million (which payment was funded with the Bridge Loan described above) with an additional payment of \$1.5 million due on the first-year anniversary of the \$10.0 million payment. Acer has also agreed to pay a 10.0% royalty on net sales of OLPRUVA worldwide, excluding Geographical Europe, and 20.0% of any value received by Acer from certain third parties relating to OLPRUVA licensing or divestment rights, all of the foregoing which are capped at \$45.0 million, for total payments to Relief of up to \$56.5 million.

In connection with the closing of the Merger on November 17, 2023, each share of common stock of Acer was converted into the right to receive (i) 0.1210 fully paid and non-assessable shares of common stock of Zevra, par value \$0.0001 per share, and (ii) one non-transferable contingent value right ("CVR") to be issued by Zevra, which will represent the right to receive one or more contingent payments up to an additional \$76 million upon the achievement, if any, of certain commercial and regulatory milestones for Acer's OLPRUVA and celirolol products within specified time periods. Certain additional cash payments are also possible pursuant to the CVRs with respect to milestones involving Acer's early-stage program ACER-2820 (emetine).

*Registration Rights Agreement*

Zevra and Nantahala concurrently entered into a registration rights agreement (the "Registration Rights Agreement"), pursuant to which Zevra agreed to file a resale registration statement with respect to the resale of the Zevra common stock issuable under the Loan and Note Purchase Agreements and the Nantahala Note. On February 5, 2024, Zevra filed a registration statement on Form S-3 (File No. 333-276856) registering an aggregate of 2,269,721 shares of Zevra's common stock that were issued pursuant to the Loan and Note Purchase Agreements. On April 5, 2024, we filed an amendment to the registration statement on Form S-3 (File No. 333-250945) covering the issuance of the shares of our common stock issuable upon the exercise of warrants issued in connection with the Merger (Note L) and remaining unexercised as of the date of the amendment, which was declared effective on April 8, 2024.

*Cancellation of Acer Warrant*

On November 22, 2023, we sold an aggregate of 1,382,489 shares of our common stock and accompanying warrants to purchase up to 1,382,489 shares of our common stock at a price of \$4.34 per share to a healthcare focused investment fund (the "Investor") for gross proceeds of approximately \$6.0 million and an aggregate of 917,934 shares of our common stock to cancel a warrant held by the Investor to purchase 2,920,306 shares of common stock of Acer. The shares of common stock and warrants were offered and sold to the Investor in a registered direct offering without an underwriter or placement agent.

*Line of Credit*

On January 26, 2023, we and Wells Fargo, as lender, entered into a margin account agreement. Our investments were used as collateral for the loan and the amount we were able to borrow is limited to 80-90% of our outstanding investment balance held with Wells Fargo. The margin account bore interest at the Prime Rate minus 225 basis-points. As of March 31, 2024, \$37.9 million was outstanding under the margin account. This facility was paid off on April 5, 2024, and the margin capability was removed from the account.

**Cash Flows**

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

	<b>Three months ended March 31,</b>	
	<b>2024</b>	<b>2023</b>
Net cash used in operating activities	\$ (16,165)	\$ (4,045)
Net cash provided by (used in) investing activities	14,793	(17,555)
Net cash provided by (used in) financing activities	1,217	(3,750)
Effect of exchange rates on cash and cash equivalents	(45)	65
Net decrease in cash and cash equivalents	<u>\$ (200)</u>	<u>\$ (25,285)</u>

**Operating Activities**

For the three months ended March 31, 2024, net cash used in operating activities of \$16.2 million consisted of a net loss of \$16.6 million and \$0.2 million in changes in working capital; partially offset by \$0.6 million in adjustments for non-cash items. Net loss was primarily attributable to our spending on research and development programs and operating costs; partially offset by revenue received under the AZSTARYS License Agreement, the Arimoclomol EAP and product sales of OLPRUVA. The changes in working capital consisted of \$7.4 million related to a change in accounts payable and accrued expenses, \$0.1 million related to a change in operating lease liabilities, \$2.6 million related to a change in inventories, and \$0.3 million related to a change in other liabilities; partially offset by \$9.1 million related to a change in accounts and other receivables, \$1.0 million related to a change in discount and rebate liabilities, and \$0.1 million related to a change in operating lease right-of-use assets. The adjustments for non-cash items primarily consisted of stock-based compensation expense of \$2.1 million, interest expense of \$0.2 million, and \$1.9 million related to depreciation, amortization and other items; partially offset by a change in the fair value of warrant and CVR liability of \$3.6 million.

For the three months ended March 31, 2023, net cash used in operating activities of \$4.0 million consisted of a net loss of \$13.2 million, partially offset by \$0.6 million in adjustments for non-cash items and \$7.1 million in changes in working capital. Net loss was primarily attributable to our spending on research and development programs and operating costs, partially offset by revenue received under the AZSTARYS License Agreement, Arimoclomol EAP and the consulting agreements. The changes in working capital consisted of \$0.7 million related to a change in prepaid expenses and other assets, \$0.5 million related to a change in accounts and other receivables, \$1.5 million related to a change in discount and rebate liabilities, \$3.9 million related to a change in accounts payable and accrued expenses, \$0.1 million related to a change in operating lease right-of-use assets, \$0.1 million related to a change in inventories and \$0.4 million related to a change in other liabilities, partially offset by \$0.1 million related to a change in operating lease liabilities. The adjustments for non-cash items primarily consisted of stock-based compensation expense of \$0.6 million, non-cash severance expense of \$0.4 million and \$0.1 million related to depreciation, amortization and other items, partially offset by a change in the fair value adjustment related to investments of \$0.2 million and a gain on foreign currency exchange rates of \$0.2 million.

**Investing Activities**

For the three months ended March 31, 2024, net cash provided by investing activities was \$14.8 million, which was primarily attributable to maturities of investments.

For the three months ended March 31, 2023, net cash used in investing activities was \$17.6 million, which was primarily attributable to purchases of investments.

**Financing Activities**

For the three months ended March 31, 2024, net cash provided by financing activities was \$1.2 million, which was primarily attributable to proceeds from the issuance of stock.

For the three months ended March 31, 2023, net cash used in financing activities was \$3.8 million, which was primarily attributable to proceeds from the issuance of debt of \$12.9 million, partially offset by payments of principal on insurance financing arrangements of \$0.4 million, payments to repurchase shares as part of the Share Repurchase Program of \$3.4 million and payments of principal on debt of \$12.8 million.

### ***Future Funding Requirements***

While under applicable accounting principles factors exist that raise substantial doubt about our ability to continue as a going concern, based on our current operating forecast, we believe that our existing cash, cash equivalents and investments will be sufficient to fund our operations into 2026, subject to continuing compliance with our debt covenants. This estimate includes the ongoing reimbursements from the French expanded access program for arimoclomol, completion of the arimoclomol NDA resubmission, commercial activities to support the launch of arimoclomol, if approved, and completion of the KP1077 development program for IH up to NDA submission. This estimate does not include revenue from arimoclomol after potential FDA approval, or the potential sale of the priority review voucher of arimoclomol, which would be received at that time, as well, or the costs of a Phase 3 trial for KP1077 in narcolepsy. Certain of the milestones are associated with regulatory matters that are outside our control. In addition, we maintain the majority of our cash and cash equivalents in accounts with major U.S. and multi-national financial institutions, and our deposits at these institutions exceed insured limits. Market conditions can impact the viability of these institutions. In the event of a failure of any of the financial institutions where we maintain our cash and cash equivalents, there can be no assurance that we would be able to access uninsured funds in a timely manner or at all. Any inability to access or delay in accessing these funds could adversely affect our business and financial position.

Potential near-term sources of additional funding include:

- any royalties or net sales milestone payments generated under the AZSTARYS License Agreement;
- any product sales under the Arimoclomol EAP;
- any product sales of OLPRUVA;
- any product sales of arimoclomol, if approved; and
- any consulting services revenue generated under other potential consulting agreements;

We cannot guarantee that we will be able to generate sufficient proceeds from any of these potential sources to fund our operating expenses. We anticipate that our expenses will fluctuate substantially as we:

- continue our ongoing preclinical studies, clinical trials and our product development activities for our pipeline of product candidates;
- seek regulatory approvals for any product candidates that successfully complete clinical trials;
- continue research and preclinical development and initiate clinical trials of our product candidates;
- seek to discover and develop additional product candidates either internally or in partnership with other pharmaceutical companies;
- adapt our regulatory compliance efforts to incorporate requirements applicable to marketed products;
- maintain, expand and protect our intellectual property portfolio; and
- incur additional legal, accounting and other expenses in operating as a public company.

To date, we have generated revenue from the AZSTARYS License Agreement, reimbursements of out-of-pocket third-party costs, the performance of consulting services, OLPRUVA product sales, and product sales under the Arimoclomol EAP. We expect that, for the foreseeable future, our only sources of revenues will be through payments arising from the AZSTARYS License Agreement, product sales of OLPRUVA, through potential consulting arrangements and any other future arrangements related to one of our product candidates and product sales under the Arimoclomol EAP. While we have entered into the AZSTARYS License Agreement to develop, manufacture and commercialize AZSTARYS, we cannot guarantee that this, or any strategy we adopt in the future, will be successful. For instance, we received milestone payments under the AZSTARYS License Agreement, but we cannot guarantee that we will earn any additional milestone or royalty payments under this agreement in the future. We also cannot guarantee that we will continue to generate revenue under the Arimoclomol EAP or successfully commercialize OLPRUVA. We also expect to continue to incur additional costs associated with operating as a public company.

We have based our estimates of our cash needs and cash runway on assumptions that may prove to be wrong, and we may use our available capital resources sooner than we currently expect and we cannot guarantee that we will be able to generate sufficient proceeds from the AZSTARYS License Agreement, product reimbursements under the Arimoclomol EAP, product sales of OLPRUVA, potential consulting arrangements or other funding transactions to fund our operating expenses. To meet any additional cash requirements, we may seek to sell additional equity or convertible securities that may result in dilution to our stockholders, issue additional debt or seek other third-party funding, including potential strategic transactions, such as licensing or collaboration arrangements. Because of the numerous risks and uncertainties associated with the development and commercialization of product candidates and products, we are unable to estimate the amounts of increased capital outlays and operating expenditures necessary to complete the commercialization and development of our partnered product or product candidates, should they obtain regulatory approval.

### **Critical Accounting Estimates**

This management's discussion and analysis of our financial condition and results of operations is based on our unaudited condensed consolidated financial statements, which we have prepared in accordance with accounting principles generally accepted in the United States. The preparation of our unaudited condensed consolidated financial statements requires us to make estimates that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of our unaudited condensed consolidated financial statements, as well as the reported revenues and expenses during the reported periods. We evaluate these estimates on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

Our critical accounting policies have not changed materially from those described in *Item 7 - Management's Discussion and Analysis of Financial Condition and Results of Operations* of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC on April 1, 2024.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not applicable.

### **ITEM 4. CONTROLS AND PROCEDURES**

#### **Limitations on Effectiveness of Controls and Procedures**

In designing and evaluating our disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

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

Our management, with the participation of our chief executive officer and our chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of March 31, 2024. Based on the evaluation of our disclosure controls and procedures as of March 31, 2024, our chief executive officer and our chief financial officer concluded that, as of such date, our disclosure controls and procedures were not effective at the reasonable assurance level.

#### **Material Weakness**

As previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2023, management identified a material weakness in our internal control over financial reporting related to the accounting for warrants to purchase the Company's common stock. The material weakness in our internal control resulted in the restatement of the Company's consolidated financial statements as of and for the year ended December 31, 2022, and the condensed consolidated financial statements for the interim periods ended March 31, 2022, June 30, 2022, September 30, 2022, March 31, 2023, June 30, 2023, and September 30, 2023, included in our Annual Report on Form 10-K. The material weakness, which related to internal controls over the application of specific technical accounting guidance, was identified during the performance of our year-end control procedures.

#### **Remediation of Material Weakness**

We have implemented certain remedial measures including, but not limited to, a review of all existing accounting for warrants to purchase the Company's common stock to confirm compliance with GAAP prior to filing the consolidated financial statements as of and for the year ended December 31, 2023, with our Annual Report on Form 10-K.

In addition, we are in the process of developing enhanced control procedures designed to ensure proper accounting for our warrant related accounts and balances, which will include adding technical resources to perform and oversee technical accounting. However, the material weakness cannot be considered remediated until the applicable remedial controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

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

Except as disclosed above, there was no change in our internal control over financial reporting identified in connection with the evaluation required by Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during our fiscal quarter ended March 31, 2024, that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.



**PART II  
OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

From time to time, we may be involved in routine legal proceedings, as well as demands, claims and threatened litigation, which arise in the normal course of our business. We believe there is no litigation pending that would reasonably be expected to, individually or in the aggregate, have a material adverse effect on our results of operations or financial condition.

**ITEM 1A. RISK FACTORS**

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider all the risk factors and uncertainties described in Part I, Item 1A, “Risk Factors” of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the SEC on April 1, 2024, before investing in our common stock. Except as discussed below, there have been no material changes to the risk factors described in that report. If any of those risks materialize, our business, financial condition and results of operations could be seriously harmed. This Quarterly Report on Form 10-Q also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements because of those risk factors and the other factors described in in this Quarterly Report on Form 10-Q.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

**Recent Sales of Unregistered Securities**

None.

**Purchases of Equity Securities By the Issuer and Affiliated Purchasers**

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

(a) Disclosure in lieu of reporting on a Current Report on Form 8-K.

None.

(b) Material changes to the procedures by which security holders may recommend nominees to the board of directors.

None.

(c) Insider Trading Arrangements and Policies.

During the three months ended March 31, 2024, no director or officer of the Company adopted or terminated a “Rule 10b5-1 trading arrangement” or “non-Rule 10b5-1 trading arrangement,” as each term is defined in Item 408(a) of Regulation S-K.

**ITEM 6. EXHIBITS**

The following is a list of exhibits filed as part of this Form 10-Q (the SEC file number for all items incorporated by reference herein from reports on Forms 10-K, 10-Q, and 8-K is 001-36913):

<b>Exhibit No.</b>	<b>Description</b>
3.1	<a href="#">Amended and Restated Certificate of Incorporation of Zevra Therapeutics, Inc. (incorporated herein by reference to the Registrant's Current Report on Form 8-K as filed with the SEC on April 21, 2015).</a>
3.1.1	<a href="#">Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Registrant, effective as of December 23, 2020 (incorporated herein by reference to Registrant's Current Report on Form 8-K as filed with the SEC on December 23, 2020).</a>
3.1.2	<a href="#">Certificate of Amendment of Amended and Restated Certificate of Incorporation of Zevra Therapeutics, Inc. (incorporated herein by reference to the Registrant's Current Report on Form 8-K as filed with the SEC on February 24, 2023).</a>
3.2	<a href="#">Amended and Restated Bylaws, as currently in effect, of Zevra Therapeutics, Inc. (incorporated herein by reference to the Registrant's Current Report on Form 8-K as filed with the SEC on February 28, 2024).</a>
4.1	<a href="#">Specimen stock certificate evidencing shares of Common Stock (incorporated herein by reference to the Registrant's Annual Report on Form 10-K as filed with the SEC on March 12, 2021).</a>
101.*†+	<a href="#">Credit Agreement dated as of April 5, 2024, by and among Zevra Therapeutics, Inc. and HCR Stafford Fund II, L.P., HCR Potomac Fund II, L.P., and Perceptive Credit Holdings IV, LP.</a>
31.1*	<a href="#">Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.</a>
31.2*	<a href="#">Certification of the Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.</a>
32.1**	<a href="#">Certification of the Principal Executive Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18. U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2**	<a href="#">Certification of the Principal Financial Officer pursuant to Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, and 18. U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS*	Inline XBRL Instance 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 and combined in Exhibit 101)

\* Filed herewith

\*\* Furnished herewith

† Pursuant to Item 601(a)(5) of Regulation S-K, schedules and similar attachments have been omitted. The registrant hereby agrees to furnish a copy of any omitted schedule or similar attachment to the SEC upon request.

+ Certain portions of the exhibit, identified by the mark, "[\*]", have been omitted because such portions contained information that is both (i) not material and (ii) the type that the Registrant treats as private or confidential.

**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.

**Zevra Therapeutics, Inc.**

Date: May 9, 2024

By: /s/ Neil F. McFarlane  
Neil F. McFarlane  
President and Chief Executive Officer  
(Principal Executive Officer)

Date: May 9, 2024

By: /s/ R. LaDuane Clifton  
R. LaDuane Clifton, MBA, CPA  
Chief Financial Officer, Secretary and Treasurer  
(Principal Financial Officer)

*Pursuant to Item 601(b)(2)(ii), certain identified information marked with [\*\*\*] has been excluded from this exhibit because it is both not material and is the type that the registrant customarily and actually treats as private or confidential.*

**FLORIDA DOCUMENTARY STAMP TAX REQUIRED BY LAW IN THE AMOUNT OF \$2,450.00 HAS BEEN PAID OR WILL BE PAID DIRECTLY TO THE DEPARTMENT OF REVENUE.**

CREDIT AGREEMENT

Dated as of April 5, 2024

among

ZEVRA THERAPEUTICS, INC.,  
as the Borrower,

CERTAIN SUBSIDIARIES OF THE BORROWER,  
as Guarantors,

ALTER DOMUS (US) LLC,  
as the Administrative Agent

and

THE LENDERS FROM TIME TO TIME PARTY HERETO

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	6
1.01 Defined Terms	6
1.02 Other Interpretive Provisions	44
1.03 Accounting Terms	45
1.04 Times of Day	46
1.05 Danish Terms.	46
ARTICLE II THE COMMITMENTS	47
2.01 Commitments	47
2.02 Borrowings	47
2.03 Prepayments	48
2.04 Termination of Commitments	50
2.05 Repayment of Loans	50
2.06 Interest	51
2.07 Fees	52
2.08 Computation of Interest	52
2.09 Evidence of Debt	52
2.10 Payments Generally	52
2.11 Sharing of Payments by Lenders; Presumptions by Administrative Agent	53
2.12 Defaulting Lenders	54
ARTICLE III TAXES, INCREASED COSTS AND YIELD PROTECTION	55
3.01 Taxes	55
3.02 Increased Costs	59
3.03 Mitigation Obligations; Replacement of Lenders	60
3.04 Illegality	61
3.05 Inability to Determine Rates	61
3.06 Survival	62
ARTICLE IV GUARANTY	62
4.01 The Guaranty	62
4.02 Obligations Unconditional	62
4.03 Reinstatement	63
4.04 Certain Additional Waivers	63
4.05 Remedies	63
4.06 Rights of Contribution	64
4.07 Guarantee of Payment; Continuing Guarantee	64
4.08 Danish Guarantee Limitations.	64
ARTICLE V CONDITIONS PRECEDENT TO CLOSING AND BORROWINGS	65
5.01 Conditions of Initial Borrowing	65
5.02 Conditions to all Borrowings	68

---

ARTICLE VI REPRESENTATIONS AND WARRANTIES 69

6.01	Existence, Qualification and Power	69
6.02	Authorization; No Contravention	70
6.03	Governmental Authorization; Other Consents	70
6.04	Binding Effect	70
6.05	Financial Statements; No Material Adverse Effect	70
6.06	Litigation	71
6.07	No Default	71
6.08	Ownership of Property; Liens	71
6.09	Environmental Compliance	71
6.10	Insurance	72
6.11	Taxes	73
6.12	ERISA Compliance	73
6.13	Subsidiaries and Capitalization	73
6.14	Margin Regulations; Investment Company Act	74
6.15	Disclosure	74
6.16	Compliance with Laws	74
6.17	Intellectual Property; Licenses, Etc	75
6.18	Solvency	77
6.19	Perfection of Security Interests in the Collateral	77
6.20	Business Locations	77
6.21	Sanctions Concerns; Anti-Corruption Laws; PATRIOT Act	77
6.22	Material Contracts	78
6.23	Compliance of Products	78
6.24	Labor Matters	81
6.25	Affected Financial Institution	81
6.26	Regulation H	82
6.27	Compliance with Privacy Laws	82
6.28	Representations as to Foreign Loan Parties.	82

ARTICLE VII AFFIRMATIVE COVENANTS 83

7.01	Financial Statements	83
7.02	Certificates; Other Information	84
7.03	Notices	86
7.04	Payment of Obligations	87
7.05	Preservation of Existence, Etc	87
7.06	Maintenance of Properties	88
7.07	Maintenance of Insurance	88
7.08	Compliance with Laws	89
7.09	Books and Records, etc	89
7.10	Inspection Rights	89
7.11	Use of Proceeds	90
7.12	Additional Subsidiaries	90
7.13	ERISA Compliance	90
7.14	Pledged Assets	90
7.15	Compliance with Material Contracts	91
7.16	Deposit Accounts	91
7.17	Products and Permits	92
7.18	Consent of Licensors	92
7.19	Anti-Corruption Laws	92
7.20	Maintenance of Regulatory Authorizations, Contracts, Intellectual Property, Etc	92
7.21	Post-Closing Obligations	94

---

ARTICLE VIII NEGATIVE COVENANTS 94

8.01	Liens	94
8.02	Investments	97
8.03	Indebtedness	98
8.04	Fundamental Changes	99
8.05	Dispositions	100
8.06	Restricted Payments	100
8.07	Change in Nature of Business	101
8.08	Transactions with Affiliates and Insiders	101
8.09	Burdensome Agreements	102
8.10	Use of Proceeds	102
8.11	Prepayment of Other Indebtedness	102
8.12	Organization Documents; Fiscal Year; Legal Name, Jurisdiction of Organization and Form of Organization; Certain Amendments	103
8.13	Ownership of Subsidiaries	104
8.14	Sale Leasebacks	104
8.15	Sanctions; Anti-Corruption Laws	104
8.16	Liquidity	104
8.17	Consolidated Net Product Sales	104

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES 107

9.01	Events of Default	107
9.02	Remedies Upon Event of Default	110
9.03	Application of Funds	111

ARTICLE X ADMINISTRATIVE AGENT 112

10.01	Appointment and Authority	112
10.02	Rights as a Lender	113
10.03	Exculpatory Provisions	113
10.04	Reliance by Administrative Agent	114
10.05	Delegation of Duties	115
10.06	Resignation of Administrative Agent	115
10.07	Non-Reliance on Administrative Agent and Other Lenders	115
10.08	Administrative Agent May File Proofs of Claim	116
10.09	Collateral and Guaranty Matters	116
10.10	Recovery of Erroneous Payments	117

ARTICLE XI MISCELLANEOUS 117

11.01	Amendments, Etc	117
11.02	Notices and Other Communications; Facsimile Copies	119
11.03	No Waiver; Cumulative Remedies; Enforcement	120
11.04	Expenses; Indemnity; and Damage Waiver	121
11.05	Payments Set Aside	123
11.06	Successors and Assigns	123
11.07	Treatment of Certain Information; Confidentiality	126
11.08	Set-off	127
11.09	Interest Rate Limitation	127
11.10	Counterparts; Integration; Effectiveness	128
11.11	Survival of Representations and Warranties	128
11.12	Severability	128
11.13	Replacement of Lenders	128
11.14	Governing Law; Jurisdiction; Etc	129
11.15	Waiver of Right to Trial by Jury	130
11.16	Electronic Execution; Electronic Records; Counterparts	130
11.17	USA PATRIOT Act	131
11.18	No Advisory or Fiduciary Relationship	132
11.19	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	132
11.20	Intended Tax Treatment of the Loans.	132

---



## SCHEDULES

- 1.01 Products
- 1.02 Permitted Licenses
- 2.01 Commitments and Applicable Percentages
- 6.10 Insurance
  - 6.13(a) Subsidiaries
  - 6.13(b) Capitalization
  - 6.17(a) Intellectual Property
  - 6.17(b) Product Specific Patents
  - 6.20(a) Locations of Real Property
  - 6.20(b) Taxpayer and Organizational Identification Numbers
  - 6.20(c) Changes in Legal Name, Jurisdiction of Organization and Structure
- 6.22 Material Contracts
- 7.21 Post-Closing Obligations
- 8.01 Liens Existing on the Closing Date
- 8.02 Investments Existing on the Closing Date
- 8.03 Indebtedness Existing on the Closing Date
- 8.08 Transactions with Affiliates and Insiders Existing on the Closing Date
- 11.02 Certain Addresses for Notices

## EXHIBITS

- A Form of Loan Notice
  - B-1 Form of Term A Note
  - B-2 Form of Term B Note
  - B-3 Form of Term C Note
  - C Form of Joinder Agreement
  - D Form of Assignment and Assumption
  - E Form of Compliance Certificate
  - F-1 Form of U.S. Tax Compliance Certificate
  - F-2 Form of U.S. Tax Compliance Certificate
  - F-3 Form of U.S. Tax Compliance Certificate
  - F-4 Form of U.S. Tax Compliance Certificate
-

## CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of April 5, 2024 among ZEVRA THERAPEUTICS, INC., a Delaware corporation (the “Borrower”), the Guarantors (defined herein), the Lenders (defined herein) and ALTER DOMUS (US) LLC, as the Administrative Agent.

The Borrower has requested that the Lenders make an investment in the Borrower in the form of term loan facilities and the Lenders are willing to do so on the terms and conditions set forth herein.

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

### ARTICLE I

#### DEFINITIONS AND ACCOUNTING TERMS

##### 1.01 Defined Terms.

As used in this Agreement, the following terms shall have the meanings set forth below:

“Account Control Agreement” means any account control agreement by and among a U.S. Loan Party, the applicable depository bank or securities intermediary (as the case may be) and the Administrative Agent, in each case in form and substance reasonably satisfactory to the Required Lenders.

“Acquisition” means, with respect to any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of (a) assets of another Person which constitute all or substantially all of the assets of such Person, or of any division, line of business or other business unit of such Person, (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise or (c) any Acquisition Product or any Person or division, line of business or other business unit of another Person holding any Acquisition Product(s).

“Acquisition Product” means any product or service developed, manufactured, marketed, offered for sale, promoted, sold, tested, used or otherwise distributed by a Person other than the Borrower or any of its Subsidiaries.

“Administrative Agent” means Alter Domus (US) LLC, in its capacity as administrative agent under any of the Loan Documents, or any duly appointed successor administrative agent, pursuant to the terms hereof.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02 or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Affordable Care Act” means the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124 Stat. 1029 (2010).

“Agent Fee Letter” means that certain letter agreement dated as of the Closing Date among the Borrower, on the one hand, and the Administrative Agent and/or one or more of its Affiliates, on the other hand.

“Agreement” means this Credit Agreement.

“ANDA” means an abbreviated new drug application submitted to the FDA pursuant to section 505(j) of the FDCA, along with all supplements and amendments thereto, and any similar application for marketing authorization required by any country, jurisdiction or Governmental Authority other than the United States.

“Applicable Foreign Loan Party Documents” has the meaning set forth in Section 6.28.

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“Applicable Margin” means, for any Interest Period, seven percent (7.00%) per annum; provided, that, (a) for any Interest Period following the occurrence of the Consolidated Net Product Sales Applicable Margin Trigger (2025) (and delivery by the Borrower of the related Consolidated Net Product Sales Applicable Margin Trigger (2025) Certificate to the Administrative Agent (for further distribution to the Lenders) not less than six (6) Business Days prior to the commencement of such Interest Period), the reference preceding this proviso to “seven percent (7.00%) per annum” shall, commencing with the first full Interest Period immediately following the occurrence of the Consolidated Net Product Sales Applicable Margin Trigger (2025) (and delivery by the Borrower of the related Consolidated Net Product Sales Applicable Margin Trigger (2025) Certificate to the Administrative Agent (for further distribution to the Lenders) not less than six (6) Business Days prior to the commencement of such Interest Period), be deemed replaced with “six percent (6.00%) per annum” and (b) for any Interest Period following the occurrence of the Consolidated Net Product Sales Applicable Margin Trigger (Subsequent Period) (and delivery by the Borrower of the related Consolidated Net Product Sales Applicable Margin Trigger (Subsequent Period) Certificate to the Administrative Agent (for further distribution to the Lenders) not less than six (6) Business Days prior to the commencement of such Interest Period), the reference preceding this proviso to “seven percent (7.00%) per annum” shall, commencing with the first full Interest Period immediately following the occurrence of the Consolidated Net Product Sales Applicable Margin Trigger (Subsequent Period) (and delivery by the Borrower of the related Consolidated Net Product Sales Applicable Margin Trigger (Subsequent Period) Certificate to the Administrative Agent (for further distribution to the Lenders) not less than six (6) Business Days prior to the commencement of such Interest Period) be deemed replaced with “six and one half of one percent (6.50%) per annum”.

“Applicable Percentage” means with respect to any Lender at any time, (a) in respect of the Term A Facility, the percentage (carried out to the ninth decimal place) of the Term A Facility represented by (i) on or prior to the Closing Date, such Lender’s Term A Commitment at such time and (ii) thereafter, the outstanding principal amount of such Lender’s Term A Loans at such time, (b) in respect of the Term B Facility, the percentage (carried out to the ninth decimal place) of the Term B Facility represented by (i) at any time during the Term B Availability Period, such Lender’s Term B Commitment at such time plus, the outstanding principal amount of such Lender’s Term B Loans at such time and (ii) at any time thereafter, the outstanding principal amount of such Lender’s Term B Loans at such time and (c) in respect of the Term C Facility, the percentage (carried out to the ninth decimal place) of the Term C Facility represented by (i) at any time during the Term C Availability Period, such Lender’s Term C Commitment at such time and (ii) at any time thereafter, the outstanding principal amount of such Lender’s Term C Loans at such time. The initial Applicable Percentage of each Lender in respect of each Term Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Appropriate Lender” means, at any time, with respect to any Term Facility, a Lender that has a Commitment with respect to such Term Facility or holds a Loan under such Term Facility at such time.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arimoclomol” means any pharmaceutical or biological composition containing arimoclomol in a form for oral use, including the product candidate trademarked in the United States as MIPLYFFA™.

“Arimoclomol Complete Response Letter” means written FDA notice pursuant to 21 C.F.R. § 314.110 reflecting a determination by the FDA that the FDA will not approve the Borrower’s NDA for Arimoclomol for the treatment of adults and pediatric patients two (2) years of age and older with Niemann-Pick disease Type C in its current form.

“Arimoclomol FDA Approval” means FDA approval of the Borrower’s NDA for Arimoclomol for the treatment of adults and pediatric patients two (2) years of age and older with Niemann-Pick disease Type C.

“Arimoclomol FDA Approval Certificate” means a certificate of a Responsible Officer of the Borrower (in form and substance satisfactory to the Required Lenders) certifying that (a) the Arimoclomol FDA Approval has been obtained on or prior to the date of such certificate, together with the approval letter from the FDA and such other supporting detail as the Required Lenders shall reasonably require and (b) the Priority Review Voucher with respect to Arimoclomol shall have been obtained by the Loan Parties on or prior to the date of such certificate, together with such supporting detail as the Required Lenders shall reasonably require.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent, in substantially the form of Exhibit D or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease of any Person, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease and (c) in respect of any Securitization Transaction of any Person, the outstanding principal amount of such financing, after taking into account reserve accounts and making appropriate adjustments, determined by the Required Lenders in their reasonable judgment.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2022, and the related consolidated statements of operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto, audited by independent public accountants of recognized national standing and prepared in conformity with GAAP.

“Azstarys” means the combination of seventy percent (70%) serdexmethylphenidate and thirty percent (30%) immediate release dexmethylphenidate for the treatment of attention deficit hyperactivity disorder, in any dosage form, formulation, presentation or package configuration, alone or in combination with one or more other active pharmaceutical ingredients, including the product trademarked in the United States as AZSTARYS™.

“Azstarys License Agreement” means that certain Collaboration and License Agreement dated September 3, 2019, by and between the Borrower and Commvave Therapeutics SA (formerly known as Boston Pharmaceutical Holdings S.A.), as amended by that certain Amendment No. 1 to the Collaboration and License Agreement dated April 8, 2021 and as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in a manner not prohibited hereby.

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

“Bail-In Legislation” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).



“BLA” means a biologics license application submitted to the FDA pursuant to section 351 of the Public Health Service Act, along with all supplements and amendments thereto, and any similar application for marketing authorization required by any country, jurisdiction or Governmental Authority other than the United States.

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

“Borrower” has the meaning set forth in the introductory paragraph hereto.

“Borrower Investment Policy” means the Borrower’s investment policy approved by the Lenders prior to the Closing Date together with such amendments, supplements, modifications or replacements thereto as may be approved by the Required Lenders after the Closing Date (such approval not to be unreasonably withheld, conditioned or delayed).

“Borrowing” means a Term A Borrowing, a Term B Borrowing or a Term C Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located; provided, that, with respect to notices and determinations in connection with, and payments of or with respect to the Loans, such day is also a U.S. Government Securities Business Day.

“Businesses” means, at any time, a collective reference to the businesses operated by the Borrower and its Subsidiaries at such time.

“Capital Lease” means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a capital lease or a finance lease on the balance sheet of that Person.

“Cash Equivalents” means, as at any date, (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided, that, the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition, (b) Dollar denominated time deposits and certificates of deposit of (i) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (ii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody’s is at least P-1 or the equivalent thereof (any such bank being an “Approved Bank”), in each case with maturities of not more than 270 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Bank (or by the parent company thereof) or any variable or fixed rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody’s and maturing within six months of the date of acquisition, (d) repurchase agreements entered into by any Person with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations, (e) Investments made in accordance with the Borrower Investment Policy, (f) Investments classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940 which are administered by reputable financial institutions having capital of at least \$500,000,000 and the portfolios of which are limited to Investments of the character described in the foregoing clauses (a) through (e) and (g) solely with respect to any Foreign Subsidiary, investments of comparable tenor and credit quality to those described in the foregoing clauses (a) through (f), customarily utilized in countries in which such Foreign Subsidiary, as the case may be, operates.

“cGCP” means (a) the FDA’s Good Clinical Practice requirements at 21 CFR Parts 50, 54, 56 and 312 and (b) any similar or functionally equivalent requirements applicable to, or required by, comparable Governmental Authorities.

“cGMP” means (a) the FDA’s current Good Manufacturing Practice requirements at 21 CFR Parts 210 and 211 and (b) any similar or functionally equivalent requirements applicable to, or required by, comparable Governmental Authorities.

“Change in Law” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that, notwithstanding anything herein to the contrary, (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.

“Change of Control” means the occurrence of any of the following events:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of Equity Interests representing thirty-five percent (35%) or more of the aggregate ordinary voting power in the election of the Board of Directors of the Borrower represented by the issued and outstanding Equity Interests of the Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right); or

(b) during any period of twelve (12) consecutive months, a majority of the members of the Board of Directors of the Borrower cease to be composed of individuals (i) who were members of that Board of Directors on the first day of such period, (ii) whose election, appointment or nomination to that Board of Directors was approved by individuals referred to in clause (i) above constituting at the time of such election, appointment or nomination at least a majority of that Board of Directors or (iii) whose election, appointment or nomination to that Board of Directors was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election, appointment or nomination at least a majority of that Board of Directors; or

(c) any “Fundamental Change” (or any comparable term) or “Change of Control” (or any comparable term) occurs under any document or agreement evidencing any Indebtedness with an aggregate principal amount in excess of the Threshold Amount.



“Closing Date” means the date hereof.

“Closing Date Fee Letter” means that certain letter agreement dated as of the Closing Date among the Borrower, on the one hand, and the Lenders and/or one or more of their respective Affiliates, on the other hand.

“CME” means CME Group Benchmark Administration Limited.

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

“Collateral” means a collective reference to all real and personal property with respect to which Liens in favor of the Administrative Agent, for the benefit of the Secured Parties, are purported to be granted pursuant to and in accordance with the terms of the Collateral Documents and shall, for the avoidance of doubt, in no event include any Excluded Property.

“Collateral Access Agreement” means an agreement in form and substance reasonably satisfactory to the Required Lenders pursuant to which (a) a lessor of real property located in the United States on which Collateral of a U.S. Loan Party in an aggregate amount in excess of \$1,000,000 is stored or otherwise located, or (b) a warehouseman, processor or other bailee of inventory or other property owned by any U.S. Loan Party and located in the United States which is in an aggregate amount in excess of \$1,000,000, in each case, acknowledges the Liens of the Administrative Agent and waives (or, if approved by the Required Lenders, subordinates) any Liens held by such Person on such property, and permits the Administrative Agent reasonable access to any Collateral stored or otherwise located thereon.

“Collateral Documents” means a collective reference to the Security Agreement, the Pledge Agreement, the Mortgages, the Account Control Agreements, the Collateral Questionnaire, the Collateral Access Agreements, the Real Property Security Documents, the Danish Collateral Documents, such security documents with respect to any Foreign Loan Party (or with respect to any deposit accounts or securities accounts of a U.S. Loan Party that are held or otherwise located outside of the United States) as shall be required by the Required Lenders, and other security documents as may be executed and delivered by the Loan Parties pursuant to the terms of Section 7.14.

“Collateral Questionnaire” means that certain collateral and diligence questionnaire, in form and substance reasonably satisfactory to Required Lenders, dated as of the Closing Date.

“Commitment” means a Term A Commitment, a Term B Commitment or a Term C Commitment, as the context may require.

“Communication” means this Agreement, any Loan Document and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

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

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or Three-Month Term SOFR, as applicable, any conforming changes to the definitions of “SOFR”, “Three-Month Term SOFR”, “Interest Rate”, and “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment and length of lookback periods) that the Administrative Agent (with the approval of the Required Lenders), in consultation with the Borrower, reasonably decides may be appropriate to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent (with the approval of the Required Lenders) reasonably decides that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent (with the approval of the Required Lenders), in consultation with the Borrower reasonably decides is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Consolidated Net Product Sales” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, as determined and reported in accordance with GAAP, the total of (a) the sum (without duplication) of (i) gross sales of FDA Approved Products to independent customers by the Borrower and its Subsidiaries for such period plus (ii) gross sales of Expanded Access Program Products to independent customers by the Borrower and its Subsidiaries for such period, less (b) the sum (without duplication) of, (i) quantity, trade, cash or other discounts, allowances, credits or rebates (including customer rebates) actually allowed or taken in the ordinary course of business for such period, plus (ii) amounts deducted, repaid or credited by reason of rejections or returns of FDA Approved Products or Expanded Access Program Products, as the case may be, and government mandated rebates, or because of chargebacks or retroactive price reductions for such period, plus (iii) charges for freight, handling, postage, transportation, insurance and other shipping charges for such period, plus (iv) taxes, tariffs, duties or other governmental charges or assessments (including any sales, value added or similar taxes other than an income tax) levied, absorbed or otherwise imposed on or with respect to the production, sale, transportation, delivery or use of FDA Approved Products or Expanded Access Program Products, as the case may be, for such period, plus (v) any “cost-plus” supply or manufacturing revenues plus (vi) amounts received by the Borrower or any Subsidiary to the extent owed to any Person other than the Borrower or any Subsidiary; provided, that, “Consolidated Net Product Sales” shall exclude (1) upfront payments, milestones, royalty payments and any other payments relating to out-licensing of Intellectual Property by the Borrower or any of its Subsidiaries (it being understood, for the avoidance of doubt, that this clause (1) shall exclude from “Consolidated Net Product Sales” any such payments or other amounts received pursuant to the Azstarys License Agreement), (2) any payments or other amounts received by the Borrower or any of its Subsidiaries from a sale, lease, license, transfer or other disposition of a Priority Review Voucher (including with respect to Arimoclomol) and (3) the gross amount billed or invoiced for sales of FDA Approved Products or Expanded Access Program Products, as the case may be, to independent customers by any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of the income resulting from such amount billed or invoiced for sales of FDA Approved Products or Expanded Access Program Products, as the case may be, to independent customers is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary. For the avoidance of doubt, “Consolidated Net Product Sales” shall exclude gross sales of FDA Approved Products or Expanded Access Program Products by any Person other than the Borrower and its Subsidiaries.

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“Consolidated Net Product Sales Applicable Margin Trigger (2025)” means that Consolidated Net Product Sales, for the fiscal year ending December 31, 2025, exceeded \$100,000,000, as shown in the financial statements delivered by the Borrower for such fiscal year pursuant to Section 7.01(a) (and the accompanying Compliance Certificate); provided, that, for the avoidance of doubt, the “Consolidated Net Product Sales Applicable Margin Trigger (2025)” cannot occur prior to delivery by the Borrower of the financial statements for the fiscal year ending December 31, 2025 pursuant to Section 7.01(a) (and the related Compliance Certificate).

“Consolidated Net Product Sales Applicable Margin Trigger (2025) Certificate” means a certificate of a Responsible Financial Officer of the Borrower certifying as to the occurrence of the Consolidated Net Product Sales Applicable Margin Trigger (2025), in form and substance reasonably satisfactory to the Required Lenders, together with such supporting detail as the Required Lenders shall reasonably require.

“Consolidated Net Product Sales Applicable Margin Trigger (Subsequent Period)” means that (a) the Consolidated Net Product Sales Applicable Margin Trigger (2025) shall not have occurred and (b) Consolidated Net Product Sales, for any four (4) consecutive fiscal quarter period ending on or after March 31, 2026, exceeded \$125,000,000, as shown in the financial statements delivered by the Borrower for such four (4) consecutive fiscal quarter period pursuant to Section 7.01(a) or (b), as the case may be (and the accompanying Compliance Certificate); provided, that, for the avoidance of doubt, the “Consolidated Net Product Sales Applicable Margin Trigger (Subsequent Period)” cannot occur prior to delivery by the Borrower of the financial statements for the four (4) consecutive fiscal quarter period ending March 31, 2026 pursuant to Section 7.01(b) (and the related Compliance Certificate).

“Consolidated Net Product Sales Applicable Margin Trigger (Subsequent Period) Certificate” means a certificate of a Responsible Financial Officer of the Borrower certifying as to the occurrence of the Consolidated Net Product Sales Applicable Margin Trigger (Subsequent Period), in form and substance reasonably satisfactory to the Required Lenders, together with such supporting detail as the Required Lenders shall reasonably require.

“Consolidated Net Product Sales Financial Covenant Fall Away Event” means that Consolidated Net Product Sales, for any four (4) consecutive fiscal quarter period ending on or after December 31, 2025, exceeded \$100,000,000, as shown in the financial statements delivered by the Borrower for such four (4) consecutive fiscal quarter period pursuant to Section 7.01(a) or (b), as the case may be (and the accompanying Compliance Certificate); provided, that, for the avoidance of doubt, a “Consolidated Net Product Sales Financial Covenant Fall Away Event” cannot occur prior to delivery by the Borrower of the financial statements for the four (4) consecutive fiscal quarter period ending December 31, 2025 pursuant to Section 7.01(b) (and the related Compliance Certificate).

“Consolidated Net Product Sales Financial Covenant Fall Away Event Certificate” means a certificate of a Responsible Financial Officer of the Borrower certifying as to the occurrence of a Consolidated Net Product Sales Financial Covenant Fall Away Event, in form and substance reasonably satisfactory to the Required Lenders, together with such supporting detail as the Required Lenders shall reasonably require.

“Consolidated Net Product Sales Financial Covenant Trigger Event” means that Consolidated Net Product Sales, for any four (4) consecutive fiscal quarter period ending on or after the occurrence of any Consolidated Net Product Sales Fall Away Event, failed to exceed \$100,000,000, as shown in the financial statements delivered by the Borrower for such four (4) consecutive fiscal quarter period pursuant to Section 7.01(a) or (b), as the case may be; provided, that, for the avoidance of doubt, a “Consolidated Net Product Sales Financial Covenant Trigger Event” cannot occur prior to the occurrence of a Consolidated Net Product Sales Fall Away Event.

“Consolidated Revenues” means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, revenues for such period as determined and reported in accordance with GAAP; provided, that, “Consolidated Revenues” shall exclude the revenues generated by any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of the income resulting from such revenues is not at the time permitted by operation of the terms of its Organization Documents or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote twenty percent (20%) or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

“Controlled Substances Act” means the U.S. Controlled Substances Act (or any successor thereto) and the rules and regulations promulgated thereunder.

“Convertible Bond Indebtedness” means Indebtedness having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into Qualified Capital Stock of the Borrower (and cash in lieu of fractional shares) (or other securities or property following a merger event or other change of the common stock of the Borrower), cash or any combination thereof.

“Copyrights” means all copyrights, whether statutory or common law, along with any and all (a) applications for registration, renewals, revisions, extensions, reversions, restorations, derivative works, enhancements, modifications, updates and new releases thereof, (b) 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, (c) rights to sue for past, present and future infringements thereof, and (d) foreign copyrights and any other rights corresponding thereto throughout the world.

“Cross-Default Reference Obligation” has the meaning assigned to such term in the definition of “Permitted Convertible Bond Indebtedness”.

“Danish Account Control Agreement” has the meaning set forth in the definition of “Danish Collateral Documents”.

“Danish Bankruptcy Act” means the Consolidated Act no. 1600 of 25 December 2022 on bankruptcy (in Danish: *konkursloven*), as amended from time to time.

“Danish Capital Markets Act” means the Consolidated Act no. 198 of 26 February 2024 on capital markets (in Danish: *lov om kapitalmarkeder*), as amended from time to time.

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“Danish Collateral Documents” means:

- (a) a Danish law governed share pledge agreement in relation to the shares in Zevra Denmark A/S to be entered into between the Borrower as pledgor and the Administrative Agent, as security agent for and on behalf of the Secured Parties;
- (b) a Danish law governed account pledge agreement in relation to bank accounts held by Zevra Denmark A/S to be entered into between Zevra Denmark A/S as pledgor and the Administrative Agent, as security agent for and on behalf of the Secured Parties (the “Danish Account Control Agreement”);
- (c) a Danish law governed assignment agreement in relation to intra-group receivables of Zevra Denmark A/S to be entered into between Zevra Denmark A/S as assignor and the Administrative Agent, as security agent for and on behalf of the Secured Parties; and
- (d) a Danish law negative pledge registered in the Danish Chattel Register (in Danish: *personbogen*) with the Danish Registration Court (in Danish: *Tinglysningsretten*) covering trade receivables, stock and inventory, operating equipment and machinery and goodwill and Intellectual Property owned by Zevra Denmark A/S.

“Danish Companies Act” means the Consolidated Act no. 1168 of 1 September 2023 on limited liability companies (in Danish: *lov om aktie- og anpartsselskaber*), as amended from time to time.

“Danish Loan Party” means any Loan Party incorporated or established under the laws of Denmark.

“DEA” means the United States Drug Enforcement Administration and any successor thereto.

“Debt Issuance” means the issuance by any Loan Party or any Subsidiary of any Indebtedness other than Indebtedness permitted under Section 8.03.

“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 or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” has the meaning set forth in Section 2.06(b).

“Defaulting Lender” means, subject to Section 2.12(b), any Lender, as determined by the Administrative Agent, that (a) has failed to perform any of its funding obligations hereunder, including with respect to any Term B Commitments or any Term C Commitments, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations hereunder or (c) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) become the subject of a Bail-In Action; provided, that, a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interests in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

“Deposit Account” means a “deposit account” (as defined in Article 9 of the Uniform Commercial Code), investment account, bank account or other account in which funds are held or invested to or for the credit or account of any Loan Party.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is the subject of any comprehensive Sanctions (currently, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People’s Republic, and the so-called Luhansk People’s Republic).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale and Leaseback Transaction or any issuance by any Subsidiary of its Equity Interests) of any property by any Loan Party or any Subsidiary, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding the following (collectively, “Permitted Transfers”): (a) the sale, lease, license, transfer or other disposition of inventory in the ordinary course of business, (b) the sale, lease, license, transfer or other disposition in the ordinary course of business of surplus, obsolete or worn out property no longer used or useful in the conduct of business of any Loan Party or any Subsidiary, (c) any sale, lease, license, transfer or other disposition of property to any Loan Party or any Subsidiary; provided, that, if the transferor of such property is a Loan Party, the transferee thereof must be a Loan Party (other than any Danish Loan Party), (d) the abandonment or other disposition of Intellectual Property that is not Material Intellectual Property, (e) licenses, sublicenses, leases or subleases (other than relating to intellectual property) granted to third parties in the ordinary course of business and not interfering with the business of the Borrower and its Subsidiaries, (f) Permitted Licenses, (g) any (i) Involuntary Disposition or (ii) sale, lease, license or other disposition of property (other than, for the avoidance of doubt, Intellectual Property) in settlement of, or to make payment in satisfaction of, any property or casualty insurance claim, (h) dispositions of cash and Cash Equivalents in the ordinary course of business, (i) dispositions consisting of the sale, transfer, assignment or other disposition of unpaid and overdue accounts receivable in connection with the collection, compromise or settlement thereof in the ordinary course of business and not as part of a financing transaction, (j) the sale, transfer, issuance or other disposition of a de minimis number of shares of the Equity Interests of a Foreign Subsidiary in order to qualify members of the governing body of such Subsidiary if required by applicable Law, (k) to the extent constituting Dispositions, Investments permitted by Section 8.02, transactions permitted by Section 8.04, Restricted Payments permitted by Section 8.06 and Permitted Liens (in each case, except to the extent permitted by reference to Section 8.05 or this definition (or any clause or sub-clause thereof or hereof)), (l) sales, leases, licenses, transfers or other dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale, lease, license, transfer or other disposition are promptly applied to the purchase price of similar replacement property, (m) surrender or waiver of contractual rights and settlement or waiver of contractual or litigation claims in the ordinary course of business, (n) dispositions of property which in the aggregate do not exceed \$1,500,000, (o) the sale, lease, license, transfer or other disposition of any Priority Review Voucher (including with respect to Arimoclomol) and (p) any early termination or unwinding of any Permitted Bond Hedge Transaction. It is understood and agreed that, notwithstanding anything to the contrary set forth in this definition, in no event shall any of the foregoing clauses (a) through (p) be deemed to permit any sale, transfer, license, lease or other disposition of any Material Product (or any Intellectual Property associated therewith), any royalty (or any portion thereof) pursuant to the Azstarys License Agreement or any Material Intellectual Property, other than (x) Permitted Licenses and (y) sales, transfers, licenses, leases or other dispositions permitted by clause (c) of this definition.

“Disqualified Capital Stock” means any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, prior to the ninety-first (91<sup>st</sup>) day after the Maturity Date, (b) requires the payment of any cash dividends at any time prior to the ninety-first (91<sup>st</sup>) day after the Maturity Date, (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations, or (d) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in clause (a), (b) or (c) above, in each case at any time prior to the ninety-first (91<sup>st</sup>) day after the Maturity Date; provided, that, any Equity Interest that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem or repurchase such Equity Interest upon the occurrence of a change in control or an asset sale occurring prior to the ninety-first (91<sup>st</sup>) day after the Maturity Date shall not constitute Disqualified Capital Stock if such Equity Interest provides that the issuer thereof will not redeem or repurchase such Equity Interest pursuant to such provisions prior to the Facility Termination Date.

“Disqualified Institution” means, (a) those (x) financial institutions and (y) competitors of the Borrower and its Subsidiaries, in the case of each of clauses (x) and (y), specified in writing to the Administrative Agent (for further distribution to the Lenders) on or prior to the Closing Date and (b) in the cases of clause (a) above, Affiliates thereof that are clearly identifiable on the basis of such Affiliates’ names; provided, that, the foregoing will not retroactively disqualify any Person that previously acquired an assignment or participation in the Loans or Commitments with respect to the portion of Loans or Commitments so previously acquired to the extent that such Person was not a Disqualified Institution at the time of the applicable assignment or participation. Notwithstanding the foregoing, any list of Disqualified Institutions may be shared, on a confidential basis, with any prospective Lender or Participant in order for such prospective Lender or Participant to represent and confirm in the applicable Assignment and Assumption or participation agreement, as applicable, that it is not a Disqualified Institution (and shall be made available, on a confidential basis, to any then-existing Lender upon request by such Lender).

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

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of the United States, of any state of the United States or the District of Columbia.

“Draft Financial Statements” means the unaudited annual consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2023, including balance sheets and statements of operations, shareholders’ equity and cash flows.

“Earn Out Obligations” means, with respect to an Acquisition, all obligations of the Borrower or any Subsidiary to make earn out or other contingency payments (including purchase price adjustments, non-competition and consulting agreements, or other indemnity obligations) pursuant to the documentation relating to such Acquisition. For purposes of determining the aggregate consideration paid for an Acquisition at the time of such Acquisition, the amount of any Earn Out Obligations shall be deemed to be the maximum amount of the earn-out payments in respect thereof as specified in the documents relating to such Acquisition. For purposes of determining the amount of any Earn Out Obligations to be included in the definition of Funded Indebtedness, the amount of Earn Out Obligations shall be deemed to be the aggregate liability in respect thereof, as determined in accordance with GAAP.

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

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

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

“Electronic Copy” has the meaning specified in Section 11.16.

“Electronic Record” and “Electronic Signature” have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

“Eligible Assets” means long-term assets that are used or useful in the same or a similar line of business as the Borrower and its Subsidiaries were engaged in on the Closing Date (or any reasonable extensions or expansions thereof).

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06.

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

“Environmental Laws” means any and all federal, state, local, foreign and other applicable statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member, membership or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Internal Revenue Code (and Sections 414(m) and (o) of the Internal Revenue Code for purposes of provisions relating to Section 412 of the Internal Revenue Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan, (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, (c) a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) by the Borrower or any ERISA Affiliate from a Multiemployer Plan, (d) the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, (e) the institution by the PBGC of proceedings to terminate a Pension Plan, (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Internal Revenue Code or Sections 303, 304 and 305 of ERISA, or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

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

“Event of Default” has the meaning set forth in Section 9.01.

“Excluded Account” means (a) any demand deposit account, securities account, commodity account or other deposit account of any Loan Party (and all cash, Cash Equivalents and other securities or instruments credited thereto or deposited therein) that is used solely and exclusively for payroll, payroll taxes, and other employee wage and benefit payments to or for any Loan Party’s employees; (b) Deposit Accounts pledged in connection with Liens of the type permitted by Section 8.01(u); (c) segregated accounts constituting (and the balance of which consists solely of funds set aside in connection with) fiduciary accounts, escrow accounts or trust accounts; (d) zero balance accounts; and (e) any other Deposit Account which, together with all other Deposit Accounts excluded pursuant to this clause (e) does not, as of any date of determination, hold cash and Cash Equivalents in an aggregate amount in excess of \$750,000.

“Excluded Property” means, with respect to any Loan Party, including any Person that becomes a Loan Party after the Closing Date as contemplated by Section 7.12, (a) any leasehold interest of such Loan Party in real property, (b) solely with respect to any U.S. Loan Party, any personal property (including, without limitation, motor vehicles) in respect of which perfection of a Lien is not either (i) governed by the Uniform Commercial Code or (ii) effected by appropriate evidence of the Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, unless requested by the Administrative Agent or the Required Lenders, (c) any property which, subject to the terms of Section 8.09, is subject to a Lien of the type described in Section 8.01(i) pursuant to documents which prohibit such Loan Party from granting any other Liens in such property, (d) any general intangible, permit, lease, license, contract or other agreement if the grant of a security interest in such general intangible, permit, lease, license, contract or other agreement in the manner contemplated by the Collateral Documents, under the terms thereof or under applicable Law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Loan Party’s rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both); provided, that, (i) any such limitation described in the foregoing clause (d) on the security interests granted under the Collateral Documents shall only apply to the extent that any such prohibition is not rendered ineffective pursuant to the Uniform Commercial Code or any other applicable Law or principles of equity and (ii) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in any applicable Law, general intangible, permit, lease, license, contract or other agreement, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such general intangible, permit, lease, license, contract or other agreement shall be automatically and simultaneously granted under the Collateral Documents and such general intangible, permit, lease, license, contract or other agreement shall be included as Collateral, and (iii) to the extent that the granting of a security interest in the Azstarys License Agreement to the Administrative Agent, for the benefit of the Secured Parties, is prohibited by the terms and provisions of the Azstarys License Agreement and such prohibition is not rendered ineffective pursuant to the Uniform Commercial Code or any other applicable Law or principles of equity, then any and all proceeds of, and the right to receive money or other consideration in connection with, any direct or indirect sale, assignment or transfer of the Azstarys License Agreement or any Intellectual Property licensed thereunder shall not constitute “Excluded Property”, (e) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law; provided, that, upon submission and acceptance by the United States Patent and Trademark Office of a statement of use or an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall no longer constitute “Excluded Property” and shall be considered Collateral, (f) Excluded Accounts, (g) any real or personal property as to which the Administrative Agent and the Borrower agree in writing that the costs or other consequences of obtaining a security interest or perfection thereof are excessive in view of the benefits to be obtained by the Secured Parties therefrom, (h) any margin stock and (i) the Equity Interests in any Excluded Subsidiary to the extent not expressly required to be pledged to guaranty the Obligations pursuant to Section 7.14.

“Excluded Subsidiary” means (a) any Foreign Subsidiary, the grant or perfection of a security interest in the assets of such Foreign Subsidiary in support of, and the guaranteeing of, the Obligations would be prohibited by applicable Law in the jurisdiction of formation or incorporation of such Foreign Subsidiary (as reasonably determined by the Borrower with the consent of the Administrative Agent), (b) any Foreign Subsidiary with respect to which the Administrative Agent and the Borrower agree in writing that the cost or other consequences of such Foreign Subsidiary guaranteeing the Obligations are excessive in view of the benefits to be obtained by the Secured Parties therefrom and (c) any Immaterial Foreign Subsidiary.

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“Expanded Access Program” means any plan under which a Governmental Authority authorizes preapproval access to any investigational drug or biologic for use by an individual.

“Expanded Access Program Products” means all Products of the Borrower and its Subsidiaries for which the Borrower and its Subsidiaries have received authorization from any Governmental Authority to implement any Expanded Access Program.

“Extraordinary Receipts” means, without duplication, any cash received by or paid to or for the account of any Person not in the ordinary course of business, including, without limitation, tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments, any purchase price adjustments and any cash received in connection with the settlement or other resolution (including by judgment) of any litigation, arbitration or other dispute; provided, that, in no event shall “Extraordinary Receipts” include the proceeds of any issuance of Qualified Capital Stock by the Borrower or any Subsidiary.

“Facilities” means, at any time, a collective reference to the facilities and real properties owned, leased or operated by any Loan Party or any Subsidiary.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) all of the Commitments have terminated and (b) all Obligations have been paid in full in cash (other than contingent indemnification or expense reimbursement obligations for which no claim has been asserted).

“FATCA” means Sections 1471 through 1474 of the Internal Revenue 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 thereunder or official interpretations thereof, any agreement entered into pursuant to current Section 1471(b)(1) of the Internal Revenue Code (or any amended or successor version described above) and any intergovernmental agreement, treaty or convention among Governmental Authorities (and any related laws, regulations, or official administrative guidance or practices) implementing such Sections of the Internal Revenue Code.

“FDA” means the United States Food and Drug Administration and any successor entity.

“FDA Approval” means, with respect to a Product, the FDA approval of an NDA, ANDA, BLA or other marketing application for such Product.

“FDA Approved Products” means all Products of the Borrower and its Subsidiaries for which the Borrower and its Subsidiaries have received FDA Approval.

“FDCA” means the Federal Food, Drug and Cosmetic Act (21 U.S.C. §§ 301 *et seq.*) and the rules and regulations promulgated thereunder.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that, if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day.

“Fee Letters” means, collectively, the Agent Fee Letter and the Closing Date Fee Letter.

“Final Payment Premium” means, as of any date of determination, an amount equal to three percent (3.00%) of the Final Payment Premium Advanced Term Loan Amount as of such date of determination.

“Final Payment Premium Advanced Term Loan Amount” means, as of any date of determination, the initial aggregate principal amount of the Loans advanced to the Borrower under this Agreement on or prior to such date of determination (for the avoidance of doubt, based on the initial aggregate principal amount thereof without reducing such amount by any applicable original issue discount and without any increase thereto as a result of any capitalized PIK Period Paid-In-Kind Interest that has been added to the principal amount thereof).

“Flood Hazard Property” means any real property subject to a Mortgage that is in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

“Foreign Lender” means a Lender that is not a U.S. Person.

“Foreign Loan Party” means any Loan Party that is not a U.S. Loan Party.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

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“Funded Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations, whether current or long-term, for borrowed money (including the Obligations) and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all purchase money Indebtedness;
- (c) the principal portion of all obligations under conditional sale or other title retention agreements relating to property purchased by such Person or any Subsidiary thereof (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);
- (d) all obligations arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (e) all obligations in respect of the deferred purchase price of property or services (other than (x) trade accounts payable in the ordinary course of business and repayable in accordance with customary trade terms and (y) milestone obligations in respect of any license of an Acquisition Product), including, without limitation, any Earn Out Obligations;
- (f) the Attributable Indebtedness of Capital Leases, Securitization Transactions and Synthetic Leases;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Capital Stock in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends;
- (h) all Funded Indebtedness of others secured by (or for which the holder of such Funded Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;
- (i) all Guarantees with respect to Funded Indebtedness of the types specified in clauses (a) through (h) above of another Person; and
- (j) all Funded Indebtedness of the types referred to in clauses (a) through (i) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, except to the extent that Funded Indebtedness is expressly made non-recourse to such Person.

For purposes hereof, the amount of any direct obligation arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments shall be the maximum amount available to be drawn thereunder.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, consistently applied and as in effect from time to time.

“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 (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

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“Guarantors” means (a) each Subsidiary identified as a “Guarantor” on the signature pages hereto and (b) each other Person that joins as a Guarantor pursuant to Section 7.12, together with their successors and permitted assigns.

“Guaranty” means the Guaranty made by the Guarantors in favor of the Secured Parties pursuant to Article IV.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“HCRX” means HealthCare Royalty Management, LLC and its successors and assigns.

“HCRX Lender” means (a) HCR Stafford Fund II, L.P., (b) HCR Potomac Fund II, L.P., and (c) any Lender that is an Affiliate or an Approved Fund of HCRX or any Person described in clauses (a) or (b) of this definition.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“Immaterial Foreign Subsidiary” means at any time a Foreign Subsidiary that (a) as of the last day of the fiscal quarter of the Borrower most recently ended for which the Borrower was required to deliver financial statements pursuant to Section 7.01(a) or (b), did not have assets in excess of (i) two and one-half of one percent (2.5%) of the consolidated total assets of the Borrower and its Subsidiaries at the end of such fiscal quarter and (ii) five percent (5%) of the consolidated total assets of the Borrower and its Subsidiaries at the end of such fiscal quarter for all Immaterial Foreign Subsidiaries in the aggregate; and (b) for the period of four fiscal quarters most recently ended for which the Borrower was required to deliver financial statements pursuant to Section 7.01(a) or (b), did not have Consolidated Revenues attributable to such Foreign Subsidiary for such period in excess of (i) two and one-half of one percent (2.5%) of Consolidated Revenues for such period and (ii) five percent (5%) of Consolidated Revenues for such period for all Immaterial Foreign Subsidiaries in the aggregate; provided, that, in no event shall Zevra Denmark A/S be an “Immaterial Foreign Subsidiary”.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all Funded Indebtedness;
- (b) the Swap Termination Value of any Swap Contract;
- (c) all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) and (b) above of any other Person; and
- (d) all Indebtedness of the types referred to in clauses (a) through (c) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person or a Subsidiary thereof is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person or such Subsidiary.

For the avoidance of doubt, “Indebtedness” shall not include Permitted Bond Hedge Transactions or Permitted Warrant Transactions.

“Indemnified Taxes” has the meaning set forth in Section 3.01(a).

“Indemnitee” has the meaning set forth in Section 11.04(b).

“Information” has the meaning set forth in Section 11.07.

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

“Intellectual Property” means all (a) Patents; (b) Trademarks and all applications, registrations and renewals thereof; (c) Copyrights and other works of authorship (registered or unregistered), and all applications, registrations and renewals thereof; (d) computer software, databases, websites and domain registrations, data and documentation; (e) trade secrets and confidential information, whether patentable or unpatentable and whether or not reduced to practice, know-how, inventions, manufacturing processes and techniques, research and development information, data and other information included in or supporting Regulatory Authorizations; (f) 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; and (g) other intellectual property or similar proprietary rights.

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“Interest Payment Date” means (a) the last Business Day of each March, June, September and December and (b) the Maturity Date.

“Interest Period” means, with respect to any Loan, (a) the period commencing on (and including) the applicable date on which such Loan is disbursed and ending on (and including) the first Interest Payment Date following such disbursement date of such Loan, and (b) thereafter, the period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (i) the first Interest Payment Date following the Interest Payment Date on which the preceding Interest Period ended and (ii) the Maturity Date.

“Interest Rate” means, for any Interest Period, a per annum rate of interest equal to the sum of (a) the Applicable Margin for such Interest Period plus (b) Three-Month Term SOFR for such Interest Period.

“Interim Financial Statements” means the unaudited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal quarter ended September 30, 2023, including balance sheets and statements of operations, shareholders’ equity and cash flows.

“Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended from time to time.

“Internal Revenue Service” means the United States Internal Revenue Service.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less the amount of cash actually received or returned to the Borrower and its Subsidiaries with respect thereto and not subject to any claw-back or similar rights.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any of its Subsidiaries.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit C executed and delivered by a Subsidiary in accordance with the provisions of Section 7.12.

“Key Permits” means all Permits relating to the Material Products (including all applicable Regulatory Authorizations) the loss of which could reasonably be expected to result, either individually or in the aggregate, in a material adverse effect on any Product Development and Commercialization Activities associated with any Material Product. For the avoidance of doubt, any Regulatory Authorizations issued by the FDA to any Loan Party, any of its Subsidiaries or any of its Product Distributors for Arimoclomol, Olpruva, Azstarys or any other Material Product, in each case, shall constitute a Key Permit.

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“KP1077 Phase 2 Trial” means that certain Phase 2 clinical trial, initiated in December 2022, evaluating the efficacy and safety of KP1077 for treatment of idiopathic hypersomnia.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case having the force of law.

“Lenders” means each of the Persons identified as a “Lender” on the signature pages hereto, each other Person that becomes a “Lender” in accordance with this Agreement and their successors and assigns.

“Lending Office” means, as to any Lender, the office address of such Lender and, as appropriate, account of such Lender set forth on Schedule 11.02 or such other address or account as such Lender may from time to time notify the Borrower and the Administrative Agent.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term A Loan, a Term B Loan or a Term C Loan.

“Loan Documents” means this Agreement, the Fee Letters, each Note, each Joinder Agreement, each Collateral Document and any other agreement, instrument or document between one or more Loan Parties and the Administrative Agent and/or one or more Lender(s) that is designated by its terms as a “Loan Document”.

“Loan Notice” means a written notice of a Borrowing of Loans pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Make-Whole Amount (Months 1-24)” means, on any date of determination, with respect to any Loan that is repaid or required to be repaid, the sum of, without duplication, (a) an amount equal to five percent (5.00%) of the principal amount of such Loan that is repaid or required to be repaid plus (b) the amount of all interest that would have accrued on the principal amount of such Loan that is repaid or required to be repaid from such date of determination through and including the thirty (30) month anniversary of the Closing Date; provided, that, it is understood and agreed that for purposes of calculating clauses (a) and (b), (i) the “Three-Month Term SOFR” component of the definition of “Interest Rate” shall be deemed to be Make-Whole Amount Three-Month Term SOFR as of such date of determination, (ii) on each Interest Payment Date occurring after the date of such repayment or requirement to repay, but on or prior to the last day of the PIK Period, interest with respect to such Loans shall be deemed to be capitalized in accordance with Section 2.06(c) by adding all PIK Period Paid-in-Kind Interest with respect to such Loans to the outstanding principal amount of such Loans on each such Interest Payment Date (it being understood, for the avoidance of doubt, that the “principal amount of such Loan that is repaid or required to be repaid” for purposes of clause (a) shall be increased by all PIK Period Paid-in-Kind Interest that would have been capitalized to such Loan in accordance with Section 2.06(c) on each Interest Payment Date from such date of determination through and including the last day of the PIK Period) and (iii) for the purposes of clause (b), the Applicable Margin applicable to such Loan shall be deemed to be the Applicable Margin that is in effect as of such date of determination.

“Make-Whole Amount (Months 25-30)” means, on any date of determination, with respect to any Loan that is repaid or required to be repaid, the sum of, without duplication, (a) an amount equal to three and one-half of one percent (3.50%) of the principal amount of such Loan that is repaid or required to be repaid plus (b) the amount of all interest that would have accrued on the principal amount of such Loan that is repaid or required to be repaid from such date of determination through and including the thirty (30) month anniversary of the Closing Date; provided, that, it is understood and agreed that for purposes of calculating clauses (a) and (b), (i) the “Three-Month Term SOFR” component of the definition of “Interest Rate” shall be deemed to be Make-Whole Amount Three-Month Term SOFR as of such date of determination, applied as if such rate would have been in effect for all subsequent Interest Periods through and including the thirty (30) month anniversary of the Closing Date, (ii) on each Interest Payment Date occurring after the date of such repayment or requirement to repay, but on or prior to the last day of the PIK Period, interest with respect to such Loans shall be deemed to be capitalized in accordance with Section 2.06(c) by adding all PIK Period Paid-in-Kind Interest with respect to such Loans to the outstanding principal amount of such Loans on each such Interest Payment Date (it being understood, for the avoidance of doubt, that the “principal amount of such Loan that is repaid or required to be repaid” for purposes of clause (a) shall be increased by all PIK Period Paid-in-Kind Interest that would have been capitalized to such Loan in accordance with Section 2.06(c) on each Interest Payment Date from such date of determination through and including the last day of the PIK Period) and (iii) for the purposes of clause (b), the Applicable Margin applicable to such Loan shall be deemed to be the Applicable Margin that is in effect as of such date of determination.

“Make-Whole Amount Three-Month Term SOFR” means, as of any date of determination, a rate per annum equal to the greater of (a) four percent (4.00%) per annum and (b) Three-Month Term SOFR for the Interest Period immediately preceding such date of determination.

“Market Capitalization” means, as of any date of determination, an amount equal to (a) the average of the daily volume weighted average price of the Borrower’s common stock as reported for each of the ten (10) trading days preceding such date of determination (it being understood that a “trading day” shall mean a day on which shares of the Borrower’s common stock trade on the NASDAQ (or, if the primary listing of such common stock is on the New York Stock Exchange, on the New York Stock Exchange) in an ordinary trading session) multiplied by (b) the total number of issued and outstanding shares of the Borrower’s common stock that are issued and outstanding on the date of the determination and listed on the NASDAQ (or the New York Stock Exchange, as applicable), subject to appropriate adjustment for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

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“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the business, assets, properties, liabilities (actual or contingent) or financial condition of the Borrower and its Subsidiaries taken as a whole, (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document to which it is a party or a material impairment in the perfection, value or priority of the Administrative Agent’s security interests in the Collateral, (c) an impairment of the ability of the Loan Parties (taken as a whole) to perform their respective material obligations under the Loan Documents, or (d) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party; provided, however, that, any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to the KP1077 Phase 2 Trial or the non-occurrence of the Arimoclomol FDA Approval, in each case, shall not constitute a “Material Adverse Effect” under clauses (a), (b) or (c) of this definition.

“Material Contracts” means (a) the Azstarys License Agreement and (b) any other contract or agreement to which the Borrower or any of its Subsidiaries is a party (other than the Loan Documents) as to which a breach or non-performance thereof by the Borrower or such Subsidiary, or the cancellation or failure to renew thereof, could reasonably be expected, either individually or in the aggregate, to have (i) a Material Adverse Effect or (ii) a material adverse effect on the commercialization of any Material Product.

“Material Intellectual Property” means all items of Intellectual Property owned, controlled, or licensed by any Loan Party or any Subsidiary (a) that are, individually or, in the aggregate, material to the business, assets, properties, liabilities (actual or contingent), or financial condition of the Borrower and its Subsidiaries or (b) the loss of which could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

“Material Product” means (a) Arimoclomol, (b) Olpruva, (c) Azstarys and (d) each other Product the loss of which could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

“Material Regulatory Authorization” means any Regulatory Authorization where the failure to possess or maintain such Regulatory Authorization, or any restriction placed thereon, in either case, could reasonably be expected, either individually or in the aggregate, to result in (a) a material adverse effect on any Product Development and Commercialization Activities associated with any Product or (b) a Material Adverse Effect.

“Material Weakness Restatement” means the restatement by the Borrower of (a) the Audited Financial Statements and (b) the quarterly financial statements for the quarters ended March 31, 2022, June 30, 2022, September 30, 2022, March 31, 2023, June 30, 2023, and September 30, 2023, in each case, as filed with the SEC on April 1, 2024.

“Maturity Date” means April 5, 2029; provided, that, if such date is not a Business Day, the Maturity Date shall be the first Business Day immediately preceding such date.

“Maximum Rate” has the meaning set forth in Section 11.09.

“Medicaid” means that means-tested entitlement program under Title XIX of the Social Security Act, which provides federal grants to states for medical assistance based on specific eligibility criteria, as set forth at Section 1396, et seq. of Title 42 of the United States Code, as amended, and any statute succeeding thereto.

“Medicare” means that government-sponsored entitlement program under Title XVIII of the Social Security Act, which provides for a health insurance system for eligible elderly and disabled individuals, as set forth at Section 1395, et seq. of Title 42 of the United States Code, as amended, and any statute succeeding thereto.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” or “Mortgages” means, individually or collectively, as the context requires, each of the mortgages, deeds of trust or deeds to secure debt executed by a Loan Party that purport to grant to the Administrative Agent, for the benefit of the Secured Parties, a security interest in the fee interest of any Loan Party in real property (other than Excluded Property).

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

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“NDA” means a new drug application filed with the FDA pursuant to section 505(b) of the FDCA, along with all supplements and amendments thereto, and any similar application for marketing authorization required by any country, jurisdiction or Governmental Authority other than the United States (including the FDA-equivalent in any other relevant jurisdiction).

“Net Cash Proceeds” means the aggregate cash or Cash Equivalents proceeds received by any Loan Party or any Subsidiary in respect of any Disposition, Debt Issuance, Involuntary Disposition or Extraordinary Receipt, net of (a) reasonable direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees, and sales commissions), (b) taxes paid or reasonably determined by the Borrower to be payable as a result thereof, (c) in the case of any Disposition or Involuntary Disposition, (i) the amount necessary to retire any Indebtedness secured by a Permitted Lien (ranking senior to any Lien of the Administrative Agent) on the related property and (ii) amounts that are set aside as a reserve (x) for adjustments in respect of the purchase price of such assets and (y) for any liabilities associated with such sale or casualty, in each case, to the extent such reserve is required by GAAP and to the extent that in each case the amounts described above in this clause (c)(ii) are (A) deposited into escrow with a third party escrow agent reasonably acceptable to the Required Lenders or set aside in a separate account that is subject to an Account Control Agreement and (B) paid as a prepayment of the Obligations in accordance with Section 2.03(b) at such time when such amounts are no longer required to be set aside as a reserve and (d) in the case of any Extraordinary Receipt, (i) reasonable direct costs incurred in connection with the collection of such proceeds, awards or other payments and (ii) insurance and condemnation proceeds that are applied to the repair or replacement of the applicable property within one (1) year after receipt thereof; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition, Debt Issuance, Involuntary Disposition or Extraordinary Receipt.

“Note” or “Notes” means the Term A Notes, the Term B Notes and the Term C Notes, individually or collectively, as appropriate.

“Obligations” means (a) all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan and (b) all costs and expenses incurred in connection with enforcement and collection of the foregoing, including the fees, charges and disbursements of counsel, in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

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

“Olpruva” means the pharmaceutical product comprising sodium phenylbutyrate for oral suspension for the treatment of urea cycle disorders involving deficiencies of carbamylphosphate synthetase, ornithine transcarbamylase, or argininosuccinic acid synthetase.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable documents with respect to any non-U.S. jurisdiction), and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

“Other Taxes” has the meaning set forth in Section 3.01(a).

“Outstanding Amount” means with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to (a) any borrowings and prepayments or repayments of such Loans occurring on such date and (b) the capitalization and addition to principal of any PIK Period Paid-In-Kind Interest that has occurred on or prior to such date in accordance with Section 2.06(c).

“Paragraph IV Certification” has the meaning specified in Section 6.17(c)(iii).

“Participant” has the meaning set forth in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“Partnered Program” means any current or future business agreement or arrangement entered into with any Third Party under which the Borrower or any Subsidiary performs services related to Product Development and Commercialization Activities associated with any Product and/or obtains any rights in any Product.

“Patents” means any patent rights of any kind, including any and all: patents (whether registered or not), patent applications or invention disclosures, as well as all divisions, continuations, continuations in-part, provisionals, continued prosecution applications, substitutions, reissues, reexaminations, inter partes review, renewals, extensions, adjustments, restorations, supplemental protection certificates and other additions in connection therewith, whether in or related to the United States or any foreign country or other jurisdiction, together with the right to claim the priority thereto and the right to sue for past infringement of any of the foregoing.

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

“Pension Funding Rules” means the rules of the Internal Revenue Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in Section 412, 430, 431, 432 and 436 of the Internal Revenue Code and Sections 302, 303, 304 and 305 of ERISA.

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“Pension Plan” means any employee pension benefit plan (as defined in Section 3(2) of ERISA), excluding a Multiple Employer Plan or a Multiemployer Plan that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to minimum funding standards under Section 412 of the Internal Revenue Code.

“Perceptive” means Perceptive Advisors LLC, and its successors and assigns.

“Perceptive Lender” means (a) Perceptive Credit Holdings IV, LP and (b) any Lender that is an Affiliate or an Approved Fund of Perceptive or any Person described in clause (a) of this definition.

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

“Permitted Acquisition” means an Investment consisting of an Acquisition by a Loan Party; provided, that, (a) the property acquired (or the property of the Person acquired) in such Acquisition is used or useful in the same or a reasonably related line of business as the Borrower and its Subsidiaries were engaged in on the Closing Date (or any reasonable extensions or expansions thereof), (b) no Event of Default shall have occurred and be continuing or would result from such Acquisition, (c) the Administrative Agent shall have received all items in respect of the Equity Interests or property acquired in such Acquisition required to be delivered by the terms of Section 7.12 and/or Section 7.14, (d) such Acquisition shall not be a “hostile” acquisition and shall have been approved by the Board of Directors and/or the shareholders (or equivalent) of the applicable Loan Party and the target of such Acquisition, (e) the Borrower shall have delivered to the Administrative Agent (for further distribution to the Lenders) *pro forma* financial statements for the Borrower and its Subsidiaries after giving effect to such Acquisition for the twelve month period ending as of the most recent fiscal quarter end in a form reasonably satisfactory to the Required Lenders, (f) the representations and warranties made by the Loan Parties in each Loan Document shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) at and as if made as of the date of such Acquisition (after giving effect thereto) except to the extent any such representation and warranty expressly relates to an earlier date, in which case it shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date and (g) the aggregate consideration (including deferred purchase price (including, for the avoidance of doubt, any milestone obligations) and any Earn Out Obligations, but excluding consideration in the form of Qualified Capital Stock of the Borrower to the extent not constituting a Change of Control) paid by the Borrower and its Subsidiaries for all such Acquisitions during the term of this Agreement shall not exceed (i) \$10,000,000, if the Arimoclomol FDA Approval shall not have occurred or (ii) \$30,000,000, if the Arimoclomol FDA Approval shall have occurred (and the Administrative Agent shall have received the Arimoclomol FDA Approval Certificate).

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) relating to the common stock (or other securities or property following a merger event or other change of the common stock) purchased by the Borrower in connection with the issuance of any Permitted Convertible Bond Indebtedness and as may be amended in accordance with its terms; provided, that, (a) the purchase price of any such call option or capped call option (or substantively equivalent derivative) transaction less the amount received by the Borrower in respect of any Permitted Warrant Transaction in connection with such issuance of Permitted Convertible Bond Indebtedness shall not exceed the net proceeds to the Borrower from such issuance of Permitted Convertible Bond Indebtedness and (b) the terms, conditions and covenants of each such call or capped call option transaction (or substantively equivalent derivative transaction) are customary for agreements of such type, as determined in good faith by the Borrower.

“Permitted Convertible Bond Indebtedness” means Convertible Bond Indebtedness of the Borrower; provided, that, (a) such Convertible Bond Indebtedness shall be unsecured, (b) no Subsidiary shall Guarantee such Convertible Bond Indebtedness if such Subsidiary does not also provide a Guarantee of the Obligations, (c) such Convertible Bond Indebtedness shall not mature, and no scheduled or mandatory principal payments, prepayments, cash settlements, repurchases, redemptions or sinking fund or like payments of any Convertible Bond Indebtedness shall be required at any time on or prior to the date that is one hundred and eighty-one (181) days after the Maturity Date (it being understood that neither (x) any offer to purchase such Indebtedness as a result of “change of control”, “fundamental change” or any comparable term under and as defined in any indenture governing any Convertible Bond Indebtedness, (y) any early conversion of such Indebtedness into Qualified Capital Stock of the Borrower (or, subject to the Redemption Conditions, cash or a combination of Qualified Capital Stock of the Borrower and cash) in accordance with the terms thereof, nor (z) any redemption of such Indebtedness upon satisfaction of a condition related to the stock price of the Borrower’s common stock, in each case, shall violate the restriction of this clause (c)), (d) such Convertible Bond Indebtedness shall not include covenants and defaults (other than covenants and defaults customary for convertible indebtedness but not customary for loans) that are, taken as a whole, more restrictive on the Loan Parties than the provisions of this Agreement, (e) no Default or Event of Default shall have occurred and be continuing at the time of incurrence of such Convertible Bond Indebtedness or would result therefrom, (f) immediately after giving effect to the incurrence of any Convertible Bond Indebtedness, the aggregate outstanding amount of all “Permitted Convertible Bond Indebtedness” shall not exceed an amount equal to twenty percent (20%) of the Borrower’s Market Capitalization as of the pricing date related to such incurrence and (g) the Borrower shall have delivered to the Administrative Agent (for further distribution to the Lenders) a certificate of a Responsible Officer of the Borrower certifying as to the foregoing; provided, further, that, any cross-default or cross-acceleration event of default provision contained in the definitive documentation for such Convertible Bond Indebtedness (each howsoever defined) that related to indebtedness or other payment obligations of a Loan Party or a Subsidiary (such Indebtedness or other payment obligations, a “Cross-Default Reference Obligation”) contains a cure period of at least thirty (30) calendar days (after written notice to the issuer of such Indebtedness by the trustee or to such issuer and such trustee by holders of at least twenty-five percent (25%) in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under such Cross-Default Reference Obligation results in an event of default under such cross-default or cross-acceleration provision.

“Permitted Licenses” means (a) non-exclusive licenses for the use of the Intellectual Property of the Borrower or any of its Subsidiaries entered into in the ordinary course of business and not interfering with the business of the Borrower and its Subsidiaries or the Product Development and Commercialization Activities with respect to any Product, (b) exclusive (subject to clause (iv)) of the proviso of this definition) licenses for the use of the Intellectual Property of the Borrower or any of its Subsidiaries entered into in the ordinary course of business; provided, that, with respect to each such license described in clauses (a) and (b), (i) no Event of Default has occurred or is continuing at the time of entry into such license, (ii) the license constitutes an arm’s-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Material Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a Lien on, or assign or otherwise transfer any Material Intellectual Property (other than customary non-assignment provisions that are rendered ineffective under the Uniform Commercial Code), (iii) in the case of any exclusive license, the Borrower delivers ten (10) days’ prior written notice and a brief summary of the terms of the proposed exclusive license to the Administrative Agent and delivers to the Administrative Agent (for further distribution to the Lenders) copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, (iv) any such license could not result in a legal transfer of title of the licensed property but, other than with respect to Azstarys, may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States, and (v) all upfront payments, royalties, milestone payments or other proceeds arising from the license agreement that are payable to the Borrower or any of its Subsidiaries are paid to a Deposit Account that is governed by an Account Control Agreement and (c) the licenses set forth on Schedule 1.02 hereto as each such license is in effect on the Closing Date (and as may be amended or otherwise modified in a manner not materially adverse to the Administrative Agent or any Lender in their respective capacities as such). It is understood and agreed that, notwithstanding anything to the contrary set forth in this definition, in no event shall a “Permitted License” include any license of any Product (or any Intellectual Property associated with or embodied therein) in the United States (or any state or other political subdivision thereof), except that a

“Permitted License” may include a nonexclusive license to a third party in the ordinary course of the Borrower’s business for the purpose of the import, export, manufacture, make, use, sale, offer for sale, promotion or distribution of such Product so long as such nonexclusive license does not grant to any third party the right to sell, offer for sale, market or promote such Product on a royalty payment basis, profit sharing basis or any other similar payment structure

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“Permitted Liens” means, at any time, Liens in respect of property of any Loan Party or any of its Subsidiaries permitted to exist at such time pursuant to the terms of Section 8.01.

“Permitted Refinancing” means, with respect to any Indebtedness of any Person, any modification, refinancing, replacement, refunding, renewal or extension of such Indebtedness; provided, that, (a) the principal amount thereof does not exceed the sum of (i) the outstanding principal amount of the Indebtedness so modified, refinanced, replaced, refunded, renewed or extended plus (ii) prepayment premiums paid, accrued but unpaid interest, and reasonable and customary fees and expenses incurred, in each case, in connection with such modification, refinancing, replacement, refunding, renewal or extension plus (iii) any unutilized commitments under the Indebtedness so modified, refinanced, replaced, refunded, renewed or extended, (b) such modification, refinancing, replacement, refunding, renewal or extension has (i) a final maturity date equal to or later than the final maturity date of the Indebtedness being modified, refinanced, replaced, refunded, renewed or extended, and (ii) a weighted average life equal to or longer than the weighted average life of the Indebtedness being modified, refinanced, replaced, refunded, renewed or extended, (c) the direct and contingent obligors of such Indebtedness shall not be changed, as a result of or in connection with such modification, refinancing, replacement, refunding, renewal or extension, (d) the terms (excluding pricing, fees, rate floors, discounts, premiums and optional prepayment or redemption terms) of such Indebtedness, taken as a whole, shall not be changed in any manner that is materially adverse, taken as a whole, to the Borrower or any Subsidiary, as applicable, as a result of or in connection with such modification, refinancing, replacement, refunding, renewal or extension, (e) if the Indebtedness being modified, refinanced, replaced, refunded, renewed or extended is subordinated in right of payment to the Obligations, such modification, refinancing, replacement, refunding, renewal or extension is subordinated to the Obligations on terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being so modified, refinanced, replaced, refunded, renewed or extended, (f) if the Indebtedness being modified, refinanced, replaced, refunded, renewed or extended is secured by Liens on the Collateral junior to those created under the Collateral Documents, such modification, refinancing, replacement, refunding, renewal or extension shall either be unsecured or secured by Liens on the Collateral junior to those created under the Collateral Documents on lien subordination terms (taken as a whole) at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness (and such junior Liens securing such Indebtedness) being so modified, refinanced, replaced, refunded, renewed or extended, (g) if the Indebtedness being modified, refinanced, replaced, refunded, renewed or extended is unsecured, such modification, refinancing, replacement, refunding, renewal or extension shall be unsecured, and (h) at the time of such modification, refinancing, replacement, refunding, renewal or extension of such Indebtedness, no Default or Event of Default shall have occurred and be continuing or result therefrom.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to common stock (or other securities or property following a merger event or other change of the common stock) and/or cash (in an amount determined by reference to the price of such common stock) sold by the Borrower substantially concurrently with any purchase by the Borrower of a related Permitted Bond Hedge Transaction and as may be amended in accordance with its terms; provided, that, the terms, conditions and covenants of each such call option, warrant or right to purchase transaction are customary for agreements of such type, as determined in good faith by the Borrower.

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

“Personal Information” has the same meaning as the term “personal data,” “personal information,” “protected health information” or the equivalent under applicable Privacy Laws.

“PIK Period” has the meaning set forth in Section 2.06(c)(i).

“PIK Period Cash Pay Interest” has the meaning set forth in Section 2.06(c)(i).

“PIK Period Cash Pay Notice” means a written notice (which notice shall be irrevocable) from a Responsible Officer of the Borrower to the Administrative Agent (for further distribution to the Lenders) that the Borrower does not intend to exercise its right to pay all interest for an applicable Interest Period in accordance with clauses (x) and (y) of Section 2.06(c)(i).

“PIK Period Paid-in-Kind Interest” has the meaning set forth in Section 2.06(c)(i).

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or, in the case of any Pension Plan, any ERISA Affiliate or any such Plan to which the Borrower or, in the case of any Pension Plan, any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Pledge Agreement” means that certain U.S. Pledge Agreement dated as of the Closing Date by and among the Administrative Agent and the U.S. Loan Parties, as amended or modified from time to time in accordance with the terms hereof.

“Prime Rate” means, with respect to any Interest Period, the fluctuating rate per annum equal to the highest rate published in the “Money Rates” section of The Wall Street Journal as the “prime rate” then in effect (or, if such source is not available for any reason, such alternative source as determined by the Administrative Agent) on the first Business Day of such Interest Period.

“Priority Review Voucher” means a voucher issued by the FDA to the sponsor of a rare pediatric disease product application, as such term is defined in 21 U.S.C. § 360ff, which entitles the holder of such voucher to priority review of an NDA after the date of approval of the rare pediatric disease product application.

“Privacy Laws” means all Laws applicable to the privacy or security of individually identifiable information of any patient or individual, including without limitation HIPAA, the EU General Data Protection Regulation (EU) 2016/679 (GDPR) and equivalent Laws in other jurisdictions.

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“Product” means (a) Arimoclomol, (b) Olpruva, (c) Azstarys and (d) any current or future service or product developed, manufactured, licensed, marketed, sold, offered for sale, promoted, distributed, tested or commercialized by the Borrower or any Subsidiary (including as part of any Partnered Program), including any such product in development or which may be developed, including those products set forth on Schedule 1.01 (as supplemented from time to time in accordance with the terms of this Agreement); provided, that, if the Loan Parties shall fail to comply with their obligations under this Agreement to give notice to the Administrative Agent and supplement Schedule 1.01 prior to manufacturing, selling, developing, testing or marketing any new Product, any such improperly undisclosed Product shall be deemed to be included in this definition.

“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, 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, offer for sale, sale, licensing, storage, labeling, marketing, promotion, supply, distribution, testing (including post-marketing studies), packaging, purchasing, securing reimbursement or other commercialization activities, receipt of payment in respect of any of the foregoing, or like activities the purpose of which is to develop or commercially exploit such Product.

“Product Distributor” means any Person that, pursuant to a Product Agreement, is engaged in any Product Development and Commercialization Activities.

“Product-Specific Patents” means, on a Product-by-Product basis, all Patents (a) in which a Loan Party or any Subsidiary has rights, and (b) that relate to, are embodied in, cover or involve the making, using, selling, offering for sale, importing or otherwise commercializing a particular Product.

“Public Borrower Materials” has the meaning set forth in Section 7.02.

“Qualified Capital Stock” of any Person means any Equity Interests of such Person that are not Disqualified Capital Stock.

“Real Property Security Documents” means with respect to the fee interest of any Loan Party in any real property:

(a) a fully executed and notarized Mortgage encumbering the fee interest of such Loan Party in such real property;

(b) if requested by the Administrative Agent in its sole discretion, maps or plats of an as-built survey of the sites of such real property certified to the Administrative Agent and the title insurance company issuing the policies referred to in clause (c) of this definition in a manner reasonably satisfactory to each of the Administrative Agent and such title insurance company, dated a date reasonably satisfactory to each of the Administrative Agent and such title insurance company by an independent professional licensed land surveyor, which maps or plats and the surveys on which they are based shall be sufficient to delete any standard printed survey exception contained in the applicable title policy and be made in accordance with the Minimum Standard Detail Requirements for Land Title Surveys jointly established and adopted by the American Land Title Association and the National Society of Professional Surveyors, Inc. in 2016 with items 2, 3, 4, 6(b), 7(a), 7(b)(1), 7(c), 8, 9, 10, 11, 13, 14, 16,17, 18 and 19 on Table A thereof completed;

(c) ALTA mortgagee title insurance policies issued by a title insurance company acceptable to the Administrative Agent with respect to such real property, assuring the Administrative Agent that the Mortgage covering such real property creates a valid and enforceable first priority mortgage lien on such real property, free and clear of all defects and encumbrances except Permitted Liens, which title insurance policies shall otherwise be in form and substance reasonably satisfactory to the Administrative Agent and shall include such endorsements as are requested by the Administrative Agent;

(d) (i) a completed “Life-of-Loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to such real property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by each Loan Party relating thereto) and (ii) if such real property is a Flood Hazard Property, (A) notices to (and confirmations of receipt by) such Loan Party as to the existence of a special flood hazard and, if applicable, the unavailability of flood hazard insurance under the National Flood Insurance Program and (B) evidence of applicable flood insurance, if available, in each case in such form, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent;

(e) if requested by the Administrative Agent in its sole discretion, an environmental assessment report as to such real property, in form and substance and from professional firms reasonably acceptable to the Administrative Agent;

(f) if requested by the Administrative Agent in its sole discretion, evidence reasonably satisfactory to the Administrative Agent that such real property, and the uses of such real property, are in compliance in all material respects with all applicable zoning laws (the evidence submitted as to which should include the zoning designation made for such real property, the permitted uses of such real property under such zoning designation and, if available, zoning requirements as to parking, lot size, ingress, egress and building setbacks); and

(g) if requested by the Administrative Agent in its sole discretion, an opinion of legal counsel to the Loan Party granting the Mortgage on such real property, addressed to the Administrative Agent and each Lender, in form and substance reasonably acceptable to the Administrative Agent.

“Recipient” means the Administrative Agent or any Lender.

“Redemption Conditions” means, with respect to any payment in cash by the Borrower or any Subsidiary in connection with any Permitted Convertible Bond Indebtedness, including any voluntary or mandatory principal payment, prepayment, cash settlement upon conversion of such Permitted Convertible Bond Indebtedness (in lieu of the issuance of shares of Qualified Capital Stock of the Borrower), repurchase, redemption, sinking fund or like payment (but excluding (x) payments of cash interest and (y) cash in lieu of fractional shares) (any such payment, a “Redemption Payment”), each of the following conditions: (a) no Default or Event of Default shall exist at the time of such payment or would result therefrom and (b) immediately prior to such payment and at all times after such payment until the Facility Termination Date, the amount of Unrestricted Cash of the U.S. Loan Parties held in accounts for which the Administrative Agent shall have received an Account Control Agreement shall not be less than one hundred and fifty percent (150%) of the then Outstanding Amount of all Obligations.

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“Redemption Payment” has the meaning set forth in the definition of “Redemption Conditions”.

“Register” has the meaning set forth in Section 11.06(c).

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

“Regulatory Authorizations” means all approvals, clearances, notifications, authorizations, orders, exemptions, registrations, designations, certifications, licenses and permits granted by or required by any Regulatory Agencies, including all NDAs, BLAs, and ANDAs for the research, testing, development, manufacture, distribution, marketing, storage, transportation, use, import, export, offering for sale, commercialization and sale of the Products.

“Related Indemnified Party” means, with respect to any Indemnitee, (a) any Affiliate of such Indemnitee, and (b) the respective officers, directors, employees, agents or representatives of such Indemnitee or any of its Affiliates, in the case of this clause (b), acting at the direction of such Indemnitee or Affiliate; provided, that, each reference to an Affiliate in this definition pertains to an Affiliate involved in the negotiation, syndication, administration or enforcement of this Agreement.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, sub-advisors and representatives of such Person and of such Person’s Affiliates.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

“Required Lenders” means, at any time, Lenders having Total Credit Exposures representing more than fifty percent (50%) of the Total Credit Exposures of all Lenders; provided, that, (a) so long as the HCRX Lenders collectively hold at least twenty-five percent (25%) of the Total Credit Exposures of all Lenders hereunder, “Required Lenders” shall include each HCRX Lender and (b) so long as the Perceptive Lenders collectively hold at least twenty-five percent (25%) of the Total Credit Exposures of all Lenders hereunder, “Required Lenders” shall include each Perceptive Lender. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Rescindable Amount” has the meaning set forth in Section 2.11(b).

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Financial Officer” means the chief executive officer, president, chief financial officer or treasurer of a Loan Party. Any document delivered hereunder that is signed by a Responsible Financial Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Financial Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Responsible Officer” means the chief executive officer, president, chief financial officer, chief medical officer, chief scientific officer, general counsel, treasurer, assistant treasurer or controller of a Loan Party and, solely for purposes of the delivery of certificates pursuant to Sections 5.01 or 7.12(b), the secretary or any assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted” means, when referring to cash or Cash Equivalents of the Loan Parties, that such cash or Cash Equivalents (a) appear (or would be required to appear) as “restricted” on a consolidated balance sheet of the Borrower and its Subsidiaries as determined in accordance with GAAP (other than as a result of the Liens of the Administrative Agent for the benefit of the Secured Parties) or (b) are subject to any Lien in favor of any Person (other than bankers’ liens and rights of setoff) other than the Administrative Agent for the benefit of the Secured Parties.

“Restricted Payment” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of any Loan Party or any Subsidiary, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of any Loan Party or any Subsidiary, now or hereafter outstanding, (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any Subsidiary, now or hereafter outstanding, (d) any payment made in cash in connection with the settlement of a Permitted Warrant Transaction and (e) any payment made in cash upon the conversion of, exercise of, repurchase of, redemption of, settlement or early termination or cancellation of, other performance of obligations under, or otherwise with respect to, any Convertible Bond Indebtedness (other than any interest thereon and any fees due thereunder).

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of S&P Global, Inc., and any successor thereto.

“Safety Notice” means any product recall, field notification, safety alert, correction, market withdrawal, warning, “dear doctor” letter, investigator notice, “serious adverse event” report, marketing suspension, removal, label change request or other similar notices relating to an alleged lack of safety or efficacy of any Product.

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“Sale and Leaseback Transaction” means, with respect to any Loan Party or any Subsidiary, any arrangement, directly or indirectly, with any Person whereby the Loan Party or such Subsidiary shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“Sanction(s)” means any economic or trade sanctions administered or enforced by the United States government (including, without limitation, OFAC), the United Nations Security Council, the European Union, any European Union Member State, or His Majesty’s Treasury (“HMT”).

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“SEC S-3 Eligibility Requirements” means the Registrant Requirements (as defined in Form S-3 of the SEC) listed in Section I.A of Form S-3 of the SEC.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 10.05.

“Securities Act” means the Securities Act of 1933.

“Securitization Transaction” means, with respect to any Person, any financing transaction or series of financing transactions (including factoring arrangements) pursuant to which such Person or any Subsidiary of such Person may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate of such Person.

“Security Agreement” means the U.S. Security Agreement dated as of the Closing Date by and among the Administrative Agent and the U.S. Loan Parties, as amended or modified from time to time in accordance with the terms hereof.

“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“SOFR Unavailability Event” has the meaning set forth in Section 3.05.

“Solvent” or “Solvency” means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course, (c) 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 such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair salable 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. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“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” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement; provided, that, “Swap Contract” shall not include any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing arrangement whereby the arrangement is considered borrowed money indebtedness for tax purposes but is classified as an operating lease or does not otherwise appear on a balance sheet under GAAP.

“Systems” means any device or combination thereof that contains data and Personal Information, including any physical and electronic data information storage services and systems and in particular those that use, access, store or disclose Personal Information.

“Taxes” has the meaning set forth in Section 3.01(a).

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“Term A Borrowing” means a borrowing consisting of simultaneous Term A Loans made by each of the Term A Lenders pursuant to Section 2.01(a).

“Term A Commitment” means, as to each Term A Lender, its obligation to make a Term A Loan to the Borrower pursuant to Section 2.01(a), in the principal amount set forth opposite such Lender’s name on Schedule 2.01. The aggregate principal amount of the Term A Commitments of all of the Term A Lenders as in effect on the Closing Date is SIXTY MILLION DOLLARS (\$60,000,000).

“Term A Facility” means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Term A Commitments at such time and (b) thereafter, the aggregate Outstanding Amount of the Term A Loans of all Term A Lenders outstanding at such time.

“Term A Lender” means (a) at any time on or prior to the Closing Date, any Lender that has a Term A Commitment at such time and (b) at any time after the Closing Date, any Lender that holds one or more Term A Loans at such time.

“Term A Loan” means an advance made by any Term A Lender under the Term A Facility.

“Term A Note” has the meaning set forth in Section 2.09.

“Term B Availability Period” means the period from and after the Closing Date to the earliest of (a) the eighteen (18) month anniversary of the Closing Date, (b) the date of termination of the Term B Commitments pursuant to Section 2.04, (c) the date of termination of the Term B Commitments pursuant to Section 9.02 and (d) the date upon which the Loans are prepaid in full pursuant to Section 2.03.

“Term B Borrowing” means a borrowing consisting of simultaneous Term B Loans made by each of the Term B Lenders pursuant to Section 2.01(b).

“Term B Borrowing Date” means any date on which a Term B Borrowing shall be made pursuant to Section 2.01(b).

“Term B Commitment” means, as to each Lender, its obligation to make a Term B Loan to the Borrower pursuant to Section 2.01(b), in the principal amount set forth opposite such Lender’s name on Schedule 2.01. The aggregate principal amount of the Term B Commitments of all of the Lenders as in effect on the Closing Date is TWENTY MILLION DOLLARS (\$20,000,000).

“Term B Facility” means, at any time, (a) during the Term B Availability Period, the aggregate amount of the Term B Commitments at such time, plus the aggregate Outstanding Amount of the Term B Loans of all Term B Lenders outstanding at such time and (b) thereafter, the aggregate Outstanding Amount of the Term B Loans of all Term B Lenders outstanding at such time.

“Term B Lender” means (a) at any time during the Term B Availability Period, any Lender that has a Term B Commitment at such time or holds one or more Term B Loans at such time and (b) at any time thereafter, any Lender that holds one or more Term B Loans at such time.

“Term B Loan” means an advance made by any Term B Lender under the Term B Facility.

“Term B Note” has the meaning set forth in Section 2.09.

“Term C Availability Period” means the period from and after the Closing Date to the earliest of (a) December 31, 2024, (b) the date of termination of the Term C Commitments pursuant to Section 2.04, (c) the date of termination of the Term C Commitments pursuant to Section 9.02 and (d) the date upon which the Loans are prepaid in full pursuant to Section 2.03.

“Term C Borrowing” means a borrowing consisting of simultaneous Term C Loans made by each of the Term C Lenders pursuant to Section 2.01(c).

“Term C Borrowing Date” means the date that the Term C Borrowing shall be made pursuant to Section 2.01(c).

“Term C Commitment” means, as to each Lender, its obligation to make a Term C Loan to the Borrower pursuant to Section 2.01(c), in the principal amount set forth opposite such Lender’s name on Schedule 2.01. The aggregate principal amount of the Term C Commitments of all of the Lenders as in effect on the Closing Date is TWENTY MILLION DOLLARS (\$20,000,000).

“Term C Draw Condition” means the conditions that (a) the Arimoclomol FDA Approval shall have occurred (and the Administrative Agent shall have received the Arimoclomol FDA Approval Certificate) and (b) the Borrower shall have delivered to the Administrative Agent (for further distribution to each Lender) a certificate of a Responsible Officer of the Borrower certifying that neither the Borrower nor any Subsidiary shall have received on or prior to the date of the Term C Borrowing any correspondence that could reasonably be expected to result in the revocation or withdrawal of the Arimoclomol FDA Approval.

“Term C Facility” means, at any time, (a) during the Term C Availability Period, the aggregate amount of the Term C Commitments at such time and (b) thereafter, the aggregate Outstanding Amount of the Term C Loans of all Term C Lenders outstanding at such time.

“Term C Lender” means (a) at any time during the Term C Availability Period, any Lender that has a Term C Commitment at such time and (b) at any time thereafter, any Lender that holds one or more Term C Loans at such time.

“Term C Loan” means an advance made by any Term C Lender under the Term C Facility.

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“Term C Note” has the meaning set forth in Section 2.09.

“Term Facility” means the Term A Facility, the Term B Facility or the Term C Facility, as the context may require.

“Term SOFR Screen Rate” means the forward-looking SOFR term rate administered by CME (or any successor administrator reasonably satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be reasonably designated by the Administrative Agent from time to time).

“Third Party” means any Person other than the Borrower or any Subsidiary or Affiliate thereof.

“Three-Month Term SOFR” means, with respect to any Interest Period, a rate per annum equal to the greater of (a) four percent (4.00%) per annum and (b) the three-month Term SOFR Screen Rate, two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period; provided, that, if the rate is not published prior to 11:00 a.m. on such determination date then “Three-Month Term SOFR” for purposes of this clause (b) means the three month Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto.

“Threshold Amount” means \$2,500,000.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments of such Lender and the Outstanding Amount of all Loans of such Lender at such time.

“Trademarks” means any statutory or common law trademark, service mark, trade name, logo, symbol, trade dress, domain name, corporate name or other indicator of source or origin or identifies the goods and services of one provider from another, and all applications and registrations therefor, together with all of the goodwill associated therewith.

“Treasury Regulations” means the regulations, including temporary regulations, promulgated by the United States Treasury Department under the Internal Revenue Code, as such regulations may be amended from time to time (including the corresponding provisions of any future regulations).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

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

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“United States” and “U.S.” mean the United States of America.

“Unrestricted Cash” means, at any time, cash and Cash Equivalents of the Loan Parties (without duplication) that are not Restricted at such time.

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“U.S. Loan Party” means the Borrower and each Guarantor that is a Domestic Subsidiary.

“U.S. Person” means any “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 3.01(c)(ii)(B)(C).

“Voting Stock” means, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

“Wholly Owned Subsidiary” means any Person one hundred percent (100%) of whose Equity Interests are at the time owned by the Borrower directly or indirectly through one or more other Persons one hundred percent (100%) of whose Equity Interests are at the time owned, directly or indirectly, by the Borrower. Unless otherwise specified, all references herein to a “Wholly Owned Subsidiary” or to “Wholly Owned Subsidiaries” shall refer to a Wholly Owned Subsidiary or Wholly Owned Subsidiaries of the Borrower.

“Withholding Agent” means any Loan Party, the Administrative Agent and any other Person required by applicable Law to withhold or deduct amounts with respect to a payment made by or on account of any obligation of any Loan Party under any Loan Document.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

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## 1.02 Other Interpretive Provisions.

With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in any Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all real and personal property and tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) Any reference herein or in any other Loan Document to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

## 1.03 Accounting Terms.

(a) Generally. Except as otherwise specifically prescribed herein, all accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein; provided, however, that, calculations of Attributable Indebtedness under any Synthetic Lease or the implied interest component of any Synthetic Lease shall be made by the Borrower in accordance with accepted financial practice and consistent with the terms of such Synthetic Lease. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (i) Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded (ii) all liability amounts shall be determined excluding any liability relating to any operating lease, all asset amounts shall be determined excluding any right-of-use assets relating to any operating lease, all amortization amounts shall be determined excluding any amortization of a right-of-use asset relating to any operating lease, and all interest amounts shall be determined excluding any deemed interest comprising a portion of fixed rent payable under any operating lease, in each case to the extent that such liability, asset, amortization or interest pertains to an operating lease under which the covenantor or a member of its consolidated group is the lessee and would not have been accounted for as such under GAAP as in effect on December 31, 2015, and (iii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 “Financial Instruments” (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Borrower or any Subsidiary at “fair value”, as defined therein. For purposes of determining the amount of any outstanding Indebtedness, no effect shall be given to any election by any Loan Party or any Subsidiary to measure an item of Indebtedness using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification 825-10-25 (formerly known as FASB 159) or any similar accounting standard).

(b) Changes in GAAP. The Borrower will provide a written summary of material changes in GAAP and in the consistent application thereof with each annual and quarterly financial statement delivered in accordance with Section 7.01. If at any time any change in GAAP would affect the computation of any financial requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided, that, until so amended, (i) such requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent (for further distribution to the Lenders) financial statements and other documents required under this Agreement or as requested hereunder setting forth a reconciliation between calculations of such requirement made before and after giving effect to such change in GAAP.

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(c) Calculations. For purposes of all calculations hereunder, the principal amount of Convertible Bond Indebtedness shall be the outstanding principal (or notional) amount thereof, valued at par.

(d) Consolidation of Variable Interest Rate Entities. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity was a Subsidiary as defined herein.

#### 1.04 Times of Day.

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

#### 1.05 Danish Terms.

Without prejudice to the generality of any provision of any Loan Document, in any Loan Document, where it relates to an entity incorporated or established under Danish law, a reference to:

(a) a director or officer includes a managing director (in Danish: *direktør*) or a member of the board of directors (in Danish: *bestyrelsesmedlem*);

(b) a person being insolvent or unable to pay its debts means that the person in question is unable to meet its liabilities as and when they fall due, unless such inability must be deemed to be only temporary within the meaning of Section 17(2) of the Danish Bankruptcy Act;

(c) a liquidator, compulsory manager, receiver, administrative receiver, administrator or similar officer will be either of: (i) a reconstructor (in Danish: *rekonstruktør*), (ii) liquidator (in Danish: *likvidator*), or (iii) a bankruptcy administrator (in Danish: *kurator*), as applicable;

(d) a winding up, administration, official management, dissolution, liquidation, moratorium, restructuring, reorganization, relief or general assignment for the benefit of creditors will be either of a dissolution by declaration (in Danish: *opløsning ved erklæring*), a voluntary liquidation (in Danish: *frivillig likvidation*), a forced dissolution (in Danish: *tvangsopløsning*) under Chapter 14 of the Danish Companies Act or judicial restructuring (in Danish: *rekonstruktion*) or bankruptcy (in Danish: *konkurs*) under the Danish Bankruptcy Act;

(e) seeking/commencement/institution of bankruptcy or insolvency (proceedings) includes the opening of insolvency or judicial reconstruction proceedings (in Danish: *tage under konkursbehandling eller rekonstruktionsbehandling*);

(f) its "Organization Documents" means the articles of association (in Danish: *vedtægter*).

(g) gross negligence means *grov uagtsomhed*.

(h) willful misconduct means *forsæt*;

(i) jointly and severally means *solidarisk*.

(j) to guarantee means *at garantere eller kautionere*.

(k) to indemnify means *at skadesløsholde*.

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## ARTICLE II

### THE COMMITMENTS

#### 2.01 Commitments.

(a) Term A Borrowing. Subject to the terms and conditions set forth herein and in reliance upon the representations and warranties of the Loan Parties set forth herein, each Term A Lender severally and not jointly agrees to make a single loan to the Borrower, in Dollars, on the Closing Date in an aggregate amount not to exceed such Term A Lender's Term A Commitment. The Term A Borrowing shall consist of Term A Loans made simultaneously by the Term A Lenders in accordance with their respective Term A Commitments. Term A Borrowings repaid or prepaid may not be reborrowed.

(b) Term B Borrowing. Subject to the terms and conditions set forth herein and in reliance upon the representations and warranties of the Loan Parties set forth herein, each Term B Lender severally and not jointly agrees to make up to two (2) loans to the Borrower, in Dollars, on any Business Day during the Term B Availability Period, in an aggregate amount not to exceed such Term B Lender's Term B Commitment; provided, that, for the avoidance of doubt, it is understood and agreed that (i) there shall be no more than two (2) Term B Borrowings during the term of this Agreement and (ii) each Term B Borrowing shall be in an amount not to exceed \$10,000,000. Each Term B Borrowing shall consist of Term B Loans made simultaneously by the Term B Lenders in accordance with their respective Term B Commitments. Term B Borrowings repaid or prepaid may not be reborrowed.

(c) Term C Borrowing. Subject to the terms and conditions set forth herein and in reliance upon the representations and warranties of the Loan Parties set forth herein, each Term C Lender severally and not jointly agrees to make a single loan to the Borrower, in Dollars, on any Business Day during the Term C Availability Period, in an aggregate amount not to exceed such Term C Lender's Term C Commitment; provided, that, on or prior to such Business Day, the Term C Draw Conditions shall have been satisfied; provided, further, that, for the avoidance of doubt, it is understood and agreed that (i) there shall be no more than one (1) Term C Borrowing during the term of this Agreement and (ii) the Term C Borrowing shall be in an amount not to exceed \$20,000,000. The Term C Borrowing shall consist of Term C Loans made simultaneously by the Term C Lenders in accordance with their respective Term C Commitments. Term C Borrowings repaid or prepaid may not be reborrowed.

#### 2.02 Borrowings.

(a) Each Borrowing shall be made upon the Borrower's irrevocable notice (in the form of a written Loan Notice, appropriately completed and signed by a Responsible Financial Officer of the Borrower) to the Administrative Agent, which must be given not later than 9:00 a.m. (i) on the Closing Date, in the case of the Term A Borrowing and (ii) on the date at least fifteen (15) Business Days in advance of the requested date of the applicable Term B Borrowing or the Term C Borrowing, as the case may be (or such shorter period as may be agreed to by the Administrative Agent and the Required Lenders, each in their sole discretion). Each Loan Notice shall specify (A) the requested date of the Borrowing (which shall be a Business Day), (B) the principal amount of Loans to be borrowed and (C) the wiring instructions of the Borrower. The Term A Borrowing shall be in a principal amount of \$60,000,000.

(b) Following receipt of a Loan Notice for a Term Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Term Facility of the applicable Loans. Each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice (or, in the case of any Borrowing on the Closing Date, directly to the account of the Borrower designated by it (or an account of another Person designated by the Borrower) in a separate funds flow or funding direction letter provided to such Lender). Upon satisfaction of the applicable conditions set forth in Section 5.02 (and, if such Borrowing is the initial Borrowing, Section 5.01) and receipt of all requested funds from the Lenders (other than any funds that have been wired by any Lender directly to the Borrower's account (or an account of another Person designated by the Borrower) on the Closing Date pursuant to written instructions from the Borrower), the Administrative Agent shall make all funds (other than any funds that have been wired by any Lender directly to the Borrower's account (or an account of another Person designated by the Borrower) on the Closing Date pursuant to written instructions from the Borrower) so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds (other than any funds that have been wired by any Lender directly to the Borrower's account (or an account of another Person designated by the Borrower) on the Closing Date pursuant to written instructions from the Borrower) in accordance with instructions on the Loan Notice provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

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## 2.03 Prepayments.

(a) Voluntary Prepayments. Subject to the payment of any repayment premium as required under Section 2.03(d), the Final Payment Premium required under Section 2.07(b) and any other fees or amounts payable hereunder at such time, the Borrower may, upon written notice from the Borrower to the Administrative Agent, voluntarily prepay the Loans, in whole but not in part; provided, that, such notice must be received not later than 11:00 a.m. three (3) Business Days prior to the date of prepayment. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, that, if such notice expressly states that it is conditioned upon the effectiveness of other credit facilities or financing or the closing of a specified transaction, such notice may be revoked by the Borrower (by notice in writing to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any prepayment pursuant to this Section 2.03(a) shall be accompanied by (w) all accrued interest on the principal amount of the Loans prepaid, (x) the repayment premium required under Section 2.03(d) and the Final Payment Premium required under Section 2.07(b), (y) all fees, costs, expenses, indemnities and other amounts due and payable hereunder at the time of prepayment and (z) all other Obligations (other than contingent indemnification and expense reimbursement obligations for which no claim has been asserted). Each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Term Facilities.

### (b) Mandatory Prepayments of Loans.

(i) Dispositions and Involuntary Dispositions. The Borrower shall promptly (and, in any event, within five (5) Business Days) prepay the Loans in an aggregate amount equal to 100% of the Net Cash Proceeds of all Dispositions and Involuntary Dispositions to the extent such Net Cash Proceeds are not reinvested in Eligible Assets within 270 days of the date of receipt thereof. Any prepayment pursuant to this clause (i) shall be applied as set forth in clause (iv) below.

(ii) Extraordinary Receipts. The Borrower shall promptly (and, in any event, within five (5) Business Days) upon the receipt by any Loan Party or any Subsidiary of the Net Cash Proceeds of any Extraordinary Receipt, prepay the Loans in an aggregate amount equal to 100% of such Net Cash Proceeds to the extent such Net Cash Proceeds are not reinvested in Eligible Assets within 270 days of the date of receipt thereof. Any prepayment pursuant to this clause (ii) shall be applied as set forth in clause (iv) below.

(iii) Debt Issuance. The Borrower shall promptly (and, in any event, within three (3) Business Days) upon the receipt by any Loan Party or any Subsidiary of the Net Cash Proceeds of any Debt Issuance, prepay the Loans in an aggregate amount equal to 100% of such Net Cash Proceeds. Any prepayment pursuant to this clause (iii) shall be applied as set forth in clause (iv) below.

(iv) Application of Mandatory Prepayments. All payments under this Section 2.03(b) shall be applied first to all fees, costs, expenses, indemnities and other amounts due and payable hereunder, then proportionately (based on the relation of such amounts to the total amount of the relevant payment under this Section 2.03(b)) to the payment or prepayment (as applicable) of the following amounts of the Obligations: default interest, if any, repayment premium required by Section 2.03(d) and accrued interest and principal. For the avoidance of doubt, each such prepayment shall also be accompanied by the Final Payment Premium required by Section 2.07(b), if applicable. Each such prepayment shall be applied first, to outstanding Term C Loans, second, to outstanding Term B Loans and third, to outstanding Term A Loans. Each such prepayment shall be applied to the Loans of the Lenders in accordance with the respective Applicable Percentages in respect of each of the relevant Term Facilities.

(v) Notice of Mandatory Prepayment. The Borrower shall provide prior written notice to the Administrative Agent of any prepayment made pursuant to this Section 2.03(b); provided, that, such notice must be received not later than 11:00 a.m. one (1) Business Day prior to the date of prepayment (or such shorter period as the Required Lenders may agree).

(c) Change of Control. Upon the occurrence of a Change of Control, the Borrower shall, at the direction of the Required Lenders, and may, at its option upon three (3) Business Days prior written notice from the Borrower to the Administrative Agent, prepay the Outstanding Amount of the Loans together with all accrued and unpaid interest thereon plus the repayment premium required by Section 2.03(d) and the Final Payment Premium required by Section 2.07(b) plus all other Obligations (other than contingent indemnification or expense reimbursement obligations for which no claim has been asserted). Each such direction or notice shall specify the date and amount of such prepayment. If such direction or notice is given, the Borrower shall make such prepayment and the payment amount specified in such direction or notice shall be due and payable on the date specified therein. Each prepayment under this Section 2.03(c) shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(d) Repayment Premiums. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if all or any portion of the principal amount of any Loans are repaid, or required to be repaid, pursuant to this Section 2.03, Article IX or otherwise (other than, for the avoidance of doubt, Section 2.05), then, in all cases, the Borrower shall pay to the Lenders, for their respective ratable accounts, on the date on which such repayment is paid or required to be paid, in addition to the other Obligations so repaid or required to be repaid, a repayment premium equal to: (i) with respect to any repayment paid or required to be paid on or prior to the twenty-four (24) month anniversary of the Closing Date, an amount equal to the Make-Whole Amount (Months 1-24) with respect to such repayment, (ii) with respect to any repayment paid or required to be paid after the twenty-four (24) month anniversary of the Closing Date, but on or prior to the thirty (30) month anniversary of the Closing Date, an amount equal to the Make-Whole Amount (Months 25-30) with respect to such repayment, (iii) with respect to any repayment paid or required to be paid after the thirty (30) month anniversary of the Closing Date but on or prior to the thirty-six (36) month anniversary of the Closing Date, an amount equal to three and one half of one percent (3.50%) of the principal amount of such Loan that is repaid or required to be repaid, (iv) with respect to any repayment paid or required to be paid after the thirty-six (36) month anniversary of the Closing Date but on or prior to the forty-eight (48) month anniversary of the Closing Date, an amount equal to one and one half of one percent (1.50%) of the principal amount of such Loan that is repaid or required to be repaid, and (v) with respect to any repayment paid or required to be paid thereafter, an amount equal to zero percent (0%) of the principal amount of such Loan that is repaid or required to be repaid. Such repayment premiums shall be fully earned when paid and shall be non-refundable for any reason whatsoever.

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#### 2.04 Termination of Commitments.

(a) Voluntary. The Borrower may, upon written notice to the Administrative Agent during (i) the Term B Availability Period, terminate in full the Term B Commitments and (ii) the Term C Availability Period, terminate in full the Term C Commitments; provided, that: any such notice shall be received by the Administrative Agent not later than 9:00 a.m. five (5) Business Days prior to the date of termination. Upon any termination of the Term B Commitments or the Term C Commitments, the Commitments of each Appropriate Lender shall be reduced by such Lender's Applicable Percentage of such reduction amount.

(b) Mandatory. The Term A Commitments will be automatically and permanently reduced to zero upon the Term A Borrowing pursuant to Section 2.01(a). The Term B Commitments will be automatically and permanently reduced (i) by the amount of each Term B Borrowing on the date of each such Term B Borrowing and (ii) to zero upon the second Term B Borrowing pursuant to Section 2.01(b) or, if earlier, on the date that the Term B Availability Period shall end. The Term C Commitments will be automatically and permanently reduced to zero upon the Term C Borrowing pursuant to Section 2.01(c) or, if earlier, on the date that the Term C Availability Period shall end.

#### 2.05 Repayment of Loans.

The Borrower shall repay the outstanding principal amount of all Loans, together with all accrued and unpaid interest thereon and all other outstanding Obligations, including the Final Payment Premium required under Section 2.07(b), on the Maturity Date.

#### 2.06 Interest.

(a) Pre-Default Rate. Subject to the provisions of clause (b) below, each Loan shall bear interest on the outstanding principal amount thereof (for the avoidance of doubt, based on the stated principal amount thereof without reducing such amount by any applicable original issue discount) for each Interest Period from the applicable borrowing date thereof at a rate per annum equal to the Interest Rate for such Interest Period.

(b) Default Rate. (i) Upon the occurrence and during the existence of any Event of Default, all outstanding Obligations shall bear interest at an interest rate per annum at all times equal to the Interest Rate for the applicable Interest Period plus four percent (4.00%) per annum (the "Default Rate"), to the fullest extent permitted by applicable Laws, until such Event of Default is cured or waived in accordance with the terms of this Agreement; provided, that, to the extent that the only Event of Default in existence is an Event of Default that occurs under Section 9.01(b) solely as a result of the Loan Parties' failure to comply with Section 7.21, the "Default Rate" for such Event of Default shall instead be an interest rate per annum at all times equal to the Interest Rate for the applicable Interest Period plus one-half of one percent (0.50%) per annum until such Event of Default is cured or waived in accordance with the terms of this Agreement and (ii) accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable in cash on demand.

#### (c) Paid-In-Kind Interest.

(i) Beginning with the Interest Payment Date occurring on June 30, 2024 and continuing through and including the Interest Payment Date occurring on March 31, 2026 (the "PIK Period"), on any Interest Payment Date, so long as (A) no Event of Default has occurred and is continuing on any such Interest Payment Date and (B) the Borrower has not delivered to the Administrative Agent (for further distribution to the Lenders) a PIK Period Cash Pay Notice on or prior to the date that is six (6) Business Days prior to the first day of the Interest Period ending on such Interest Payment Date, (x) seventy-five percent (75%) of the aggregate amount of interest accruing on the Loans during such Interest Period (such interest, the "PIK Period Cash Pay Interest") shall be due and payable in cash in arrears on such Interest Payment Date and (y) twenty-five percent (25%) of the aggregate amount of interest accruing on the Loans during such Interest Period (such interest, the "PIK Period Paid-in-Kind Interest") shall be due and payable on such Interest Payment Date by capitalizing and adding such PIK Period Paid-in-Kind Interest to the outstanding principal amount of the applicable Loans on such Interest Payment Date. For the avoidance of doubt, if (I) on or prior to the sixth (6<sup>th</sup>) Business Day prior to the first day of any Interest Period ending on any Interest Payment Date occurring during the PIK Period the Borrower has delivered to the Administrative Agent (for further distribution to the Lenders) a PIK Period Cash Pay Notice, or (II) any Event of Default has occurred and is continuing on any such Interest Payment Date, all interest accruing on the Loans shall be due and payable in cash in arrears on such Interest Payment Date.

(ii) Paid-in-Kind Interest Generally. Any and all such PIK Period Paid-in-Kind Interest so added to the principal amount of the Loans shall constitute and increase the principal amount of the Loans for all purposes under this Agreement, including without limitation, for purposes of calculating any repayment premium under Section 2.03(d) (but excluding for purposes of calculating the Final Payment Premium under Section 2.07(b)), and shall bear interest in accordance with this Section 2.06.

(d) Interest Generally. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date and at such other times as may be specified herein. Subject to Section 2.06(c) above, all interest shall be due and payable in cash. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law. Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be determinative in the absence of manifest error.

#### 2.07 Fees.

(a) Fee Letters. The Borrower shall pay to the Administrative Agent, the Lenders and their respective Affiliates for their own respective accounts fees and original issue discount in the amounts and at the times specified in the applicable Fee Letter. It being understood and agreed that any such original issue discount shall not reduce the aggregate principal amount of any Loans for any reason under this Agreement or any other Loan Document. Such fees and original issue discount shall be fully earned when paid and shall be non-refundable for any reason whatsoever.

(b) Final Payment Premium. Upon the earlier to occur of (i) the Maturity Date and (ii) the date that the Loans become due and payable in full for any reason (whether pursuant to Section 2.03, Section 2.05, Section 9.02 or otherwise), the Borrower shall pay, without any presentment thereof, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office, in addition to the other Obligations prepaid, repaid or required to be prepaid or repaid, in each case, on such date, the Final Payment Premium. The Final Payment Premium shall be fully earned when paid and shall be non-refundable for any reason whatsoever.

#### 2.08 Computation of Interest.

All computations of interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which such Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which such Loan or such portion is paid.





## 2.09 Evidence of Debt.

The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. Upon the request of any Lender, the Borrower shall execute and deliver to such Lender a promissory note, which shall evidence such Lender's Loans in addition to such accounts or records. Each such promissory note shall (a) in the case of the Term A Loans, be in the form of Exhibit B-1 (a "Term A Note"), (b) in the case of the Term B Loans, be in the form of Exhibit B-2 (a "Term B Note") and (c) in the case of the Term C Loans, be in the form of Exhibit B-3 (a "Term C Note"). Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

## 2.10 Payments Generally.

(a) General. Except as otherwise expressly set forth herein or in any other Loan Document, payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Subject to Section 9.03, all payments of principal, interest, repayment premiums, Final Payment Premium and fees on the Loans and all other Obligations payable by any Loan Party under the Loan Documents shall be due, without any presentment thereof, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office. The Loan Parties will make such payments in Dollars, in immediately available funds not later than 2:00 p.m. on the date due, marked for attention as indicated, or in such other manner or to such other account in any United States bank as the Administrative Agent may from time to time direct in writing. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. may, at the Administrative Agent's discretion, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest.

(b) Obligations of Lenders Several. The obligations of the Lenders hereunder to make the Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 11.04(c) 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 a Loan or to make its payment under Section 11.04(c).

(c) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for the making of 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 the making of any Loan in any particular place or manner.

## 2.11 Sharing of Payments by Lenders; Presumptions by Administrative Agent.

(a) If any Lender shall, by exercising any right of setoff or otherwise, obtain payment in respect of any principal of or interest on its Loans or repayment premium or Final Payment 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 repayment premium or Final Payment Premium in connection therewith greater than its *pro rata* share thereof as provided herein, then the Lender shall (x) notify the Administrative Agent of such fact and (y) purchase (for cash at face value) participations in the Loans of the other Lenders pursuant to documentation satisfactory to the Administrative Agent, 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 repayment premium or Final Payment Premium in connection with their respective 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 2.11 shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary (as to which the provisions of this Section 2.11 shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

(b) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (i) the Borrower has not in fact made such payment; (ii) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (iii) the Administrative Agent has for any reason otherwise erroneously made such payment; then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, 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. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

## 2.12 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendment. The Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01. Each Lender agrees to provide to the Borrower, the Administrative Agent and each other Lender with prompt written notice of such Lender becoming a Defaulting Lender.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 11.08), shall be applied at such time or times as may be determined by the Required Lenders as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Required Lenders; third, if so determined by the Required Lenders and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and sixth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that, if (A) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (B) such Loans were made at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.12(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower and the Required Lenders agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will cease to be a Defaulting Lender; provided, that, no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; provided, further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

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ARTICLE III

TAXES, INCREASED COSTS AND YIELD PROTECTION

3.01 Taxes.

(a) All payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document to any Recipient shall be made free and clear of and without deduction or withholding for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, imposts, assessments, deductions, withholdings or other charges of any nature whatsoever, including any interest, additions to tax and penalties thereon, imposed by any taxing authority (collectively, "Taxes"), excluding (i) Taxes attributable to such Recipient's failure to comply with Section 3.01(c), Section 3.01(d), or Section 3.01(f), (ii) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed by any jurisdiction as a result of such Recipient being organized in or in the case of a Lender, having its applicable Lending Office in such jurisdiction, or (B) as a result of any other present or former connection with the jurisdiction imposing such Tax and such Recipient (other than a connection arising as the result of having executed, delivered, become a party to, performed obligations under, received payments under, received or perfected a security interest under, engaged in any transaction pursuant to, or enforced any Loan Document, or having sold or assigned an interest in any Loan or Loan Document), (iii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (A) such Lender acquires such interest in the Commitment (or, in the case of a Loan not funded by such Lender pursuant to a prior Commitment, acquires such interest in such Loan), other than pursuant to an assignment request by the Borrower pursuant to Section 11.13, or (B) such Lender changes its Lending Office, except in each case to the extent that, pursuant to this Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired such interest in the applicable Loan or Commitment or to such Lender immediately before it changed its Lending Office, (iv) any U.S. federal backup withholding under Section 3406 of the Internal Revenue Code, and (v) withholding Tax imposed under FATCA (all non-excluded items imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document being called "Indemnified Taxes"). If any Withholding Agent is required by applicable Law to make any withholding or deduction of Taxes from any payment by or on account of any obligation of any Loan Party under any Loan Document, then (x) the applicable Withholding Agent shall be entitled to make such withholding or deduction and shall pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted, (y) the applicable Withholding Agent shall promptly forward to the Administrative Agent an official receipt or other documentation satisfactory to the Administrative Agent evidencing such payment to such Governmental Authority and (z) if such withholding or deduction is in respect of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased by such additional amount or amounts as is necessary to ensure that the net amount actually received by the applicable Lender (or, in the case of payments made to the Administrative Agent for its own account, the Administrative Agent) will equal the full amount such Recipient would have received had no such withholding or deduction for Indemnified Taxes been made (including any such withholdings or deductions applicable to additional sums payable under this Section 3.01) (provided, that, if the applicable Withholding Agent in respect of an Indemnified Tax is a Person other than a Loan Party or the Administrative Agent (e.g., a Lender), the additional amounts required to be paid by a Loan Party under this clause (z) in respect of such Tax shall not be greater than the additional amounts such Loan Party would have been obligated to pay had such Loan Party made payment of such sum directly to the applicable beneficial owner of such payment complied with the provisions of Section 3.01(c)). Further, the Loan Parties shall pay all present or future stamp, court, documentary, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to any of the Loan Documents, except for Taxes imposed with respect to an assignment that are imposed by any jurisdiction as a result of a present or former connection between the Recipient and the jurisdiction imposing such Tax (other than a connection arising as the result of having executed, delivered, become a party to, performed obligations under, engaged in any transaction pursuant to, received payments under, received or perfected a security interest under, or enforced any Loan Document, or having sold or assigned an interest in any Loan or Loan Document) (all such non-excluded Taxes hereinafter referred to as "Other Taxes").

(b) [Reserved].

(c) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to any payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable Law or when reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or 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 or 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 Sections 3.01(c)(i)(A), (ii)(B), and 3.01(d) below) shall not be required if in the 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. Each Lender agrees that if any form or certification it previously delivered pursuant to Section 3.01(d) expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify the Administrative Agent and the Borrower of its inability to do so.

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(ii) Without limiting the generality of the foregoing:

(A) 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 certifying that such Lender is exempt from U.S. federal backup withholding tax; and

(B) Any Foreign Lender shall, to the extent it is then 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, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to such tax treaty;

(B) properly completed and duly executed copies of IRS Form W-8ECI;

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “U.S. Tax Compliance Certificate”) and (y) properly completed and duly executed copies of IRS Form W-8BEN-E; or

(D) to the extent a Foreign Lender is not the beneficial owner, properly completed and duly executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided, that, if the Foreign Lender is a partnership for U.S. tax purposes and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of such direct and indirect partner(s); and

(iii) Any Foreign Lender shall, to the extent it is then 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 the reasonable request of the Borrower or the Administrative Agent), properly completed and duly executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(d) Each 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 Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations thereunder or to determine the amount to deduct and withhold from such payment. The Borrower or the Administrative Agent may, to the extent required by applicable Law, provide any such information and documentation so provided to the Internal Revenue Service and any other relevant Tax authority. For purposes of this clause, “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(e) Each Lender agrees that if any form or certification it previously delivered pursuant to Sections 3.01(c) or (d) expires or becomes obsolete or inaccurate in any respect, it shall promptly update such form or certification or promptly notify the Administrative Agent and the Borrower of its inability to do so. Notwithstanding anything to the contrary in this Section 3.01, no Lender shall be required to deliver any documentation pursuant to this Section 3.01 that such lender is not legally eligible to deliver.

(f) On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall provide to the Borrower, two duly-signed, properly completed copies of the documentation prescribed in clauses (i) or (ii) below, as applicable (together with all required attachments thereto): (i) IRS Form W-9 or any successor thereto, or (ii) (A) IRS Form W-8ECI or any successor thereto, and (B) with respect to payments received on account of any Lender, a U.S. branch withholding certificate on IRS Form W-8IMY or any successor thereto (together with all required accompanying documentation) certifying either that the Administrative Agent is a U.S. branch and intends to be treated as a U.S. person for purposes of withholding and reporting under Chapter 3 and Chapter 4 of the Internal Revenue Code pursuant to Section 1.1441-1(b)(2)(iv) of the Treasury Regulations. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower. An Administrative Agent delivering an IRS Form W-9 pursuant to the preceding clause (i) represents to the Borrower that it is a “U.S. person” and a “financial institution” within the meaning of Treasury Regulations Section 1.1441-1 and that it will comply with its obligations to withhold under Section 1441 and FATCA with the effect that the Borrower may make payments to the Administrative Agent without deduction or withholding of any Taxes imposed by the United States.

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(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 3.01(g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.01(g) the payment of which would place the indemnified party in a less favorable net after-tax position than the indemnified party would have been in if the Taxes 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 Taxes had never been paid. This Section 3.01(g) 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.

(h) Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after written demand therefor, for (i) any Indemnified Taxes or Other Taxes attributable to such Lender (but only to the extent that the Loan Parties have not already indemnified the Administrative Agent for such Indemnified Taxes or Other Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (iii) any Taxes that are excluded from the definition of Indemnified Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (h).

### 3.02 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes and Other Taxes) and (B) Taxes that are excluded from the definition of Indemnified Taxes in Section 3.01(a)) on its loans, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the applicable interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any Loan), then, upon written demand of such Lender, the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

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(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in clause (a) or (b) of this Section 3.02 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.02 shall not constitute a waiver of such Lender's right to demand such compensation; provided, that, the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.02 for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

### 3.03 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.02 or requires the Borrower to pay any Indemnified Taxes, Other Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 3.01 or 3.02, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.04, as applicable, and (ii) in each case, would not subject such Lender, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.02, or if the Borrower is required to pay any Indemnified Taxes, Other Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 3.03(a), the Borrower may replace such Lender in accordance with Section 11.13.

### 3.04 Illegality.

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to perform any of its obligations hereunder or to make, maintain or fund or charge interest with respect to any Loan, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Loan or to make any such Loan shall be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay the Loans of such Lender immediately.

### 3.05 Inability to Determine Rates.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (a) adequate and reasonable means do not exist for ascertaining clause (b) of the definition of Three-Month Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary, (b) the CME (or any successor administrator reasonably satisfactory to the Administrative Agent) has made a public statement identifying a specific date after which SOFR shall or will no longer be made available, or permitted to be used for determining the interest rate of syndicated loans denominated in Dollars, or shall or will otherwise cease; provided, that, in each case, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Administrative Agent that will continue to provide SOFR, or (c) the Administrative Agent or the Required Lenders determine that for any reason that Three-Month Term SOFR for the relevant Interest Period does not adequately and fairly reflect the cost of funds to the Lenders (each a "SOFR Unavailability Event"), then (i) the Administrative Agent will promptly so notify the Borrower and each Lender and (ii) thereafter, (A) the Borrower and the Required Lenders shall negotiate in good faith to amend this Agreement to replace Three-Month Term SOFR with an alternate benchmark rate, giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto, as the case may be, for Dollar-denominated credit facilities for such alternative benchmarks, together with any proposed Conforming Changes and (B) until such time as the Borrower and the Required Lenders amend this Agreement as contemplated by the foregoing clause (A), clause (b) of the definition of Three-Month Term SOFR for the Interest Period during which such SOFR Unavailability Event occurs will be a rate per annum equal to the Prime Rate as in effect on the date such SOFR Unavailability Event occurs and thereafter will be re-set on the first Business Day of each Interest Period occurring thereafter.

### 3.06 Survival.

All of the Borrower's obligations under this Article III shall survive any assignment by or the replacement of any Lender, termination of the Commitments and the Loan Documents, repayment of all Obligations and replacement or resignation of the Administrative Agent.

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## ARTICLE IV

### GUARANTY

#### 4.01 The Guaranty.

Each of the Guarantors hereby jointly and severally guarantees to each Secured Party and the Administrative Agent as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, the obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

#### 4.02 Obligations Unconditional.

The obligations of the Guarantors under Section 4.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any law or regulation or other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4.02 that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this Article IV until such time as the Obligations (other than contingent indemnification or expense reimbursement obligations for which no claim has been asserted) have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

- (a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any of the acts mentioned in any of the provisions of any of the Loan Documents, or any other agreement or instrument referred to in the Loan Documents shall be done or omitted;
- (c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents, or any other agreement or instrument referred to in the Loan Documents shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;
- (d) any Lien granted to, or in favor of, any Secured Party as security for any of the Obligations shall fail to attach or be perfected; or
- (e) any of the Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Secured Parties exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents, or any other agreement or instrument referred to in the Loan Documents, or against any other Person under any other guarantee of, or security for, any of the Obligations.

#### 4.03 Reinstatement.

The obligations of the Guarantors under this Article IV shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any Secured Party, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor agrees that it will indemnify the Secured Parties on demand for all reasonable and documented costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Secured Parties in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

#### 4.04 Certain Additional Waivers.

Each Guarantor agrees that such Guarantor shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 4.02 and through the exercise of rights of contribution pursuant to Section 4.06.

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#### 4.05 Remedies.

The Guarantors agree that, to the fullest extent permitted by law, as between the Guarantors, on the one hand, and the Secured Parties, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 9.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 9.02) for purposes of Section 4.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of Section 4.01. The Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the Secured Parties may exercise their remedies thereunder in accordance with the terms thereof.

#### 4.06 Rights of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under applicable law. Such contribution rights shall be subordinate and subject in right of payment to the obligations of such Guarantors under the Loan Documents and no Guarantor shall exercise such rights of contribution until all Obligations (other than contingent indemnification or expense reimbursement obligations for which no claim has been asserted) have been paid in full and the Commitments have terminated.

#### 4.07 Guarantee of Payment; Continuing Guarantee.

The guarantee in this Article IV is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

#### 4.08 Danish Guarantee Limitations.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, any guarantee, indemnity and other obligations (as well as any security created in relation thereto) of any Danish Loan Party expressed to be assumed under this Agreement, any other Loan Document or any Collateral Document:

(a) shall be deemed not to be assumed (and any security created in relation thereto shall be limited) to the extent that the same would constitute unlawful financial assistance within the meaning of Section 206 or Section 210 of the Danish Companies Act; and

(b) shall further be limited to an amount equivalent to the higher of:

(i) the Equity of such Danish Loan Party at the time(s) (A) the Danish Loan Party is requested to make a payment under this Agreement or (B) of enforcement of security granted by such Danish Loan Party (as applicable); and

(ii) the Equity of such Danish Loan Party at the Closing Date,

provided, that, the limitations set forth in this clause (b) shall only apply to obligations and liabilities of the Danish Loan Party which exceed the sum of (A) the advances under the Loan Documents received by such Danish Loan Party directly or indirectly in its capacity as intra-group borrower (provided, always, that, any payment made by the Danish Loan Party under this Article IV in respect of such obligations of the Danish Loan Party shall reduce *pro tanto* the outstanding amount of the intercompany loan owing by the Danish Loan Party) and (B) interest and other costs and fees which are to be borne by the Danish Loan Party in its capacity as borrower under a Loan Document.

The limitations set out in this Section 4.08 shall apply *mutatis mutandis* to a Danish Loan Party's aggregate obligations and liabilities under any security, guarantee, indemnity, collateral, subordination of rights and/or claims, subordination and/or turn-over of rights of recourse, application of proceeds (including mandatory prepayments) and any other means of direct or indirect financial assistance made by a Danish Loan Party under any of the Loan Documents.

For the purpose of this Section 4.08, "Equity" means the equity (in Danish: egenkapital) of such Danish Loan Party calculated in accordance with generally accepted accounting principles, standards and practices in Denmark at the relevant time (including, if applied by such Danish Loan Party, IFRS), however, adjusted upwards to the greater of (A) the book value, and (B) the market value, if and to the extent any book value is not equal to the market value.

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ARTICLE V

CONDITIONS PRECEDENT TO CLOSING AND BORROWINGS

5.01 Conditions of Initial Borrowing.

This Agreement shall become effective upon and the obligation of each Lender to make Loans to be advanced on the Closing Date is subject to satisfaction of the following conditions precedent (as determined by the Lenders in their sole discretion):

(a) Loan Documents. Receipt by the Administrative Agent of executed counterparts of this Agreement and the other Loan Documents (other than such Danish Collateral Document described in clause (d) of the definition of “Danish Collateral Documents”, which shall be delivered subject to Section 7.21), each properly executed by a Responsible Officer of the signing Loan Party and each other party to such Loan Documents, in each case in form and substance reasonably satisfactory to the Administrative Agent and the Lenders.

(b) Opinions of Counsel. Receipt by the Administrative Agent of favorable opinions of legal counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, dated as of the Closing Date, and in form and substance satisfactory to the Administrative Agent and the Lenders.

(c) Financial Statements; Due Diligence. The Administrative Agent shall have received the Audited Financial Statements, the Interim Financial Statements, the Draft Financial Statements and such other reports, statements and due diligence items as the Administrative Agent or any Lender shall request.

(d) No Material Adverse Change. There shall not have occurred since December 31, 2022 any event or condition that has had or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(e) Litigation. There shall not exist any action, suit, investigation or proceeding pending or threatened in any court or before an arbitrator or Governmental Authority that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(f) Organization Documents, Resolutions, Etc. Receipt by the Administrative Agent of the following, each of which shall be originals or facsimiles, in form and substance reasonably satisfactory to the Administrative Agent, the Lenders and their respective legal counsel:

(i) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a Responsible Officer of such Loan Party to be true and correct as of the Closing Date;

(ii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent or any Lender may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iii) such documents and certifications as the Administrative Agent or any Lender may reasonably require to evidence that each Loan Party is duly organized or formed, and is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization or formation; and

(iv) with respect to each Danish Loan Party:

(A) A copy of the articles of association of each Danish Loan Party;

(B) A copy of a complete and up-to-date transcript from the Danish Business Authority (in Danish: *Erhvervsstyrelsen*) relating to each Danish Loan Party;

(C) A copy of a resolution of the Board of Directors of each Danish Loan Party: (x) approving the terms of, and the transactions contemplated by, the Loan Documents to which it is a party and resolving that it execute, deliver and perform the Loan Documents to which it is a party; (y) authorizing a specified person or persons to execute the Loan Documents to which it is a party on its behalf; and (z) authorizing a specified person or persons, on its behalf, to sign/and or dispatch all documents and notices to be signed and/or dispatched by it under or in connection with the Loan Documents to which it is a party;

(D) A specimen of the signature of each person authorized to execute any Loan Document and other documents and notices to be signed and/or dispatched by it under or in connection with the Loan Documents to which it is a party; and

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(E) A certificate of each Danish Loan Party: (x) confirming that borrowing or guaranteeing or securing, as appropriate, the Loans and the Commitments would not cause any borrowing, guaranteeing, securing or similar limit binding on such Danish Loan Party to be exceeded; and (y) certifying that each copy document relating to it specified in this Section 5.01(f)(iv) is correct, complete and in full force and effect as at a date no earlier than the Closing Date.

(g) Perfection and Priority of Liens. Receipt by the Administrative Agent of the following:

(i) searches of Uniform Commercial Code filings in the jurisdiction of formation of each U.S. Loan Party or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist other than Permitted Liens;

(ii) Uniform Commercial Code financing statements for each appropriate jurisdiction as is necessary, in the Required Lenders' sole discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iii) all certificates evidencing any certificated Equity Interests pledged to the Administrative Agent pursuant to the Pledge Agreement, together with duly executed in blank and undated stock powers attached thereto;

(iv) searches of ownership of, and Liens on, the Intellectual Property owned by each U.S. Loan Party in the appropriate governmental offices;

(v) duly executed notices of grant of security interest in the form required by the Security Agreement as are necessary, in the Required Lenders' reasonable discretion, to perfect the Administrative Agent's security interest in the U.S. federal patents, copyrights, trademarks and trademark applications owned by the U.S. Loan Parties; and

(vi) subject to Section 7.21, such Account Control Agreements as shall be necessary to cause the Loan Parties to be in compliance with Section 7.16.

(h) [Reserved].

(i) Evidence of Insurance. Subject to Section 7.21, receipt by the Administrative Agent of copies of insurance policies or certificates of insurance of the Loan Parties evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, naming the Administrative Agent as additional insured (in the case of liability insurance) or lender's loss payee (in the case of hazard insurance) on behalf of the Secured Parties.

(j) Closing Certificate. Receipt by the Administrative Agent of a certificate signed by a Responsible Financial Officer of the Borrower certifying (i) that the conditions specified in Sections 5.01(d), (e) and (l) and Sections 5.02(a) and (b) have been satisfied, (ii) that the Borrower and its Subsidiaries (immediately after giving effect to the transactions contemplated hereby and the incurrence of Indebtedness related thereto) are Solvent on a consolidated basis and (iii) that neither the Borrower nor any Subsidiary as of the Closing Date has outstanding any Disqualified Capital Stock.

(k) Existing Indebtedness. Subject to Section 7.21, all of the existing Indebtedness for borrowed money of the Borrower and its Subsidiaries (excluding Indebtedness permitted to exist under Section 8.03) shall be repaid in full and all security interests related thereto shall be terminated on or prior to the Closing Date.

(l) Governmental and Third Party Approvals. The Borrower and its Subsidiaries shall have received all material governmental, shareholder and third party consents and approvals necessary in connection with the transactions contemplated by this Agreement and the other Loan Documents and the other transactions contemplated hereby and all applicable waiting periods shall have expired without any action being taken by any Person that could reasonably be expected to restrain, prevent or impose any material adverse conditions on the Borrower or any of its Subsidiaries or such other transactions or that could seek to threaten any of the foregoing, and no law or regulation shall be applicable which could reasonably be expected to have such effect.

(m) Letters of Direction. Receipt by the Administrative Agent of satisfactory letters of direction containing funds flow information with respect to the proceeds of the Loans to be made on the Closing Date.

(n) Fees. Receipt by the Administrative Agent and the Lenders of any fees or original issue discount required to be paid on or before the Closing Date (including, for the avoidance of doubt, pursuant to the Fee Letters).

(o) Attorney Costs; Due Diligence Expenses. The Borrower shall have paid all reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent and counsel to each Lender and all reasonable and documented due diligence expenses of the Lenders, in each case, incurred prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided, that, such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent), in each case, to the extent specified in any separate funds flow or funding direction letters entered into between the Borrower and the Lenders.

(p) Other. Receipt by the Administrative Agent and the Lenders of such other documents, instruments, agreements and information as reasonably requested by the Administrative Agent or any Lender, including, but not limited to, information regarding litigation, tax, accounting, labor, insurance, pension liabilities (actual or contingent), real estate leases, material contracts, debt agreements, property ownership, environmental matters, contingent liabilities, commercial trends, pipeline indications and associated clinical data, competitive landscape, regulatory exclusivity, intellectual property and management of the Borrower and its Subsidiaries.

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Without limiting the generality of the provisions of the penultimate paragraph of Section 10.03, for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### 5.02 Conditions to all Borrowings.

The obligation of each Lender to honor any Loan Notice is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article VI or any other Loan Document, shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) on and as of the date of such Borrowing, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (and in all respects if any such representation or warranty is already qualified by materiality or reference to Material Adverse Effect) as of such earlier date, and except that for purposes of this Section 5.02, the representations and warranties contained in clauses (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01.

(b) No Default or Event of Default shall exist or would result from such proposed Borrowing or from the application of the proceeds thereof.

(c) With respect to each Term B Borrowing, to the extent requested by any Lender, the Administrative Agent shall have received the executed counterpart of the Term B Note, properly executed by a Responsible Officer of the Borrower and in form and substance reasonably satisfactory to the Administrative Agent and the Lenders.

(d) With respect to the Term C Borrowing, (i) the Term C Draw Condition shall have been satisfied and (ii) to the extent requested by any Lender, the Administrative Agent shall have received the executed counterpart of the Term C Note, properly executed by a Responsible Officer of the Borrower and in form and substance reasonably satisfactory to the Administrative Agent and the Lenders.

(e) With respect to each Term B Borrowing and the Term C Borrowing, receipt by the Administrative Agent of a reasonably satisfactory letter of direction containing funds flow information with respect to the proceeds of the Loans to be advanced on the applicable Term B Borrowing Date and the Term C Borrowing Date, as the case may be.

(f) With respect to each Term B Borrowing and the Term C Borrowing, receipt by the Administrative Agent and the Lenders of any fees and original issue discount required to be paid on or before the applicable Term B Borrowing Date and the Term C Borrowing Date, as the case may be (including, in each case, for the avoidance of doubt, pursuant to the Fee Letters).

(g) With respect to each Term B Borrowing and the Term C Borrowing, the Borrower shall have paid all reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent and counsel to the Lenders, in each case, incurred prior to the applicable Term B Borrowing Date or the Term C Borrowing Date, as the case may be, and in each case to the extent invoiced to the Borrower at least two (2) Business Days prior to the Term B Borrowing Date or the Term C Borrowing Date, as the case may be, and solely to the extent required under Section 11.04 hereof.

(h) The Administrative Agent shall have received a Loan Notice in accordance with the requirements hereof.

Each Loan Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a), (b), and (d)(i), (if applicable) have been satisfied on and as of the date of the applicable Borrowing.

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## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

The Loan Parties represent and warrant to the Administrative Agent and the Lenders that:

#### 6.01 Existence, Qualification and Power.

Each Loan Party and each of its Subsidiaries (a) is duly incorporated, organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### 6.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not (a) contravene the terms of any of such Person's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (c) violate, in any material respect, any Law (including, without limitation, Regulation U or Regulation X issued by the FRB), except with respect to any conflict, breach or contravention or payment (but not creation of Liens) referred to in clause (b)(i), to the extent that such conflict, breach, contravention or payment could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

#### 6.03 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document other than (a) those that have already been obtained and are in full force and effect, (b) filings to perfect the Liens created by the Collateral Documents, (c) the filing of any applicable notices under securities laws and (d) the payment of Florida documentary stamp tax required by law which as of the Closing Date is not yet due and payable.

#### 6.04 Binding Effect.

Each Loan Document has been duly executed and delivered by each Loan Party that is party thereto. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, subject to applicable Debtor Relief Laws or other Laws affecting creditors' rights generally and subject to general principles of equity.

#### 6.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements, other than solely with respect to the Material Weakness Restatement, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, commitments and Indebtedness.

(b) The Interim Financial Statements (other than solely with respect to the Material Weakness Restatement) and the Draft Financial Statements, in each case, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments, and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, material commitments and Indebtedness.

(c) From the date of the Audited Financial Statements to and including the Closing Date, there has been no Disposition by any Loan Party or any Subsidiary, or any Involuntary Disposition, of any material part of the business or property of any Loan Party or any Subsidiary, and no purchase or other acquisition by any of them of any business or property (including any Equity Interests of any other Person) material to any Loan Party or any Subsidiary, in each case, which is not reflected in the foregoing financial statements or in the notes thereto and has not otherwise been disclosed in writing to the Lenders on or prior to the Closing Date.

(d) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

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#### 6.06 Litigation.

There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Loan Parties, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

#### 6.07 No Default.

(a) Neither any Loan Party nor any Subsidiary is in default under or with respect to any Contractual Obligation that could reasonably be expected to have a Material Adverse Effect.

(b) No Default has occurred and is continuing.

#### 6.08 Ownership of Property; Liens.

Each Loan Party and its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of each Loan Party and its Subsidiaries is subject to no Liens, other than Permitted Liens.

#### 6.09 Environmental Compliance.

Except as could not reasonably be expected to have a Material Adverse Effect:

(a) Each of the Facilities and all operations at the Facilities are in compliance with all applicable Environmental Laws, and there is no violation of any Environmental Law with respect to the Facilities or the Businesses, and there are no conditions relating to the Facilities or the Businesses that could give rise to liability under any applicable Environmental Laws.

(b) None of the Facilities contains, or has previously contained any Hazardous Materials at, on or under the Facilities in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, Environmental Laws.

(c) Neither any Loan Party nor any Subsidiary has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Facilities or the Businesses, nor does any Responsible Officer of any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) Hazardous Materials have not been transported or disposed of from the Facilities, or generated, treated, stored or disposed of at, on or under any of the Facilities or any other location, in each case, by or on behalf of any Loan Party or any Subsidiary in violation of, or in a manner that would be reasonably likely to give rise to liability under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Loan Parties, threatened, under any Environmental Law to which any Loan Party or any Subsidiary is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to any Loan Party, any Subsidiary, the Facilities or the Businesses.

(f) There has been no release or threat of release of Hazardous Materials at or from the Facilities, or arising from or related to the operations (including, without limitation, disposal) of any Loan Party or any Subsidiary in connection with the Facilities or otherwise in connection with the Businesses, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

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#### 6.10 Insurance.

(a) The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of such Persons, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates. The insurance coverage of the Loan Parties and their Subsidiaries as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 6.10.

(b) Each Loan Party and each of its respective Subsidiaries maintains, if available, fully paid flood hazard insurance on all real property that is located in a special flood hazard area and that constitutes Collateral, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise reasonably required by the Administrative Agent or the Required Lenders.

#### 6.11 Taxes.

The Loan Parties and their respective Subsidiaries have filed all federal, state and other material Tax returns and reports required to have been filed, and have paid all federal, state and other taxes, assessments, fees and other governmental charges that have been levied or imposed upon them or their properties, income or assets otherwise due and payable (including in their capacity as a Withholding Agent), except (a) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP and (b) to the extent that the failure to do so could not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

#### 6.12 ERISA Compliance.

(a) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each Plan is in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state laws and (ii) each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Internal Revenue Code or an application for such a letter is currently being processed by the Internal Revenue Service or is entitled to reply on the opinion or advisory letter issued by the Internal Revenue Service to the sponsor or a preapproved plan document, and to the knowledge of the Loan Parties, nothing has occurred that would prevent, or cause the loss of, such tax-qualified status.

(b) There are no pending or, to the knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. The Borrower has not engaged in any prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan, in any case, that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as has not resulted in and could not be reasonably expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred and neither the Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan, (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained and (iii) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid.

#### 6.13 Subsidiaries and Capitalization.

(a) Set forth on Schedule 6.13(a) is a complete and accurate list as of the Closing Date of each Subsidiary, together with (i) jurisdiction of organization, (ii) number of shares of each class of Equity Interests outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by any Loan Party or any Subsidiary, (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto and (v) identification of each Subsidiary that is an Excluded Subsidiary. The outstanding Equity Interests of each Subsidiary are validly issued, fully paid and non-assessable.

(b) As of the Closing Date, except as described on Schedule 6.13(b), there are no outstanding commitments or other obligations of the Borrower or any Subsidiary to issue, and no rights of any Person to acquire, any shares of any Equity Interests of the Borrower or any of its Subsidiaries. All issued and outstanding Equity Interests of the Borrower and each of its Subsidiaries is duly authorized and validly issued, fully paid and non-assessable and such Equity Interests were issued in compliance with all applicable Laws.

#### 6.14 Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 8.01 or Section 8.05 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 9.01(e) will be margin stock.

(b) No Loan Party is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

#### 6.15 Disclosure.

Each Loan Party has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether written or oral) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, that, with respect to financial projections, estimates, budgets or other forward-looking information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time such information was prepared (it being understood that such information is as to future events and is not to be viewed as facts, is subject to significant uncertainties and contingencies, many of which are beyond the control of the

Borrower and its Subsidiaries, that no assurance can be given that any particular projection, estimate, budget or forecast will be realized and that actual results during the period or periods covered by any such projections, estimate, budgets or forecasts may differ significantly from the projected results and such differences may be material).

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#### 6.16 Compliance with Laws.

Each Loan Party and each Subsidiary is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

#### 6.17 Intellectual Property; Licenses, Etc.

(a) Schedule 6.17(a) sets forth a complete and accurate list of all (i) Patents, (ii) Trademarks and (iii) other registered items of Material Intellectual Property, in each case of the foregoing clauses (i) through (iii), that (A) is owned or controlled by any Loan Party or any Subsidiary or (B) constitutes Material Intellectual Property and is being in-licensed by any Loan Party or any Subsidiary. For each item of Intellectual Property listed on Schedule 6.17(a), the Loan Parties have, where relevant, indicated on such schedule the owner of record, jurisdiction of application and/or registration, the application numbers, the registration or patent numbers or patent application numbers, and the date of application and/or registration. Schedule 6.17(a) also sets forth a complete and accurate list of all Material Contracts that are license agreements (inbound or outbound) of any of the foregoing items of Intellectual Property.

(b) Schedule 6.17(b) sets forth, on a Product-by-Product basis, for each Material Product, a complete and accurate list of all Product-Specific Patents, and, to the knowledge of the Loan Parties, in each such listed Product-Specific Patent there is at least one valid claim that, but for a Loan Party or any Subsidiary's rights under such Patents, would be infringed by making, using, selling, offering for sale, importing or otherwise commercializing such Material Product.

(c) With respect to all Material Intellectual Property:

(i) each Loan Party and its respective Subsidiaries, as applicable, owns or has a valid license to such Intellectual Property free and clear of any and all Liens other than Permitted Liens;

(ii) each Loan Party and its respective Subsidiaries, as applicable, has taken commercially reasonable actions to maintain and protect the Intellectual Property within such Intellectual Property;

(iii) except for rejections issued by a Governmental Authority in the ordinary course of prosecuting Patent or Trademark applications, (A) there is no proceeding challenging the validity or enforceability of any such Intellectual Property, (B) none of the Loan Parties nor any of their respective Subsidiaries is involved in any such proceeding with any Person, (C) none of such Intellectual Property is the subject of any Other Administrative Proceeding, and (D) no Person has made any certification pursuant to the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417), as amended, including but not limited to any such certification pursuant to 21 U.S.C. §355(b)(2)(A)(iv) or 21 U.S.C. §355(j)(2)(A)(vii)(IV), or any reasonably similar or equivalent certification or notice in the United States or any other jurisdiction or any associated litigation (a "Paragraph IV Certification"), asserting the non-infringement, invalidity, or unenforceability of any such Patent owned by or licensed to any Loan Party or any Subsidiary;

(iv) (A) such Intellectual Property is subsisting and, to the knowledge of the Loan Parties, such Intellectual Property is valid and enforceable, (B) regarding any Patent listed or required to be listed on Schedule 6.17(a), no Loan Party or any Subsidiary is in receipt of any opinion of counsel that any such Patent (or any individual claims therein) is invalid or unenforceable, and (C) to the knowledge of the Loan Parties, such Intellectual Property is in full force and effect and has not lapsed, or been forfeited or cancelled or abandoned (except for routine abandonments associated with patent prosecution) and there are no unpaid maintenance, renewal or other fees payable or owing by such Loan Party or Subsidiary for any such Intellectual Property;

(v) to the knowledge of the Loan Parties, regarding any Patent listed or required to be listed on Schedule 6.17(a) and owned by a Loan Party, each individual associated with the filing and prosecution of such Patent has complied in all material respects with all applicable duties of candor and good faith in dealing with any Governmental Authority, including any duty to disclose to any Governmental Authority all information known by such individual to be material to patentability of each such Patent;

(vi) each Loan Party and its respective Subsidiaries, 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;

(vii) to the extent any Intellectual Property within such Intellectual Property was authored, developed, conceived or created, in whole or in part, for or on behalf of any Loan Party or any Subsidiary by any Person, then such Loan Party or Subsidiary has entered into a written agreement with such Person in which such Person has assigned all right, title and interest in and to such Intellectual Property to such Loan Party or Subsidiary, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on such Loan Party or such Subsidiary having ownership of all right, title and interest in and to such Intellectual Property; and

(viii) no such Intellectual Property is subject to any license grant, covenant not to sue, or similar arrangement, in each case, by any Loan Party or Subsidiary, except for (A) license grants between the Loan Parties and (B) those license grants disclosed on Schedule 6.17(a).

(d) To the knowledge of the Loan Parties, no Third Party is committing any act of Infringement of any Material Intellectual Property.

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(e) With respect to each license agreement listed or required to be listed on Schedule 6.17(a), such license agreement (i) is in full force and effect and is binding upon and enforceable against each Loan Party (or each Loan Party's respective Subsidiaries, as applicable) party thereto and, all other parties thereto in accordance with its terms, (ii) has not been amended or otherwise modified, and (iii) to the knowledge of the Loan Parties, has not suffered a material default or breach thereunder. To the knowledge of the Loan Parties, none of the Loan Parties nor any of their respective Subsidiaries has taken or omitted to take any action that would permit any other Person party to any such license agreement to have, and to the knowledge of the Loan Parties, no such Person otherwise has, any defenses, counterclaims or rights of setoff thereunder.

(f) (i) None of the Loan Parties nor any of their respective Subsidiaries nor, to the knowledge of the Loan Parties, any licensees of any Intellectual Property owned by any Loan Party or any Subsidiary has received written notice, or to the knowledge of the Loan Parties any other notice, from any Third Party alleging or any opinion of counsel that the conduct of its business (including any research, development, manufacture, import, use, sale, 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 develop or commercially exploit any Product) Infringes any Intellectual Property of any Third Party, and (ii) to the knowledge of the Loan Parties, the conduct of the business of the Loan Parties and any of their Subsidiaries and any licensees of any Intellectual Property owned by any Loan Party or any Subsidiary (including any research, development, manufacture, import, use, sale, 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 develop or commercially exploit any Product) as currently conducted does not Infringe any Intellectual Property of any Third Party.

(g) Neither any Loan Party nor any Subsidiary has made any assignment or agreement in conflict with the security interest in any Material Intellectual Property of any Loan Party under the Collateral Documents and no Material Contract that is a license agreement with respect to any such Material Intellectual Property conflicts with the security interest granted to the Administrative Agent, on behalf of the Secured Parties, pursuant to the terms of the Collateral Documents. The consummation of the transactions contemplated hereby and the exercise by the Administrative Agent or the Secured Parties of any right or protection set forth in the Loan Documents will not constitute a breach or violation of, or otherwise affect the enforceability or approval of, any Material Contracts associated with any Material Intellectual Property owned or licensed by any Loan Party or Subsidiary.

#### 6.18 Solvency.

The Borrower and its Subsidiaries (immediately after giving effect to the transactions contemplated hereby and the incurrence on or, to the extent outstanding as of such date, prior to, such date of Indebtedness related thereto) are Solvent on a consolidated basis.

#### 6.19 Perfection of Security Interests in the Collateral.

The Collateral Documents create valid security interests in, and Liens on, the Collateral purported to be covered thereby, which security interests and Liens will be, upon the timely and proper filings, deliveries, notations and other actions contemplated in the Collateral Documents perfected security interests and Liens (to the extent that such security interests and Liens can be perfected by such filings, deliveries, notations and other actions), prior to all other Liens other than Permitted Liens.

#### 6.20 Business Locations.

Set forth on Schedule 6.20(a) is a list of all real property that is owned or leased by the Loan Parties as of the Closing Date (with (a) a description of each real property that is Excluded Property and (b) a designation of whether such real property is owned or leased). Set forth on Schedule 6.20(b) is the taxpayer identification number and organizational identification number (in each case, or foreign equivalent) of each Loan Party as of the Closing Date. The exact legal name and jurisdiction of organization of (i) the Borrower is as set forth on the signature pages hereto and (ii) each Guarantor is (A) as set forth on the signature pages hereto, (B) as set forth on the signature pages to the Joinder Agreement pursuant to which such Guarantor became a party hereto or (C) as may be otherwise disclosed by the Loan Parties to the Administrative Agent in accordance with Section 8.12(c). Except as set forth on Schedule 6.20(c), no Loan Party has during the five years preceding the Closing Date, (x) changed its legal name, (y) changed its jurisdiction of organization, or (z) been party to a merger, consolidation or other change in structure.

#### 6.21 Sanctions Concerns; Anti-Corruption Laws; PATRIOT Act.

(a) Sanctions Concerns. No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is fifty percent (50%) or more owned or (where relevant under applicable Sanctions) controlled by one or more individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant Sanctions authority or (iii) located, organized or ordinarily resident in a Designated Jurisdiction. The Loan Parties and their respective Subsidiaries have instituted and maintained policies and procedures reasonably designed to promote compliance with such Sanctions.

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar applicable anti-corruption laws, and have instituted and maintained policies and procedures reasonably designed to promote compliance with such laws.

(c) PATRIOT Act. To the extent applicable, each Loan Party and each Subsidiary is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act.

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## 6.22 Material Contracts.

Set forth on Schedule 6.22 is a complete and accurate list of all Material Contracts of the Loan Parties and their respective Subsidiaries as of the Closing Date, with an adequate description of the parties thereto, and all amendments and modifications thereto as of the Closing Date. Each Material Contract (a) is in full force and effect and is binding upon and enforceable against the Loan Parties and their respective Subsidiaries party thereto and, to the knowledge of the Borrower, all other parties thereto in accordance with its terms, and (b) is not currently subject to any material breach or default by any Loan Party or any Subsidiary or, to the knowledge of the Borrower, any other party thereto. None of the Loan Parties or their respective Subsidiaries has taken or failed to take any action that would permit any other Person party to any Material Contract to have, and, to the knowledge of the Borrower, no such Person otherwise has, any defenses, counterclaims or rights of setoff thereunder. None of the Material Contracts are non-assignable by their terms (other than those certain agreements separately noted in Schedule 6.22 as being non-assignable) or as a matter of law or prevent the granting of a security interest therein.

## 6.23 Compliance of Products.

(a) The Loan Parties and their Subsidiaries, either directly or through their Product Distributors, have obtained all Regulatory Authorizations necessary to conduct the business as presently conducted, except where the lack of such Regulatory Authorizations could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on any Product Development and Commercialization Activities. All Regulatory Authorizations with respect to Material Products that are held by the Loan Parties and their respective Subsidiaries and Product Distributors are legally and beneficially owned exclusively by one of the Loan Parties or their respective Subsidiaries or Product Distributors, free and clear of all Liens other than Permitted Liens. All Regulatory Authorizations held by the Loan Parties are valid and in full force and effect, except where the failure of any Regulatory Authorization to be valid or in full force and effect, individually or in the aggregate, could not be reasonably expected to have a material adverse effect on any Product Development and Commercialization Activities.

(b) In the past three (3) years, except where the failure to do so could not reasonably be expected to result in the termination or restriction of a Material Regulatory Authorization, all applications, notifications, submissions, information, claims, reports, amendments, modifications, supplements, or notices submitted in connection with any and all requests for a Regulatory Authorization from the FDA, the EMA or other Regulatory Agency relating to any Loan Party or any Subsidiary or any of their respective Products, when submitted to the FDA, the EMA or other Regulatory Agency were true, complete and correct in all material respects as of the date of submission (or were corrected in or supplemented by a subsequent submission). In the past three (3) years, to the knowledge of the Loan Parties, (i) there has been no material untrue statement of fact and/or no fraudulent statement made by the Loan Parties or their respective Subsidiaries or Product Distributors (as relating to Material Products), or any of their respective agents or representatives to the FDA, the DEA, the EMA or any other Regulatory Agency, and (ii) there has been no failure to disclose any material fact required to be disclosed, commission of an act, making of a statement, or failure to make a statement to the FDA, the DEA, the EMA or any other Regulatory Agency that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(c) Except as could not reasonably be expected to result in a material adverse effect on any Product Development and Commercialization Activities:

(i) The Products, as well as the business of the Loan Parties and their respective Subsidiaries and, to the knowledge of the Borrower, Product Distributors (as relating to Material Products), comply with (A) all applicable Laws of the FDA, the DEA, the EMA and any other applicable Regulatory Agency, including, without limitation, all applicable requirements of the FDCA, the Controlled Substances Act, similar state Laws, and similar Laws of any country, jurisdiction or Governmental Authority other than the United States and (B) all applicable, Regulatory Authorizations, and all other Permits;

(ii) During the past three (3) years, no Loan Parties, their respective Subsidiaries nor, to the knowledge of the Borrower, their respective Product Distributors (as relating to Material Products) have received: any FDA Form 483, warning letter, untitled letter or similar written correspondence or notice with respect to any Product or the manufacture, processing, packing, distribution, or holding thereof, as well as the business of the Loan Parties and their respective Subsidiaries or relevant Product Distributors (as relating to Material Products), from any Regulatory Agency that assert lack of compliance with any applicable Laws;

(iii) During the past three (3) years, no Loan Parties nor their respective Subsidiaries nor, to the knowledge of the Borrower, their respective Product Distributors or suppliers (as relating to Material Products) have received any written notice of, and does not otherwise have knowledge of, any pending regulatory enforcement action, investigation or inquiry from any Regulatory Agencies (other than non-material routine or periodic inspections or reviews) against the Loan Parties or any of their respective Subsidiaries or any of their respective Product Distributors or suppliers (as relating to Material Products) alleging or asserting noncompliance with the FDCA, Controlled Substances Act, or similar Laws related to the Product Development and Commercialization Activities; and

(iv) During the past three (3) years, (A) no Loan Party or Subsidiary or to the knowledge of the Loan Parties with respect to Material Products, no Product Distributor or supplier of any Loan Party has issued any Safety Notices and (B) to the Loan Parties' knowledge, there are no facts that would be reasonably likely to result in (1) a material Safety Notice with respect to the Products, or (2) a termination or suspension of marketing of any of the Products.

(d) In the past three (3) years, except as could not reasonably be expected, individually or in the aggregate to result in a material adverse effect on any Product Development and Commercialization Activities, none of the Loan Parties or their respective Subsidiaries nor, to the knowledge of the Loan Parties, any Product Distributors (as relating to Material Products) has received any written notice of proceedings from any Regulatory Agency with respect to (i) any material adverse change in any applicable Regulatory Authorization, or any failure to materially comply with any term or requirement of any applicable Regulatory Authorization or (ii) any revocation, withdrawal, suspension, cancellation, limitation, termination or modification of any applicable Regulatory Authorization.

(e) In the past three (3) years, except as could not reasonably be expected, either individually or in the aggregate, to result in a material adverse effect on any Product Development and Commercialization Activities: (i) all studies, tests, preclinical trials and clinical trials conducted by or on behalf of or for the benefit of any Loan Party or any of its respective Subsidiaries with respect to any Product have been conducted in material compliance with applicable Laws, including applicable cGCPs, (ii) no Loan Party nor any of their respective Subsidiaries has received any notice from the FDA, the EMA or any other Regulatory Agency alleging any material non-compliance with applicable Laws, including applicable cGCPs or otherwise terminating or suspending any clinical trial conducted by or on behalf of or for the benefit of such Loan Party or Subsidiary with respect to any Product and (iii) none of the Loan Parties nor their respective Subsidiaries, or, to the knowledge of the Loan Parties with respect to Material Products, any of their respective Product Distributors, licensees, licensors or third party services providers or consultants, has received from the FDA, the EMA or other applicable Regulatory Agency any notices or correspondence requiring the termination, suspension or material modification of any studies, tests or clinical trials in which the Products have participated.



(f) In the past three (3) years, neither the Borrower nor any Subsidiary nor, to the knowledge of any Loan Party, any Product Distributor has experienced any failures in the manufacturing of any Material Product for commercial sale that could reasonably be expected, individually or in the aggregate, to result in a material adverse effect on any Product Development and Commercialization Activities.

(g) None of the Products is currently, and have not for the past six (6) years been, the subject of any claim or allegation, formal or informal, that any Product, or its use, is defective or has resulted in or proximately caused any material injury to any Person or property.

(h) During the past three (3) years, no Loan Party, any of their respective Subsidiaries or, to the knowledge of the Loan Parties, any relevant Product Distributor (as related to Products) has received any written notice from the United States Department of Justice, any U.S. Attorney, any State Attorney General, or other similar federal, state, or foreign Governmental Authority alleging any material violation of the Federal Anti-kickback Statute (42 U.S.C. Section 1320a-7b), the Federal False Claims Act (31 U.S.C. Section 3729-3733), the Foreign Corrupt Practices Act of 1977 (15 U.S.C. Section 78dd-1, et seq.), any federal Law, or state or foreign Law. No Loan Party nor any of their respective Subsidiaries is aware of a material violation of any such Law.

(i) The transactions contemplated by the Loan Documents and the exercise by the Administrative Agent or the Secured Parties of any right or protection set forth in the Loan Documents will not (i) constitute a breach or violation of, or otherwise materially affect, the enforceability or approval of any Regulatory Authorization with respect to the Material Products or (ii) impair the Loan Parties' ownership of or rights under (or the license or other right to use, as the case may be) any Regulatory Authorizations with respect to the Material Products in any material manner.

(j) No Loan Party nor any of their respective Subsidiaries or any Product Distributor on behalf of any Loan Party or Subsidiary is enrolled in or currently receives payments from any federal or state government or private healthcare reimbursement program or has ever been terminated from any federal or state government or private healthcare reimbursement program (including Medicare or Medicaid) or otherwise had its rights to receive payments from any government or private healthcare reimbursement program adversely affected as a result of any investigation or enforcement action, whether by any Governmental Authority or other Third Party.

(k) During the past three (3) years, no information security or privacy breach event has occurred (including with respect to the Systems of the Loan Parties or their Subsidiaries) that would require notification to any Person by the Loan Parties or their Subsidiaries under any applicable Privacy Laws.

(l) During the past three (3) years, no Loan Party nor any of their respective Subsidiaries nor, to the Loan Parties' knowledge, any individual who is an officer, director, manager, employee, shareholder, agent or managing agent of any Loan Party or any of their respective Subsidiaries, has been convicted of: (i) any federal or state health program-related offense or any other offense related to healthcare or been terminated, excluded or suspended from participation in any such program, or (ii) any crime that has resulted or would reasonably be expected to result in a debarment or exclusion (A) under 21 U.S.C. Section 335a, or (B) any similar applicable Law. No debarment proceedings or investigations in respect of the business of any Loan Party or any of their respective Subsidiaries are pending or, to the Loan Parties' knowledge, threatened against any Loan Party or any of their respective Subsidiaries or any individual who is an officer, director, manager, employee, shareholder, agent or managing agent of any Loan Party or any of their respective Subsidiaries.

(m) As of the Closing Date, all Products of the Borrower and its Subsidiaries are listed on Schedule 1.01 and the Loan Parties have delivered to the Administrative Agent on or prior to the Closing Date copies of all material Regulatory Authorizations relating to such Products issued or outstanding as of the Closing Date.

#### 6.24 Labor Matters.

There are no existing or, to the knowledge of the Loan Parties, threatened strikes, lockouts or other labor disputes involving the Borrower or any Subsidiary that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, hours worked by and payment made to employees of the Loan Parties and their respective Subsidiaries are not in violation of the Fair Labor Standards Act or any other applicable law, rule or regulation dealing with such matters.

#### 6.25 Affected Financial Institution.

Neither any Loan Party nor any Subsidiary is an Affected Financial Institution.

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## 6.26 Regulation H.

No real property subject to a Mortgage is a Flood Hazard Property unless the Administrative Agent (for further distribution to the Lenders) shall have received the following: (a) the applicable Loan Party's written acknowledgment of receipt of written notification from the Administrative Agent (i) as to the fact that such real property subject to a Mortgage is a Flood Hazard Property and (ii) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program, (b) copies of insurance policies or certificates of insurance of the applicable Loan Party evidencing flood insurance reasonably satisfactory to the Administrative Agent and the Required Lenders and naming the Administrative Agent as loss payee on behalf of the Lenders and (c) such other flood hazard determination forms, notices and confirmations thereof as requested by the Administrative Agent (for further distribution to the Lenders). All flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full.

## 6.27 Compliance with Privacy Laws.

To the extent that any Loan Party or any Subsidiary has access to any Personal Information, the Loan Parties and their respective Subsidiaries are in material compliance with all applicable Privacy Laws, and maintain information security processes that (a) include commercially reasonable safeguards for the security, privacy, confidentiality, and integrity of transactions and confidential or proprietary data or Personal Information used, disclosed, or accessed by the Loan Parties and their respective Subsidiaries and (b) are designed to protect against unauthorized access to the Systems of the Loan Parties and their respective Subsidiaries. Neither any Loan Parties nor any Subsidiary has received any written communication from any Governmental Authority that alleges non-compliance with Privacy Laws.

## 6.28 Representations as to Foreign Loan Parties. With respect to each Foreign Loan Party, that:

(a) Such Foreign Loan Party is subject to civil and commercial Laws with respect to its obligations under this Agreement and the other Loan Documents to which it is a party (collectively as to such Foreign Loan Party, the "Applicable Foreign Loan Party Documents"), and the execution, delivery and performance by such Foreign Loan Party of the Applicable Foreign Loan Party Documents constitute and will constitute private and commercial acts and not public or governmental acts. Neither such Foreign Loan Party nor any of its property has 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, execution or otherwise) under the laws of the jurisdiction in which such Foreign Loan Party is organized and existing in respect of its obligations under the Applicable Foreign Loan Party Documents.

(b) The Applicable Foreign Loan Party Documents are in proper legal form under the Laws of the jurisdiction in which such Foreign Loan Party is organized and existing for the enforcement thereof against such Foreign Loan Party under the Laws of such jurisdiction, and to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Loan Party Documents. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of the Applicable Foreign Loan Party Documents that the Applicable Foreign Loan Party Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which such Foreign Loan Party is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of the Applicable Foreign Loan Party Documents or any other document, except for (i) any such filing, registration, recording, execution or notarization as has been made or is not required to be made until the Applicable Foreign Loan Party Document or any other document is sought to be enforced and (ii) any charge or tax that has been timely paid.

(c) There is no Tax imposed by any Governmental Authority in or of the jurisdiction in which such Foreign Loan Party is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Loan Party Documents or (ii) on any payment to be made by such Foreign Loan Party pursuant to the Applicable Foreign Loan Party Documents, except as has been disclosed to the Administrative Agent (for further disclosure to the Lenders).

(d) The execution, delivery and performance of the Applicable Foreign Loan Party Documents executed by such Foreign Loan Party are, under applicable foreign exchange control regulations of the jurisdiction in which such Foreign Loan Party is organized and existing, not subject to any notification or authorization except (i) such as have been made or obtained or (ii) such as cannot be made or obtained until a later date (provided, that, any notification or authorization described in clause (ii) shall be made or obtained as soon as is reasonably practicable).

(e) Under the Laws of the jurisdiction in which such Foreign Loan Party is incorporated it is not necessary that the Loan Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Loan Documents or the transactions contemplated by the Loan Documents.

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ARTICLE VII

AFFIRMATIVE COVENANTS

Until the Facility Termination Date, the Loan Parties shall and shall cause each Subsidiary to:

7.01 Financial Statements.

Deliver to the Administrative Agent (for further distribution to the Lenders), in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) as soon as available, and in any event within one hundred and five (105) days after the end of each fiscal year of the Borrower (or, if earlier, when required to be filed with the SEC), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of operations, changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders (it being understood and agreed that RSM US LLP and any "Big-4" accounting firm shall be satisfactory to the Required Lenders), which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not (i) be subject to any qualification or exception or any qualification or exception as to the scope of such audit (other than a "going concern" statement, explanatory note or like qualification or exception) or (ii) commencing with the financial statements for the fiscal year ended December 31, 2024, describe a material weakness in the Borrower's internal controls over financial reporting, whether as described in the Material Weakness Restatement or in respect of any other material weakness (as defined and/or interpreted under GAAP) to the extent such material weakness precludes the Borrower from S-3 eligibility due to a failure to meet the SEC S-3 Eligibility Requirements; and

(b) as soon as available, and in any event within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower (or, if earlier, when required to be filed with the SEC), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of operations, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Financial Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

7.02 Certificates; Other Information.

Deliver to the Administrative Agent (for further distribution to the Lenders), in form and detail reasonably satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Financial Officer of the Borrower, certifying compliance with the covenants set forth in Sections 8.16 and 8.17;

(b) as soon as practicable, and in any event not later than sixty (60) days after the commencement of each fiscal year of the Borrower, an annual business plan and budget of the Loan Parties and their Subsidiaries for the then current fiscal year containing, among other things, projections for each quarter of such fiscal year, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the equityholders (other than in their capacities as employees or members of the Board of Directors of any Loan Party) of any Loan Party, and copies of all annual, regular, periodic and special reports and registration statements which a Loan Party may file or be required to file with the SEC (or comparable national agency in any applicable non-U.S. jurisdiction) under Section 13 or 15(d) of the Securities Exchange Act of 1934 (or any foreign equivalent), and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a certificate of a Responsible Financial Officer of the Borrower containing information regarding the amount of all Dispositions, Involuntary Dispositions, Debt Issuances, Extraordinary Receipts and Acquisitions that occurred during the period covered by such financial statements (and in the case of any Disposition or series of related Dispositions, Involuntary Disposition or Extraordinary Receipt, solely to the extent generating Net Cash Proceeds in excess of \$250,000);

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(e) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary, copies of each written notice or other written correspondence received with respect to, or otherwise relating to, any actual or threatened material action, suit, proceeding, claim or dispute with respect to the Material Weakness Restatement;

(f) promptly after the furnishing thereof, copies of any material statement or report furnished to any holder of Indebtedness of any Loan Party or any Subsidiary in excess of the Threshold Amount pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Administrative Agent pursuant to Section 7.01 or any other clause of this Section 7.02;

(g) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary, (i) copies of each written notice or other written correspondence received from the SEC (or comparable national agency in any applicable non-U.S. jurisdiction) concerning any material investigation or possible material investigation or other inquiry (it being understood that any investigation or possible investigation or other inquiry regarding the Material Weakness Restatement shall be deemed to be material for purposes of this clause (i)) by such agency regarding financial or other operational results of any Loan Party or any Subsidiary and (ii) copies of any material written correspondence or any other material written communication from the FDA or any other regulatory body;

(h) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(i) concurrently with the delivery of the financial statements referred to in Sections 7.01(a) and (b), a certificate of a Responsible Officer of the Borrower (i) attaching a supplement to Schedule 6.17(a) as is necessary to cause such schedule to be true and complete in all material respects as of the date of such certificate and (ii) attaching the insurance binder or other evidence of insurance for any insurance coverage of any Loan Party or any Subsidiary that was renewed, replaced or modified during the period covered by such financial statements (to the extent not previously provided to the Administrative Agent);

(j) promptly, and in any event prior to the Borrower or any Subsidiary manufacturing, selling, developing, testing or marketing any Product not then listed on Schedule 1.01, the Loan Parties shall give written notice thereof to the Administrative Agent (which shall include a brief description of such Product, plus copies of all material Regulatory Authorizations relating to such new Product and/or the Borrower's or such Subsidiary's manufacture, sale, development, testing or marketing thereof issued or outstanding as of the date of such notice) along with a copy of an updated Schedule 1.01;

(k) promptly, and in any event within five (5) Business Days after any Loan Party or any Subsidiary or Product Distributor (as relating to Products) obtains any new or additional material Regulatory Authorizations from the FDA (or parallel state or local authorities), or foreign counterparts of the FDA (or parallel state or local authorities), with respect to any Product which has previously been disclosed to the Administrative Agent, the Loan Parties shall promptly give written notice to the Administrative Agent of such new or additional material Regulatory Authorizations along with a copy thereof; and

(l) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary, (i) copies of all subpoenas and written requests for information and other written notices regarding any active or potential material investigation of, or material claim or material litigation against, any Loan Party or any Subsidiary or Product Distributor (with respect to any Material Product) by any Governmental Authority, and (ii) the findings of any inspections of any manufacturing Facilities of any Loan Party, any Subsidiary or any Third Party suppliers or Product Distributors of any Loan Party or any Subsidiary by any Governmental Authority (including any Form 483s and warning letters).

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Documents required to be delivered pursuant to Section 7.01(a) or (b) or this Section 7.02 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 11.02, or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website (including EDGAR), if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided, that: (A) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery by a Lender, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that certain of the Lenders may have personnel who do 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 who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that if requested by the Administrative Agent it will, (x) in good faith, identify that portion of the materials and/or information provided by, or to be provided by, or on behalf of the Borrower hereunder that does not constitute material non-public information with respect to the Borrower or its Affiliates or their respective securities (the "Public Borrower Materials") and (y) clearly and conspicuously mark all Public Borrower Materials "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof (it being understood that by marking Public Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, any Affiliate thereof and the Lenders to treat such Public Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that, to the extent such Public Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07)).

### 7.03 Notices.

- (a) Promptly (and in any event, within three (3) Business Days) notify the Administrative Agent and each Lender of the occurrence of any Default.
- (b) Promptly (and in any event, within ten (10) Business Days) notify the Administrative Agent and each Lender of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.
- (c) Promptly (and in any event, within ten (10) Business Days) notify the Administrative Agent and each Lender of the occurrence of any ERISA Event that has resulted or could reasonably be expected to result in a Material Adverse Effect.
- (d) Promptly (and in any event, within ten (10) Business Days) notify the Administrative Agent and each Lender of any material change in accounting policies or financial reporting practices by the Borrower or any Subsidiary.
- (e) Promptly (and in any event, within ten (10) Business Days) notify the Administrative Agent and each Lender of any litigation, arbitration or governmental investigation or proceeding not previously disclosed by the Loan Parties which has been instituted (or, in each case, any material development with respect thereto) or, to the knowledge of the Loan Parties, is threatened in writing, with respect to any Product or against any Loan Party or any Subsidiary or to which any of the properties of any thereof is subject which could reasonably be expected to result in losses and/or expenses in excess of the Threshold Amount.
- (f) Promptly (and in any event within five (5) Business Days) notify the Administrative Agent of any return, recovery, dispute or claim related to any Material Product that could reasonably be expected to result in liability in excess of \$2,500,000.
- (g) Promptly (and in any event, within five (5) Business Days) notify the Administrative Agent (for further distribution to the Lenders) after (i) any Loan Party or any Subsidiary enters into a new Material Contract or (ii) an existing Material Contract is amended or terminated.

Each notice pursuant to this Section 7.03(a) through (g) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the applicable Loan Party has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

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#### 7.04 Payment of Obligations.

Pay and discharge all its obligations and liabilities, including (a) prior to the date on which penalties attach thereto, all federal and state and other Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets (including in its capacity as a Withholding Agent), unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Loan Party or such Subsidiary, except to the extent that the failure to do so could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (b) as the same shall become due and payable, all lawful claims which, if unpaid, would by law become a Lien upon its property (other than Permitted Liens), and (c) prior to the date on which such Indebtedness shall become delinquent or in default, all material Indebtedness, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

#### 7.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 8.04 or Section 8.05 except (other than with respect to the Borrower) to the extent that the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Preserve, renew and maintain in full force and effect its good standing under the Laws of the jurisdiction of its organization, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) Take all commercially reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

#### 7.06 Maintenance of Properties.

(a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(c) Use the standard of care typical in the industry in the operation and maintenance of its Facilities.

#### 7.07 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

(b) Without limiting the foregoing, (i) maintain, if available, fully paid flood hazard insurance on all real property that is located in a special flood hazard area and that constitutes Collateral, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise reasonably required by the Administrative Agent or the Required Lenders, (ii) furnish to the Administrative Agent evidence of the renewal (and payment of renewal premiums therefor) of all such policies prior to the expiration or lapse thereof, and (iii) furnish to the Administrative Agent prompt written notice of any redesignation of any such improved real property into or out of a special flood hazard area.

(c) Subject to Section 7.21, use commercially reasonable efforts to (i) cause the Administrative Agent and its successors and/or assigns to be named as lender's loss payee or mortgagee as its interest may appear, and/or additional insured with respect to any such U.S. general liability or U.S. general property insurance held by a U.S. Loan Party that provides liability coverage or coverage in respect of any Collateral (which, for the avoidance of doubt, shall not include any directors and officers policies, workers compensation, business interruption policies or cyber policies) and (ii) cause each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent, that it will give the Administrative Agent thirty (30) days (or such lesser amount as the Required Lenders may agree) prior written notice before any such policy or policies shall be adversely altered or canceled (it being understood that the Loan Parties shall have forty-five (45) days (or such longer period as the Administrative Agent may agree in its reasonable discretion) after entering into any such insurance policy after the Closing Date to comply with this Section 7.07(c)); provided, that, unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have exercised its rights pursuant to Section 9.02 of this Agreement, (A) all proceeds from insurance policies shall be paid to the Borrower or applicable Loan Party, (B) to the extent the Administrative Agent receives any proceeds under any insurance policy of the Borrower or any Subsidiary, the Administrative Agent shall promptly turn over to the Borrower any amounts received by it, and (C) the Administrative Agent and the Lenders agree that the Borrower and/or its Subsidiaries shall have the sole right to adjust or settle any claims under such insurance.

(d) Promptly notify the Administrative Agent of any real property subject to a Mortgage that is, or becomes, a Flood Hazard Property.

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#### 7.08 Compliance with Laws.

Comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted, or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

#### 7.09 Books and Records, etc.

(a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be.

(b) Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.

(c) The Borrower shall (i) promptly (and in any event on or prior to the time of filing of the Borrower's annual report on Form 10-K for the fiscal year ended December 31, 2024) institute (to the extent it has not already done so) and thereafter maintain policies and procedures reasonably designed to maintain effective control over the Borrower's internal controls over financial reporting (as such term is used in Item 308 of Regulation S-K promulgated under the Securities Exchange Act of 1934), including the remediation of the material weakness that resulted in the Material Weakness Restatement, and (ii) no later than the time of filing of the Borrower's annual report on Form 10-K for the fiscal year ended December 31, 2024, disclose the steps taken to successfully remediate the material weakness that resulted in the Material Weakness Restatement.

#### 7.10 Inspection Rights.

Permit representatives and independent contractors of the Administrative Agent and each Lender (assuming for the purposes of this Section 7.10 that each Lender and its Affiliates and Approved Funds collectively constitute one Lender) to visit, audit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its officers and independent public accountants, all at the expense of the Borrower and at such reasonable times during normal business hours and as often as may be desired, upon reasonable advance notice to the Borrower; provided, that, so long as no Event of Default exists, (x) without limitation of the foregoing, each Lender (together with its Affiliates) shall have the right to meet with officers of the Loan Parties and their respective Subsidiaries not more frequently than one (1) time per fiscal quarter and (y) the Borrower shall only be required to reimburse the Administrative Agent and the Lenders for one (1) such visit, audit and inspection (excluding any such visits, audits and inspections during the continuance of an Event of Default) by the Administrative Agent and one (1) such visit, audit and inspection (excluding any such visits, audits and inspections during the continuance of an Event of Default) by each Lender, in each case, in any fiscal year; provided, further, however, when an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

#### 7.11 Use of Proceeds.

Use the proceeds of the Loans (a) to refinance existing Indebtedness of the Borrower and its Subsidiaries, (b) to pay fees and expenses in connection with this Agreement and the other Loan Documents, and (c) to fund the development and commercialization of Arimoclomol and Olpruva; provided, that, in no event shall the proceeds of such Loans be used in contravention of any Law or any Loan Document.

#### 7.12 Additional Subsidiaries.

Within forty-five (45) days after the acquisition or formation of any Domestic Subsidiary, and within sixty (60) days after the acquisition or formation of any Foreign Subsidiary (in each case, or such longer period as may be agreed to by the Required Lenders in their sole discretion) (it being understood that any Excluded Subsidiary ceasing to be an Excluded Subsidiary but remaining a Subsidiary shall be deemed to be the acquisition of a Subsidiary for purposes of this Section 7.12):

(a) notify the Administrative Agent thereof in writing, together with the (i) jurisdiction of organization, (ii) number of shares of each class of Equity Interests outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by the Borrower or any Subsidiary and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto; and

(b) cause such Person (other than any Excluded Subsidiary) to (i) become a Guarantor by executing and delivering to the Administrative Agent a Joinder Agreement or such other documents as the Required Lenders shall reasonably request for such purpose, and (ii) deliver to the Administrative Agent documents of the types referred to in Sections 5.01(f) and (g) and, if requested by the Required Lenders, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (i)), all in form, content and scope reasonably satisfactory to the Required Lenders.

#### 7.13 ERISA Compliance.

Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other federal or state law, (b) cause each Plan that is qualified under Section 401(a) of the Internal Revenue Code to maintain such qualification, and (c) make all required contributions to any Plan subject to Section 412, Section 430 or Section 431 of the Internal Revenue Code, in each case, except as could not reasonably be expected to have a Material Adverse Effect.

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#### 7.14 Pledged Assets.

(a) Equity Interests. Cause (i) 100% of the issued and outstanding Equity Interests of each Subsidiary (other than any Excluded Subsidiary) directly owned by a Loan Party and (ii) 65% (or such greater percentage that, due to a change in an applicable Law after the Closing Date, (A) could not reasonably be expected to cause any earnings of such Excluded Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Excluded Subsidiary's United States parent and (B) could not reasonably be expected to cause any material adverse tax consequences) of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treasury Regulations Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treasury Regulations Section 1.956-2(c)(2)) in each Excluded Subsidiary, in each case, directly owned by a Loan Party, in each case, to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent, for the benefit of the Lenders, pursuant to the terms and conditions of the Collateral Documents, together with opinions of counsel and any filings and deliveries necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Required Lenders (it being understood and agreed that no agreement or filing governed by the laws of any jurisdiction other than New York state shall be required in connection with the pledge of any Equity Interests of an Immaterial Foreign Subsidiary (other than any Danish Loan Party)).

(b) Other Property. Cause all property (other than Excluded Property) of each Loan Party to be subject at all times to first priority (subject to Permitted Liens), perfected and, in the case of owned real property, title insured Liens in favor of the Administrative Agent to secure the Obligations pursuant to the Collateral Documents or, with respect to any such property acquired subsequent to the Closing Date, such other additional security documents as the Required Lenders shall request and, in connection with the foregoing, deliver to the Administrative Agent (for further distribution to the Lenders) such other documentation as the Administrative Agent may request including filings and deliveries necessary to perfect such Liens, Organization Documents, resolutions, Real Property Security Documents, and favorable opinions of counsel to such Person, all in form, content and scope reasonably satisfactory to the Required Lenders.

#### 7.15 Compliance with Material Contracts.

(a) Comply with each Material Contract of such Person, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Within forty-five (45) days following the written request of any Lender, use commercially reasonable efforts to conduct any audit expressly permitted by the Azstarys License Agreement.

#### 7.16 Deposit Accounts.

(a) Within thirty (30) days after the acquisition or establishment of any Deposit Account (other than an Excluded Account) by any Loan Party, provide written notice thereof to the Administrative Agent (for further distribution to the Lenders).

(b) Subject to Section 7.21, cause all Deposit Accounts of the Loan Parties (other than Excluded Accounts) at all times to be subject to Account Control Agreements (or an equivalent agreement in any other relevant jurisdiction (to the extent available in such jurisdiction)) or the Danish Account Control Agreement, as the case may be, in each case in form and substance reasonably satisfactory to the Required Lenders (it being understood that the Loan Parties shall have sixty (60) days to comply with this Section 7.16(b), solely with respect to any Deposit Account acquired or established after the Closing Date (such period to be measured from the date of acquisition or establishment)).

(c) Provide the Administrative Agent and the Required Lenders with read only access (to the extent available after the Loan Parties shall have used commercially reasonable efforts to obtain the same) to any and all Deposit Accounts of the Loan Parties (other than Excluded Accounts) (it being understood that (i) the Loan Parties shall have the time period set forth on Schedule 7.21 with respect thereto to comply with this Section 7.16(c), solely with respect to any Deposit Account acquired or established on or prior to the Closing Date and (ii) the Loan Parties shall have sixty (60) days to comply with this Section 7.16(c), solely with respect to any Deposit Account acquired or established after the Closing Date (such period to be measured from the date of acquisition or establishment)).

(d) Within fifteen (15) Business Days of receipt (into (x) a Deposit Account for which the Administrative Agent shall not have received an Account Control Agreement or (y) a Deposit Account that is not a Deposit Account in the United States) by any Loan Party or any Subsidiary of the proceeds of, or other amounts with respect to, a sale, lease, license, transfer or other disposition of a Priority Review Voucher (including with respect to Arimoclomol), cause all such proceeds and amounts to be transferred to a Deposit Account in the United States for which the Administrative Agent shall have received an Account Control Agreement.

(e) If the Borrower or any Subsidiary shall have made any Redemption Payment, at all times thereafter until the Facility Termination Date, maintain Unrestricted Cash of the U.S. Loan Parties in Deposit Accounts for which the Administrative Agent shall have received an Account Control Agreement in the amount required by the defined term "Redemption Conditions".

#### 7.17 Products and Permits.

Either directly or through its Product Distributors, as applicable, obtain, maintain and preserve, comply with in all material respects, and take all necessary action to timely renew all Permits and accreditations which are necessary or material with respect to any Product Development and Commercialization Activities associated with the Products of the Borrower and its Subsidiaries or to the conduct of the business of the Loan Parties and their Subsidiaries, and promptly provide evidence of the same to the Administrative Agent (for further distribution to the Lenders).

#### 7.18 Consent of Licensors.

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Promptly after entering into or becoming bound by any Material Contract after the Closing Date: (a) provide written notice to the Administrative Agent (for further distribution to the Lenders) of the material terms of such Material Contract with a description of its anticipated and projected impact on the business and financial condition of the Loan Parties and their Subsidiaries and (b) in good faith take such commercially reasonable actions as the Required Lenders may reasonably request to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for the Administrative Agent to be granted and perfect a valid security interest in such Material Contract and to fully exercise its rights under any of the Loan Documents with respect to such Material Contract, including in the event of a disposition or liquidation of the rights, assets or property that is the subject of such Material Contract.

#### 7.19 Anti-Corruption Laws.

Conduct its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar applicable anti-corruption legislation in other jurisdictions and maintain policies and procedures designed to promote and achieve compliance with such laws.

#### 7.20 Maintenance of Regulatory Authorizations, Contracts, Intellectual Property, Etc.

(a) With respect to the Products, (i) maintain, either directly or through its Product Distributors, as applicable, in full force and effect all Regulatory Authorizations, contract rights, authorizations or other rights necessary or material for the operations of the business of the Loan Parties and their Subsidiaries and relevant Product Distributors, and comply with the terms and conditions applicable to the foregoing, except where failure to do so could not reasonably be expected to have a material adverse effect on any Product Development and Commercialization Activities; (ii) promptly notify the Administrative Agent (for further distribution to the Lenders) of any Safety Notice conducted, to be undertaken or issued, by such Loan Party, its respective Subsidiaries or its respective Product Distributors or 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 any Loan Party or their respective Subsidiaries or any Product Distributor (as relating to Products), or any basis for undertaking or issuing any such action or item, in each case, that could reasonably be expected to have a material adverse effect on any Product Development and Commercialization Activities; (iii) design, manufacture, store, transport, label, sell, market, and distribute all Products in compliance with applicable Laws, including without limitation, the FDCA and the Controlled Substances Act, except where the failure to do so could not reasonably be expected to have a material adverse effect on any Product Development and Commercialization Activities; (iv) conduct all studies, tests and preclinical and clinical trials relating to the Products in accordance with all cGCPs, and other applicable Laws, except where the failure to do so could not reasonably be expected to have a material effect on any Product Development and Commercialization Activities; and (v) operate all manufacturing Facilities in material compliance with applicable Laws, including without limitation, cGMPs, the Controlled Substances Act, except where the failure to do so could not reasonably be expected to have a material adverse effect on any Product Development and Commercialization Activities.

(b) (i) 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 Material Intellectual Property and all Material Contracts; (ii) promptly notify the Administrative Agent (for further distribution to the Lenders) of any Infringement or other violation by any Person of Material Intellectual Property owned or controlled by such Loan Party or its respective Subsidiaries that a Responsible Officer of a Loan Party is aware or becomes aware of; (iii) use commercially reasonable efforts to pursue, enforce, and maintain (including, where applicable, use commercially reasonable efforts to cause its licensees to pursue, enforce and maintain) in full force and effect legal protection for all Material Intellectual Property, including Patents, developed or controlled by such Loan Party or any of its respective Subsidiaries, including but not limited to: (x) filing and pursuing valid claims in Patents that, but for a Loan Party or any Subsidiary's rights under such Patents, would be infringed by making, using, selling, offering for sale, importing, and otherwise commercializing the Products, (y) participating in and defending against any allegations or claims made by any third party regarding the enforceability or validity of any Patent that is Material Intellectual Property and that is owned by or licensed to any Loan Party or any Subsidiary, and (z) at the Loan Parties' reasonable business judgment, pursuing any applicable patent term extensions (including patent term adjustment (PTA), patent term extension (PTE), and supplementary protection certificates (SPC)) for any Patent within the Material Intellectual Property to the extent provided for under applicable Law; and (iv) promptly notify the Administrative Agent (for further distribution to the Lenders) of any written claim by any Person that the conduct of such Loan Party's or such Subsidiary's business (including any research, development, manufacture, import, use, sale, 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 develop or commercially exploit any Product) or the conduct of any Product Development and Commercialization Activities by any Product Distributor, Infringes any Intellectual Property of that Person and, if reasonably requested by the Administrative Agent, use commercially reasonable efforts to resolve such claim.

(c) Furnish to the Administrative Agent (for further distribution to the Lenders) prompt written notice of the following:

(i) any written notice that the FDA, the EMA or any other Governmental Authority is limiting, suspending or revoking any Regulatory Authorization applicable to any Product, changing the market classification or labeling of or otherwise materially restricting any Product or considering any of the foregoing;

(ii) any Arimoclolmol Complete Response Letter;

(iii) any Loan Party or any Subsidiary becoming subject to any material and adverse administrative or regulatory action, any FDA or EMA inspection or any non-routine inspection by any other Person, receipt of inspectional observations (e.g., on FDA Form 483), warning letter, or notice of violation letter, or any Product being seized, withdrawn, recalled, detained, or subject to a suspension of manufacturing, or the commencement of any proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, suspension, import detention, or seizure of any Product are pending or threatened against any Loan Party or any Subsidiary or any relevant Product Distributor;

(iv) any written recommendation (together with a copy thereof) from any Governmental Authority that any Loan Party or any Subsidiary, or any obligor to which any Loan Party or any Subsidiary provides Products or services, or any Product Distributor, should have its licensure, provider or supplier number, or accreditation suspended, revoked, or limited in any way, or any penalties or sanctions imposed; or

(v) any notice relating to a Paragraph IV Certification concerning any product and asserting the non-infringement, invalidity or unenforceability of any Patent owned by or licensed to any Loan Party or any Subsidiary or any associated litigation.

#### 7.21 Post-Closing Obligations.

Within the time periods set forth on Schedule 7.21, deliver to the Administrative Agent such documents, instruments, certificates or agreements as are listed on Schedule 7.21, in each case in form and substance satisfactory to the Administrative Agent and the Required Lenders.

ARTICLE VIII  
NEGATIVE COVENANTS

Until the Facility Termination Date no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

8.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;
  - (b) Liens existing on the Closing Date and listed on Schedule 8.01 and any renewals or extensions thereof; provided, that, (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 8.03(b), (iii) the direct or any contingent obligor with respect thereto is not changed and (iv) any renewal or extension of the obligations secured or benefited thereby is a Permitted Refinancing permitted by Section 8.03(b);
  - (c) Liens (other than Liens imposed under ERISA) for taxes, assessments or governmental charges or levies not yet delinquent or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
  - (d) Liens in respect of property imposed by requirements of Law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as, without limitation, carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business that are securing obligations (i) not then due, (ii) if due, not yet overdue by more than thirty (30) days, (iii) that if overdue by more than thirty (30) days, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP or (iv) with respect to which the failure to make payment could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;
  - (e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA which has resulted or could reasonably be expected to result in liability, together with any other Lien imposed by ERISA, in an aggregate amount in excess of the Threshold Amount;
  - (f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, indemnity and performance bonds and other obligations of a like nature incurred in the ordinary course of business;
  - (g) easements, rights-of-way, restrictions and other similar encumbrances and title deficiencies affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;
  - (h) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 9.01(h);
  - (i) Liens securing Indebtedness permitted under Section 8.03(e); provided, that: (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, (ii) the Indebtedness secured thereby does not exceed the cost (negotiated on an arm's length basis) or fair market value, whichever is lower, of the property being acquired on the date of acquisition and (iii) such Liens attach to such property concurrently with or within one hundred and eighty (180) days after the acquisition thereof;
  - (j) (i) licenses, sublicenses, leases or subleases (other than relating to Intellectual Property) granted to others in the ordinary course of business not interfering in any material respect with the business of any Loan Party or any Subsidiary and (ii) Permitted Licenses;
  - (k) any interest of title of a lessor under, and Liens arising from Uniform Commercial Code financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, leases permitted by this Agreement;
  - (l) Liens arising in the ordinary course of business by virtue of any contractual, statutory or common law provision relating to banker's Liens, rights of set off or similar rights and remedies covering deposit or securities accounts (including funds or other assets credited thereto) or other funds maintained with a depository institution or securities intermediary, in each case incurred in the ordinary course of business;
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(m) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection;

(n) (i) Liens of sellers of goods to the Borrower and any of its Subsidiaries arising under Article 2 of the Uniform Commercial Code or similar provisions of applicable law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses and (ii) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(o) Liens in favor of customs and revenue authorities arising as a matter of law, in the ordinary course of business, to secure payment of customs duties in connection with the importation of goods;

(p) Liens securing liability for reimbursement or indemnification obligations of the Borrower or any Subsidiary to insurance carriers providing insurance to the Borrower or any Subsidiary arising by virtue of deposits made in the ordinary course of business;

(q) Liens securing Indebtedness permitted pursuant to Section 8.03(i); provided, that, (i) such Liens are not incurred in connection with, or in contemplation or anticipation of, the applicable Permitted Acquisition and do not attach to any other asset of the Borrower or any Subsidiary (other than improvements thereon) and (ii) such Liens secure only those obligations secured on the date of the applicable Permitted Acquisition;

(r) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(s) Liens that are contractual rights of setoff relating to purchase orders entered into with customers, vendors or suppliers of such Person in the ordinary course of business;

(t) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(u) cash deposits securing Indebtedness permitted under Sections 8.03(g)(iii) and 8.03(h); and

(v) other Liens securing other obligations permitted hereunder in an aggregate amount at any time outstanding not to exceed \$500,000.

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## 8.02 Investments.

Make any Investments, except:

- (a) Investments held by the Borrower or any Subsidiary in the form of cash or Cash Equivalents;
- (b) Investments existing as of the Closing Date and set forth in Schedule 8.02;
- (c) (i) Investments by the Borrower and its Subsidiaries consisting of the ownership of Equity Interests in their respective Subsidiaries outstanding on the Closing Date; (ii) Investments in any Person that is a Loan Party (other than a Danish Loan Party), (iii) Investments by Loan Parties in Danish Loan Parties in an aggregate amount not to exceed \$2,000,000 at any one time outstanding, (iv) Investments by any Subsidiary that is not a Loan Party in (A) any other Subsidiary that is not a Loan Party or (B) any Danish Loan Party, and (v) Investments by Loan Parties in Subsidiaries that are not Loan Parties, in an aggregate amount not to exceed \$2,000,000 at any one time outstanding;
- (d) Permitted Acquisitions;
- (e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;
- (f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business and (ii) loans to employees, officers or directors relating to the purchase of Qualified Capital Stock of the Borrower pursuant to employee stock purchase plans approved by the Borrower's Board of Directors, in an aggregate amount for all such Investments made in reliance of this clause (f) not to exceed \$500,000 at any one time outstanding;
- (g) Investments consisting of (i) obligations of any Loan Party or any Subsidiary under Swap Contracts permitted under Section 8.03(d) that are incurred for non-speculative purposes in the ordinary course of business, (ii) negotiable instruments held for collection in the ordinary course of business, (ii) lease, utility and other similar deposits in the ordinary course of business or (iii) Restricted Payments permitted by Section 8.06 (other than by reference to this Section 8.02 (or any sub-clause hereof));
- (h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (i) promissory notes and other non-cash consideration that is permitted to be received in connection with Permitted Transfers or Dispositions permitted by Section 8.05;
- (j) Investments in joint ventures or strategic alliances in the ordinary course of the Borrower's business consisting of the licensing or development of technology (it being understood that for purposes of this clause (j) no Material Product or any Intellectual Property associated therewith shall be considered "technology" (unless such license is a Permitted License)) or the providing of technological support; provided, that, any cash Investments made by the Borrower and its Subsidiaries pursuant to this clause (j) do not exceed \$2,000,000 in the aggregate at any one time outstanding;
- (k) to the extent constituting Investments, advances in respect of transfer pricing, cost-sharing arrangements (i.e., "cost-plus" arrangements) and associated "true-up" payments that are in the ordinary course of business;
- (l) to the extent constituting Investments, Investments in the form of Permitted Bond Hedge Transactions and Permitted Warrant Transactions, in each case, entered into in connection with Permitted Convertible Bond Indebtedness; and
- (m) other Investments not exceeding \$5,000,000 in the aggregate at any one time outstanding.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, in no event shall any Loan Party (x) Dispose of any Material Product (or any Intellectual Property associated therewith), any royalty (or any portion thereof) pursuant to the Azstarys License Agreement or any Material Intellectual Property, in each case, to (A) any Person that is not a Loan Party or (B) any Danish Loan Party or (y) contribute or otherwise invest any Material Product (or any Intellectual Property associated therewith), any royalty (or any portion thereof) pursuant to the Azstarys License Agreement or any Material Intellectual Property, in each case, to (A) any Person that is not a Loan Party or (B) any Danish Loan Party (in each case of clauses (x) and (y)), other than pursuant to a Permitted License).

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### 8.03 Indebtedness.

Create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under the Loan Documents;
  - (b) Indebtedness of the Borrower and its Subsidiaries existing on the Closing Date and described on Schedule 8.03 (and any Permitted Refinancing thereof);
  - (c) intercompany Indebtedness permitted under Section 8.02 (other than by reference to this Section 8.03 (or any sub-clause hereof));
  - (d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract; provided, that, (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;
  - (e) purchase money Indebtedness (including obligations in respect of Capital Leases or Synthetic Leases) hereafter incurred by the Borrower or any Subsidiary to finance the purchase of fixed assets, and renewals, refinancings and extensions thereof; provided, that, (i) the total of all such Indebtedness for all such Persons taken together shall not exceed an aggregate principal amount of \$2,500,000 at any one time outstanding, (ii) such Indebtedness when incurred shall not exceed the purchase price of the asset(s) financed and (iii) no such Indebtedness shall be refinanced for a principal amount in excess of the principal balance outstanding thereon at the time of such refinancing;
  - (f) Guarantees permitted by Section 8.02 (other than by reference to this Section 8.03 (or any sub-clause hereof));
  - (g) Indebtedness in respect of (i) surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantees and similar obligations, (ii) customary indemnification obligations to purchasers in connection with Dispositions permitted by Section 8.05, and (iii) letters of credit (including reimbursement obligations thereunder) issued in the ordinary course of business with respect to the leasing of real property, construction-related activities or other business transactions in the ordinary course of business; provided, that, the aggregate outstanding amount of such letters of credit incurred pursuant to this clause (iii), plus the aggregate outstanding amount of Indebtedness incurred in reliance on Section 8.03(h), shall not exceed \$4,000,000 at any time outstanding;
  - (h) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit processing services, debit cards, stored value cards and purchase cards (including so-called “procurement cards” or “P-cards”) or other cash management services or any automated clearing house transfers of funds, netting services, overdraft protections and otherwise in connection with deposit, securities, and commodities accounts arising in the ordinary course of business and not constituting Indebtedness for borrowed money; provided, that, the aggregate outstanding amount of such Indebtedness, plus the aggregate outstanding amount of Indebtedness, incurred in reliance on Section 8.03(g)(iii), shall not exceed \$4,000,000 at any one time outstanding;
  - (i) Indebtedness of a Subsidiary acquired pursuant to a Permitted Acquisition (or Indebtedness assumed by the Borrower or any Subsidiary pursuant to a Permitted Acquisition as a result of (i) a merger or consolidation or (ii) the acquisition of an asset securing such Indebtedness); provided, that, (A) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Permitted Acquisition and such Indebtedness existed immediately prior to such Permitted Acquisition and (B) the aggregate outstanding amount of all such Indebtedness shall not exceed \$2,500,000 at any one time outstanding;
  - (j) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;
  - (k) Permitted Convertible Bond Indebtedness (and any Permitted Refinancings thereof); and
  - (l) unsecured Indebtedness not otherwise permitted by the foregoing clauses of this Section 8.03, in an aggregate principal amount not to exceed \$2,500,000 at any one time outstanding.
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#### 8.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person; provided, that, notwithstanding the foregoing provisions of this Section 8.04 but subject to the terms of Sections 7.12 and 7.14, (a) the Borrower may merge or consolidate with any of its Subsidiaries; provided, that, the Borrower shall be the continuing or surviving corporation, (b) any Loan Party (other than the Borrower or any Danish Loan Party) may merge or consolidate with any other Loan Party (other than the Borrower or any Danish Loan Party), (c) any Danish Loan Party may be merged or consolidated with or into any Loan Party that is not a Danish Loan Party; provided, that, such Loan Party that is not a Danish Loan Party shall be the continuing or surviving corporation, (d) any Subsidiary that is not a Loan Party may be merged or consolidated with or into any Loan Party; provided, that, such Loan Party shall be the continuing or surviving corporation, (e) any Subsidiary that is not a Loan Party may be merged or consolidated with or into any other Subsidiary that is not a Loan Party and (f) any Subsidiary may dissolve, liquidate or wind up its affairs at any time; provided, that, such dissolution, liquidation or winding up could not reasonably be expected to have a Material Adverse Effect and all of its assets and business are transferred to a Loan Party prior to or concurrently with such dissolution, liquidation or winding up.

#### 8.05 Dispositions.

Make any Disposition unless (a) the consideration paid in connection therewith shall be cash or Cash Equivalents paid contemporaneous with consummation of the transaction and shall be in an amount not less than the fair market value of the property disposed of, (b) no Event of Default shall have occurred and be continuing both immediately prior to and after giving effect to such Disposition, (c) such transaction does not involve the sale or other disposition of a minority equity interest in any Subsidiary, and (d) the aggregate fair market value of all of the assets sold or otherwise disposed of in such Disposition together with the aggregate fair market value of all assets sold or otherwise disposed of by the Borrower and its Subsidiaries in all such transactions occurring during the term of this Agreement does not exceed \$1,000,000 in a fiscal year.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, in no event shall any Loan Party (x) Dispose of any Material Product (or any Intellectual Property associated therewith), any royalty (or any portion thereof) pursuant to the Azstarys License Agreement or any Material Intellectual Property, in each case, to (A) any Person that is not a Loan Party or (B) any Danish Loan Party or (y) contribute or otherwise invest any Material Product (or any Intellectual Property associated therewith), any royalty (or any portion thereof) pursuant to the Azstarys License Agreement or any Material Intellectual Property, in each case, to (A) any Person that is not a Loan Party or (B) any Danish Loan Party (in each case of clauses (x) and (y), other than pursuant to a Permitted License).

#### 8.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to any Loan Party;

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the Qualified Capital Stock of such Person;

(c) (x) the issuance of Qualified Capital Stock of the Borrower upon the exercise of any warrants, options or rights to acquire such Qualified Capital Stock, including upon conversion of any Indebtedness that is convertible into or exchangeable for Qualified Capital Stock of the Borrower, and (y) cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible or exchangeable into Qualified Capital Stock of the Borrower;

(d) the Borrower may make any payment of premium to a counterparty under a Permitted Bond Hedge Transaction in accordance with the definition thereof; and

(e) the Borrower may make any payment in connection with a Permitted Warrant Transaction by (i) delivery of shares of the Borrower's common stock upon net share settlement thereof or (ii) set-off and/or payment of an early termination payment or similar payment thereunder, in each case, in the Borrower's common stock upon any early termination thereof.

Notwithstanding anything to the contrary in the foregoing, the issuance of, performance of obligations under (including any payments of interest), and conversion, exercise, repurchase, redemption (including, for the avoidance of doubt, a required repurchase in connection with the redemption of Permitted Convertible Bond Indebtedness upon satisfaction of a condition related to the stock price of the common stock of the Borrower), settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, common stock, following a merger event or other change of the common stock, other securities or property), or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Convertible Bond Indebtedness shall not be prohibited by this Section 8.06; provided, that, (x) any Redemption Payment shall only be permitted if the Redemption Conditions are satisfied in respect thereof at such time and, with respect to clause (b) of the definition of "Redemption Conditions", satisfied at all times thereafter until the Facility Termination Date and (y) nothing in the foregoing terms and provisions of this paragraph shall permit any voluntary or optional cash payment or prepayment by the Borrower or any Subsidiary with respect to any Permitted Convertible Bond Indebtedness (other than (A) payments of cash interest, (B) cash in lieu of fractional shares and (C) solely to the extent such settlement constitutes a Redemption Payment that complies with the conditions set forth in clause (x) of this proviso, any cash settlement upon conversion).

Notwithstanding the foregoing, this Section 8.06 shall not prohibit the repurchase, exchange or inducement of the conversion of Permitted Convertible Bond Indebtedness to the extent consummated by delivery of Qualified Capital Stock of the Borrower and/or a different series of Permitted Convertible Bond Indebtedness and/or by payment of cash (in an amount that does not exceed the proceeds received by the Borrower from the substantially concurrent issuance of Qualified Capital Stock of the Borrower and/or a different series of Permitted Convertible Bond Indebtedness minus the net cost of any Permitted Bond Hedge Transaction and/or any Permitted Warrant Transactions, in each case, in connection therewith plus the net cash proceeds, if any, received by the Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and/or Permitted Warrant Transactions, if any (so long as the Borrower shall have delivered a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Required Lenders, to the Administrative Agent (for further distribution to the Lenders) certifying as to (x) the receipt of such proceeds and their use to repurchase then existing Permitted Convertible Bond Indebtedness and (y) a reasonably detailed calculation of the amount and sources of such proceeds)).

#### 8.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the Closing Date or any business reasonably related or incidental thereto or a reasonable extension or expansion thereof.

#### 8.08 Transactions with Affiliates and Insiders.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person other than (a) advances of working capital to any Loan Party, (b) transfers of cash and assets to any Loan Party, (c) intercompany transactions not prohibited by Section 8.02, Section 8.03, Section 8.04, Section 8.05 or Section 8.06 (in each case, other than by reference to this Section 8.08 (or any sub-clause hereof)), (d) normal and reasonable compensation, indemnification and reimbursement of expenses of officers and directors in the ordinary course of business or otherwise approved by the Board of Directors of the Borrower, (e) transactions existing on the Closing Date and set forth on Schedule 8.08 and (f) except as otherwise specifically limited in this Agreement, other transactions which are entered into in the ordinary course of such Person's business on terms and conditions substantially as favorable to such Person as would be obtainable by it in a comparable arms-length transaction with a Person other than an officer, director or Affiliate.

#### 8.09 Burdensome Agreements.

Enter into, or permit to exist, any Contractual Obligation that (a) encumbers or restricts the ability of any such Person to (i) make Restricted Payments to any Loan Party, (ii) pay any Indebtedness or other obligations owed to any Loan Party, (iii) make loans or advances to any Loan Party, (iv) transfer any of its property to any Loan Party, (v) pledge its property pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (vi) act as a Loan Party pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i) through (v) above) for (A) this Agreement and the other Loan Documents, (B) any document or instrument governing Indebtedness incurred pursuant to Section 8.03(e); provided, that, any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (C) any Permitted Lien or any document or instrument governing any Permitted Lien; provided, that, any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (D) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 8.05 or any Permitted Transfer pending the consummation of such sale, (E) restrictions that are binding on a Subsidiary at the time such Subsidiary becomes a Subsidiary, so long as such restrictions (x) were not entered into in contemplation of such Person becoming a Subsidiary and (y) only apply to such Subsidiary and not to any other Loan Party or Subsidiary, and (F) customary provisions regarding confidentiality or restricting assignment, pledges or transfer of any agreement entered into by the Borrower or any Subsidiary in the ordinary course of business; provided, that, if such agreement is a Material Contract, the Loan Parties and their Subsidiaries have complied with Section 7.18 or (b) requires the grant of any security for any obligation if such property is given as security for the Obligations.

#### 8.10 Use of Proceeds.

Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

#### 8.11 Prepayment of Other Indebtedness.

(a) Make (or give any notice with respect thereto) any voluntary or optional payment or prepayment or redemption or acquisition for value of (including without limitation, by way of depositing money or securities with the trustee with respect thereto before due for the purpose of paying when due), refund, refinance or exchange of any principal of Indebtedness of any Loan Party or any Subsidiary prior to its scheduled maturity, other than (a) Indebtedness arising under the Loan Documents, (b) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed pursuant to a Permitted Transfer or Disposition permitted by Section 8.05, (c) converting (or exchanging) any Indebtedness to (or for) Qualified Capital Stock of the Borrower, (d) Indebtedness to the extent consummated solely with the proceeds of Permitted Refinancings of such specific Indebtedness being prepaid, redeemed, refunded, refinanced or exchanged as permitted hereunder and (e) Indebtedness of the type permitted by Sections 8.03(e), (g), (h) and (i).

(b) Make (or give any notice with respect thereto) any Redemption Payment prior to the scheduled maturity of any Permitted Convertible Bond Indebtedness (other than (i) any interest due thereon and any fees due thereunder and (ii) cash in lieu of fractional shares).

Notwithstanding anything to the contrary in the foregoing, the issuance of, performance of obligations under (including any payments of interest), and conversion, exercise, repurchase, redemption (including, for the avoidance of doubt, a required repurchase in connection with the redemption of Permitted Convertible Bond Indebtedness upon satisfaction of a condition related to the stock price of the common stock of the Borrower), settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, common stock, following a merger event or other change of the common stock, other securities or property), or the satisfaction of any condition that would permit or require any of the foregoing, any Permitted Convertible Bond Indebtedness shall not be prohibited by this Section 8.11; provided, that, (x) any Redemption Payment in respect thereof shall only be permitted if the Redemption Conditions are satisfied in respect of such Redemption Payment at such time and, with respect to clause (b) of the definition of "Redemption Conditions", satisfied at all times thereafter until the Facility Termination Date and (y) nothing in the foregoing terms and provisions of this paragraph shall permit any voluntary or optional cash payment or prepayment by the Borrower or any Subsidiary with respect to any Permitted Convertible Bond Indebtedness (other than (A) payments of cash interest, (B) cash in lieu of fractional shares and (C) solely to the extent such settlement constitutes a Redemption Payment that complies with the conditions set forth in clause (x) of this proviso, any cash settlement upon conversion).

Notwithstanding the foregoing, this Section 8.11 shall not prohibit the repurchase, exchange or inducement of the conversion of Permitted Convertible Bond Indebtedness to the extent consummated by delivery of Qualified Capital Stock of the Borrower and/or a different series of Permitted Convertible Bond Indebtedness and/or by payment of cash (in an amount that does not exceed the proceeds received by the Borrower from the substantially concurrent issuance of Qualified Capital Stock of the Borrower and/or a different series of Permitted Convertible Bond Indebtedness minus the net cost of any Permitted Bond Hedge Transaction and/or any Permitted Warrant Transactions, in each case, in connection therewith plus the net cash proceeds, if any, received by the Borrower pursuant to the related exercise or early unwind or termination of the related Permitted Bond Hedge Transactions and/or Permitted Warrant Transactions, if any (so long as the Borrower shall have delivered a certificate of a Responsible Officer of the Borrower, in form and substance reasonably satisfactory to the Required Lenders, to the Administrative Agent (for further distribution to the Lenders) certifying as to (x) the receipt of such proceeds and their use to repurchase then existing Permitted Convertible Bond Indebtedness and (y) a reasonably detailed calculation of the amount and sources of such proceeds)).

8.12 Organization Documents; Fiscal Year; Legal Name, Jurisdiction of Organization and Form of Organization; Certain Amendments.

- (a) Amend, modify or change its Organization Documents in a manner materially adverse to the Administrative Agent or any Lender.
- (b) Change its fiscal year.
- (c) Without providing ten (10) days prior written notice to the Administrative Agent, change its name, jurisdiction of organization or form of organization.
- (d) Amend, change, supplement, waive or otherwise modify (or permit the amendment, change, supplement, waiver or modification of), or enter into any forbearance from exercising any rights with respect to, any Material Contract or any document or other agreement evidencing Indebtedness in excess of the Threshold Amount, in each case, in any manner materially adverse to the Administrative Agent or any Lender, in their respective capacities as such.

8.13 Ownership of Subsidiaries.

Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than any Loan Party or any Wholly Owned Subsidiary) to own any Equity Interests of any Subsidiary, except to qualify directors where required by applicable law or to satisfy other requirements of applicable law with respect to the ownership of Equity Interests of Foreign Subsidiaries, (b) permit any Loan Party or any Subsidiary to issue or have outstanding any shares of Disqualified Capital Stock or (c) create, incur, assume or suffer to exist any Lien on any Equity Interests of any Subsidiary, except for Permitted Liens.

8.14 Sale Leasebacks.

Enter into any Sale and Leaseback Transaction.

8.15 Sanctions; Anti-Corruption Laws.

(a) Directly or, to the extent there is knowledge or reason to know, indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds of any Loan to any Person, (i) to fund any activities of or business with any Person, that, at the time of such funding, is the subject of Sanctions, except to the extent permissible for a Person required to comply with Sanctions, or (ii) in any other manner that will result in a violation by any Person participating in the transaction, whether as Lender, Administrative Agent or otherwise, of Sanctions

(b) Directly or indirectly, use the proceeds of any Loan for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar applicable anti-corruption legislation in other jurisdictions.

8.16 Liquidity.

Permit the sum of (a) the amount of Unrestricted Cash of the U.S. Loan Parties held in Deposit Accounts for which the Administrative Agent shall have received an Account Control Agreement plus (b) an amount equal to [\*\*\*] percent ([\*\*\*]%) of the amount of Unrestricted Cash of the Danish Loan Parties held in Deposit Accounts for which the Administrative Agent shall have received the Danish Account Control Agreement, as of the last day of any fiscal quarter of the Borrower, to be less than \$[\*\*\*]; provided, that, not less than \$[\*\*\*] of such \$[\*\*\*] shall be Unrestricted Cash of the U.S. Loan Parties held in Deposit Accounts for which the Administrative Agent shall have received an Account Control Agreement; provided, further, that, solely during the applicable period(s) therefor set forth in Schedule 7.21, the Administrative Agent shall be deemed to have received an Account Control Agreement for each Deposit Account described on such Schedule 7.21 that will be subject to an Account Control Agreement, notwithstanding the fact that such Deposit Account may not during such applicable period be subject to an Account Control Agreement.

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8.17 Consolidated Net Product Sales.

Permit Consolidated Net Product Sales, for any four (4) consecutive fiscal quarter period, commencing with the four (4) consecutive fiscal quarter period ending March 31, 2025, to be less than the applicable amount set forth in the table below for any such period:

<u>Four (4) Consecutive Fiscal Quarter Period Ending:</u>	<u>Amount:</u>
March 31, 2025:	\$[***]
June 30, 2025:	\$[***]
September 30, 2025:	\$[***]
December 31, 2025:	\$[***]
March 31, 2026:	\$[***]
June 30, 2026:	\$[***]
September 30, 2026:	\$[***]
December 31, 2026:	\$[***]
March 31, 2027:	\$[***]
June 30, 2027:	\$[***]
September 30, 2027:	\$[***]
December 31, 2027:	\$[***]
March 31, 2028:	\$[***]
June 30, 2028:	\$[***]
September 30, 2028:	\$[***]
December 31, 2028:	\$[***]
March 31, 2029 and each fiscal period ending thereafter:	\$[***]

provided, that, from and after the occurrence of the Arimoclomol FDA Approval, the Loan Parties and their respective Subsidiaries shall not permit Consolidated Net Product Sales, for any four (4) consecutive fiscal quarter period to be less than the applicable amount set forth in the table below for any such period:

<u>Four (4) Consecutive Fiscal Quarter Period Ending:</u>	<u>Amount:</u>
March 31, 2025:	\$[***]
June 30, 2025:	\$[***]
September 30, 2025:	\$[***]
December 31, 2025:	\$[***]
March 31, 2026:	\$[***]
June 30, 2026:	\$[***]
September 30, 2026:	\$[***]
December 31, 2026:	\$[***]
March 31, 2027:	\$[***]
June 30, 2027:	\$[***]
September 30, 2027:	\$[***]
December 31, 2027:	\$[***]
March 31, 2028:	\$[***]
June 30, 2028:	\$[***]
September 30, 2028:	\$[***]
December 31, 2028:	\$[***]
March 31, 2029 and each fiscal period ending thereafter:	\$[***]

provided, further, that, upon the occurrence of a Consolidated Net Product Sales Financial Covenant Fall Away Event (together with delivery by the Borrower to the Administrative Agent (for further distribution to the Lenders) of a Consolidated Net Product Sales Financial Covenant Fall Away Event Certificate), the Borrower and its Subsidiaries shall no longer be required to comply with this Section 8.17 (it being understood that the occurrence of a Consolidated Net Product Sales Financial Covenant Fall Away Event shall not, for the avoidance of doubt, cure or be deemed to waive any Event of Default then existing as a result of the Borrower's failure to comply with this Section 8.17 with respect to a previous period) unless and until a Consolidated Net Product Sales Financial Covenant Trigger shall have occurred; provided, further, that, for the avoidance of doubt, upon the occurrence of a Consolidated Net Product Sales Financial Covenant Trigger Event, commencing with the four (4) consecutive fiscal quarter period with respect to which the Consolidated Net Product Sales Financial Covenant Trigger Event shall have occurred, the Borrower and its Subsidiaries shall thereafter be required to comply with this Section 8.17.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

#### 9.01 Events of Default.

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within three (3) Business Days after the same becomes due, any interest on any Loan, or any repayment premium or fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 7.01, 7.02, 7.03, 7.05, 7.10, 7.11, 7.12, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19, 7.20 or 7.21 or Article VIII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in clause (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier of the date on which (i) a Responsible Officer of any Loan Party becomes aware of such failure and (ii) written notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be materially incorrect or materially misleading when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), but only after the expiration of any grace period applicable thereto, in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate outstanding principal amount (including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required and/or the expiration of any grace period applicable thereto, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount or (iii) any early payment by the Borrower is required or unwinding or termination occurs with respect to any Permitted Bond Hedge Transaction or Permitted Warrant Transaction, or any condition giving rise to the foregoing is met, in each case, with respect to which any Loan Party or Subsidiary is the "defaulting party" under the terms of such Permitted Bond Hedge Transaction or Permitted Warrant Transaction, if such payment, unwinding or termination would require any Loan Party to pay an amount of cash in excess of the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) or any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (i) enforcement proceedings are commenced by any creditor upon such judgment or order or (ii) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

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(j) Invalidity of Loan Documents. Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) Material Adverse Effect. There occurs any circumstance or circumstances that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect; or

(l) Change of Control. There occurs any Change of Control; or

(m) Invalidity of Subordination Provisions. Any subordination provision in any document or instrument governing Indebtedness that is purported to be subordinated to the Obligations or any subordination provision in any subordination agreement that relates to any Indebtedness that is to be subordinated to the Obligations, or any subordination provision in any guaranty by any Loan Party of any such Indebtedness, shall cease to be in full force and effect, or any Person (including the holder of any such Indebtedness) shall contest in any manner the validity, binding nature or enforceability of any such provision; or

(n) Injunction. Any court order enjoins, restrains, or prevents any Loan Party from conducting any material part of its business; or

(o) Material Products. (i) The FDA shall revoke, withdraw, suspend, cancel, materially limit, terminate or materially adversely modify any approved Key Permit related to any Material Product; or (ii) any Governmental Authority (other than the FDA) shall revoke, withdraw, suspend, cancel, materially limit, terminate or materially modify any approved Key Permit related to any Material Product (in each case, a “Non-FDA Governmental Action”) and, in any such case, Consolidated Revenues shall decrease by greater than twenty-five percent (25%), as assessed as at the end of each of the four fiscal quarters immediately following such Non-FDA Governmental Action by comparing Consolidated Revenues for the four fiscal quarter period most recently ended prior to such Non-FDA Governmental Action for which the Loan Parties were required to deliver financial statements pursuant to Section 7.01(a) or (b) as against Consolidated Revenues for the four fiscal quarter period ending on the applicable date of assessment; or (iii) any Safety Notice is issued or initiated in connection with any Material Product after approval by the FDA or any other Governmental Authority and Consolidated Revenues shall decrease by greater than twenty-five percent (25%), as assessed as at the end of each of the four fiscal quarters immediately following the issuance or initiation of such Safety Notice by comparing Consolidated Revenues for the four fiscal quarter period most recently ended prior to the issuance or initiation of such Safety Notice for which the Loan Parties were required to deliver financial statements pursuant to Section 7.01(a) or (b) as against Consolidated Revenues for the four fiscal quarter period ending on the applicable date of assessment; provided, however, that, any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to the KP1077 Phase 2 Trial or the non-occurrence of the Arimoclomol FDA Approval, in each case, shall not give rise to an Event of Default under this Section 9.01(q); or

(p) Regulatory Matters. If any of the following occurs: (i) the FDA, CMS, EMA, DEA, or any other Governmental Authority issues a letter or other communication asserting that any Material Product lacks a required Regulatory Authorization or does not comply with applicable Law; (ii) any involuntary or voluntary recall of any Material Product or any part thereof occurs which could reasonably be expected, either individually or in the aggregate, to result in losses and/or expenses in excess of \$1,000,000; or (iii) any Loan Party or any Subsidiary or any Product Distributor (as relating to Material Products) enters into a settlement agreement with the FDA, CMS, EMA, DEA, or any other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions in excess of \$1,000,000; provided, however, that, any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to the KP1077 Phase 2 Trial or the non-occurrence of the Arimoclomol FDA Approval, in each case, shall not give rise to an Event of Default under this Section 9.01(p); or

(q) Delisting. The shares of common stock of the Borrower are delisted from the Nasdaq Capital Market because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in such shares not being listed on any other nationally recognized stock exchange in the United States; or

(r) Permitted Bond Hedge Transactions and Permitted Warrant Transactions. There occurs under any Permitted Bond Hedge Transaction or Permitted Warrant Transaction an Early Termination Date (as defined therein) resulting from any event of default or termination event thereunder as to which the Borrower or any Subsidiary is the Defaulting Party (as defined therein) or the Affected Party (as defined therein) and the termination value owed by the Borrower or such Subsidiary as a result thereof, taken together, is greater than the Threshold Amount, and such termination value is required to be paid in cash and may not be settled by the delivery of common stock of the Borrower.

(s) SEC Filings. Any circumstance or circumstances occur which preclude the Borrower from S-3 eligibility due to a failure to meet the SEC S-3 Eligibility Requirements (other than, for the avoidance of doubt and solely with respect to fiscal periods ending prior to December 31, 2024, the Material Weakness Restatement).

9.02 Remedies Upon Event of Default.

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If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

- (a) declare the Commitment of each Lender to make Loans to be terminated, whereupon such Commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts (including any repayment premium and the Final Payment Premium) owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and
- (c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that, upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States or under any other Debtor Relief Law, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts (including any repayment premium and the Final Payment Premium) as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

If the Obligations are accelerated for any reason, the repayment premium required by Section 2.03(d) and the Final Payment Premium required by Section 2.07(b) will also be due and payable as though such Obligations were voluntarily prepaid and any discount on the Loans shall be deemed earned in full and, in each case, shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. Any repayment premium required by Section 2.03(d) and the Final Payment Premium required by Section 2.07(b) payable pursuant to the preceding sentence shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination and the Borrower agrees that it is reasonable under the circumstances currently existing. The repayment premium required by Section 2.03(d) and the Final Payment Premium required by Section 2.07(b) shall also be payable and any discount on the Loans shall be deemed earned in full, in each case, in the event that the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND THE OTHER LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING REPAYMENT PREMIUM, FINAL PAYMENT PREMIUM AND ANY DISCOUNT ON THE LOANS IN CONNECTION WITH ANY SUCH ACCELERATION. The Borrower and the other Loan Parties expressly agree that (i) the repayment premium required by Section 2.03(d), the Final Payment Premium required by Section 2.07(b) and any discount on the Loans provided for herein is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the repayment premium required by Section 2.03(d), the Final Payment Premium required by Section 2.07(b) and any discount on the Loans shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Borrower and the other Loan Parties giving specific consideration in this transaction for such agreement to pay the repayment premium required by Section 2.03(d), the Final Payment Premium required by Section 2.07(b) and any discount on the Loans, (iv) the Borrower and the other Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph and (v) the repayment premium required by Section 2.03(d), the Final Payment Premium required by Section 2.07(b) and any discount on the Loans represent a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of any early termination. The Borrower and the other Loan Parties expressly acknowledge that their agreement to pay the repayment premium required by Section 2.03(d), the Final Payment Premium required by Section 2.07(b) and any discount on the Loans to the Lenders as herein described is a material inducement to the Lenders to make the Loans and establish the Commitments hereunder.

### 9.03 Application of Funds.

After the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 9.02), any amounts received by any Lender or the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent 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, interest, repayment premium and Final Payment Premium) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on, and repayment premium and Final Payment Premium with respect to, the Loans, 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 in cash (other than contingent indemnification or expense reimbursement obligations for which no claim has been asserted), to the Borrower or as otherwise required by Law.

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## ARTICLE X

### ADMINISTRATIVE AGENT

#### 10.01 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints ALTER DOMUS (US) LLC 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 X are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party 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 Loan Parties 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 10.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, 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 this Article X and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

(c) Any Collateral governed by Danish law shall be granted in favour of the Administrative Agent as agent and representative (in Danish: *fuldmægtig og repræsentant*) for and on behalf of the Secured Parties in accordance with Section 1(2) and 18(1) of the Danish Capital Markets Act. Each of the Secured Parties appoints the Administrative Agent as its agent and representative (in Danish: *fuldmægtig og repræsentant*) to receive and hold the Collateral governed by Danish law on behalf of and for the benefit of the Secured Parties, and the Administrative Agent agrees to receive and hold such Collateral accordingly.

#### 10.02 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 with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

#### 10.03 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 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 Required 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 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 or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of 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 Loan Party or any of its Affiliates 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 Required 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 provided in Section 11.01 and Section 9.02) 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. If the Administrative Agent shall request instructions from the Lenders with respect to any act or action (including 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 Required Lenders, and the Administrative Agent shall not incur liability to any Person by reason of so refraining. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower or a Lender.

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The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (B) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (C) 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, (D) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (E) 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 not have any liability for any action taken, or errors in judgment made, in good faith by it or any of its officers, employees or agents. 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 liable for any acts or omissions, except for such losses, damages or expenses which have been finally determined by a court of competent jurisdiction by final and non-appealable judgment. 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, or to exercise any of the rights or powers vested in it by this Agreement or the other Loan Documents at the request or direction of any Lender unless the Administrative Agent is adequately indemnified in its sole discretion against the costs, expenses and liabilities that may be incurred by the Administrative Agent in compliance with such request or direction. The Administrative Agent shall have no obligation to give, execute, deliver, file, record, authorize or obtain any financing or continuation statements, notices, instruments, documents, agreements, consents or other papers as shall be necessary to (x) create, preserve, perfect or validate the security interest granted to the Administrative Agent for the benefit of the Secured Parties pursuant to this Agreement or any other Loan Document or (y) enable the Administrative Agent to exercise and enforce its rights under this Agreement or any other Loan Document with respect to such pledge and security interest. The Administrative Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement or any other Loan Document 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; pandemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disturbances; 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.

#### 10.04 Reliance by Administrative Agent.

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 Loan Parties), 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.

#### 10.05 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 Related Parties. The exculpatory provisions of this Article X shall apply to any such sub-agent and to the Related Parties 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.

#### 10.06 Resignation of Administrative Agent.

The Administrative Agent may resign as 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 Required Lenders shall have the right, subject to the approval of the Borrower (so long as no Event of Default has occurred and is continuing; such approval not to be unreasonably withheld), to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, been approved (so long as no Event of Default has occurred and is continuing) by the Borrower or have accepted such appointment within thirty (30) days after the Administrative Agent's giving of notice of resignation, then the Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent reasonably acceptable to the Borrower (so long as no Default or Event of Default has occurred and is continuing). Upon the acceptance of any appointment as 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 Administrative Agent, the provisions of this Section 10.06 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 Administrative Agent. If no successor has accepted appointment as Administrative Agent by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Required Lenders shall perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. After the retiring Administrative Agent's resignation hereunder, the provisions of this Article X and Section 11.04 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 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 of the Administrative Agent under this Agreement and the other Loan Documents and will have and succeed to the rights, duties, benefits, privileges, protections, indemnities and immunities as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

#### 10.07 Non-Reliance on 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 Related Parties 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 Related Parties 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.



#### 10.08 Administrative Agent May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, 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) at the direction of the Required Lenders, 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 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each 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 11.04.

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.

#### 10.09 Collateral and Guaranty Matters.

The Lenders irrevocably authorize the Administrative Agent, upon the direction of the Required Lenders,

(a) to release any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document (i) upon the Facility Termination Date, (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other Disposition permitted hereunder (including Permitted Transfers) or any Involuntary Disposition, or (iii) as approved in accordance with Section 11.01;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 8.01(i); and

(c) to release any Guarantor from its obligations under the Guaranty 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 Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty, pursuant to this Section 10.09.

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 any Loan Party 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.

#### 10.10 Recovery of Erroneous Payments.

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender, whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, 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. Each Lender irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender promptly upon determining that any payment made to such Lender comprised, in whole or in part, a Rescindable Amount.

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ARTICLE XI  
MISCELLANEOUS

11.01 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 other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, 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; provided, further, that:

(a) no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of a Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender whose Commitment is being extended or increased (it being understood and agreed that a waiver of any condition precedent set forth in Section 5.02 or of any Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal (excluding mandatory prepayments), interest, repayment premiums, fees or other amounts due to the Lenders (or any of them) or any scheduled or mandatory reduction of the Commitments hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such payment or whose Commitments are to be reduced;

(iii) reduce the principal of, the rate of interest specified herein on or the repayment premium specified herein on any Loan, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to receive such payment of principal, interest, fees or other amounts; provided, however, that, only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(iv) change any provision of this Section 11.01(a) or the definition of "Required Lenders", in each case, without the written consent of each Lender directly affected thereby;

(v) except in connection with a Disposition permitted under Section 8.05, release all or substantially all of the Collateral without the written consent of each Lender directly affected thereby;

(vi) release the Borrower or, except in connection with a merger or consolidation permitted under Section 8.04 or a Disposition permitted under Section 8.05, all or substantially all of the Guarantors without the written consent of each Lender directly affected thereby, except to the extent the release of any Guarantor is permitted pursuant to Section 10.09 (in which case such release may be made by the Administrative Agent acting alone);

(vii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation, without the written consent of each Lender;

(viii) change any provision of Section 2.03(b)(iv), Section 2.06(c), Section 2.10 or Section 2.11, in each case, without the written consent of each Lender directly affected thereby; or

(ix) (A) change the definition of "HCRX" or "HCRX Lender" (or any defined term used in any such definition), in each case, without the written consent of each HCRX Lender or (B) change the definition of "Perceptive" or "Perceptive Lender" (or any defined term used in any such definition), in each case, without the written consent of each Perceptive Lender;

(b) unless also signed by the Administrative Agent, no amendment, waiver or consent shall affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document;

provided, however, that, notwithstanding anything to the contrary herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (A) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender, (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (iii) the Required Lenders shall determine whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

Notwithstanding anything herein to the contrary, as to any amendment, amendment and restatement or other modification otherwise approved in accordance with this Section 11.01, it shall not be necessary to obtain the consent or approval of any Lender that, upon giving effect to such amendment, amendment and restatement or other modification, would have no Commitment or outstanding Loans so long as such Lender receives payment in full of the principal of and interest accrued on each Loan made by, and all other amounts owing to, such Lender or accrued for the amount of such Lender under this Agreement and the other Loan Documents at the time of such amendment, amendment and restatement or other modification becomes effective.

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#### 11.02 Notices and Other Communications; Facsimile Copies.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number of its Lending Office (whether specified on Schedule 11.02 or separately specified to the Borrower and the Administrative Agent).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below, shall be effective as provided in such clause (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided, that, the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under Article II by electronic communication. The Administrative Agent or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, that, approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested", as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided, that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Change of Address, Etc. Each of the Borrower, the Lenders and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by 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 any Loan Party 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 Loan Parties shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. 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.

#### 11.03 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.

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 Loan Parties 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 10.01 for the benefit of all the Secured Parties; 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 11.08 (subject to the terms of Section 2.11), 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 any Loan Party under any Debtor Relief Law; 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 Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 10.01 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.11, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

#### 11.04 Expenses; Indemnity; and Damage Waiver.

(a) Costs and Expenses. The Loan Parties shall pay, promptly following written demand therefor (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any of its Affiliates or any Lender or any of their respective Affiliates in connection with (A) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and (B) any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) or the administration of this Agreement and the other Loan Documents and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 11.04, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.



(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof) and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (but limited, in the case of legal fees and expenses, to the reasonable fees, disbursements and other charges of one firm of counsel for Indemnitees (taken as a whole), and, if necessary, one firm of local counsel in each appropriate jurisdiction, in each case for all such Indemnitees (and, in the case of an actual or perceived conflict of interest where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of one additional firm of counsel for all such affected Indemnitees taken as a whole), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnitee; provided, that, such indemnity shall not, (x) as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee (or any Related Indemnified Party of such Indemnitee) or (B) result from a claim brought by any Loan Party against such Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (y) be available to the extent that such losses, claims, damages, liabilities or related expenses arise solely from a dispute solely among Indemnitees (except when and to the extent that one of the Indemnitees party to such dispute was acting in its capacity or in fulfilling its role as an agent or any similar role under this Agreement or any Loan Document) that does not involve any act or omission by the Borrower or any of its Affiliates. This Section 11.04(b) shall not apply with respect to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to pay in full in cash any amount required under clause (a) or (b) of this Section 11.04 to be paid by them to the Administrative Agent (or any sub-agent thereof) or any Related Party thereof, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on 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 Related Party thereof acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.10(b).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives any claim against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof; provided, that, the foregoing shall not limit the Loan Parties’ indemnification obligations to the extent such special, indirect, consequential or punitive damages are included in any third party claim with respect to which an Indemnitee is entitled to indemnification pursuant to Section 11.04(b). No Indemnitee referred to in clause (b) 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 Loan Documents or the transactions contemplated hereby or thereby, other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section 11.04 shall be payable not later than ten (10) Business Days after demand therefor.

(f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(d) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments, the termination of the Loan Documents and the repayment, satisfaction or discharge of all the other Obligations.

#### 11.05 Payments Set Aside.

To the extent that any payment by or on behalf of any Loan Party 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 discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied 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 and the other Loan Documents.

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## 11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or thereunder without the prior written consent of the Administrative Agent and each Lender (other than any Defaulting Lender) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of clause (b) of this Section 11.06, (ii) by way of participation in accordance with the provisions of clause (d) of this Section 11.06 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (e) of this Section 11.06 (and any other attempted assignment or transfer by any party hereto shall be null and void). 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, Participants to the extent provided in clause (d) of this Section 11.06 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees (other than any Disqualified Institution) all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitments under any Term Facility and the Loans at the time owing to it (in each case with respect to any Term Facility); provided, that, any such assignment shall be subject to the following conditions:

(i) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(ii) Assignment and Assumption. The parties to each assignment shall (A) execute and deliver to the Administrative Agent an Assignment and Assumption and (B) deliver a processing fee of \$[\*\*\*] to the Administrative Agent at the time of such assignment (it being understood that the Administrative Agent, in its sole discretion, may elect to waive such fee); provided, that, such processing fee shall not be charged with respect to an assignment (1) by and between any HCRX Lender and any other HCRX Lender or (2) by and between Perceptive Lender and any other Perceptive Lender. The assignee, if it is not a Lender, shall deliver to the Administrative Agent such information, including notice information, as the Administrative Agent may reasonably require.

(iii) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to any Disqualified Institution or (D) to a natural Person.

(iv) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this clause (iv), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 11.06, 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 3.01, 3.02 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Notwithstanding anything to the contrary in this Agreement, the Borrower, the other Loan Parties and the Lenders acknowledge and agree that the Administrative Agent (x) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions, (y) shall not be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution and (z) shall not have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office 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, notwithstanding any notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. 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 written notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, a Defaulting Lender, a Disqualified Institution or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided, that, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participation.



Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in clauses (i) through (viii) of Section 11.01(a) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Section 3.01 (subject to the requirements and limitations therein (it being understood that the documentation required under Section 3.01(c) shall be solely delivered to the participating Lender; provided, that, the participant shall also deliver such documentation to the Administrative Agent and the Borrower if making a claim for the payment of Taxes indemnified pursuant to Section 3.01) and Section 3.02 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 11.06; provided, that, such Participant (A) agrees to be subject to the provisions of Sections 3.03 and 11.13 as if it were an assignee under clause (b) of this Section 11.06 and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.02, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.03 with respect to any Participant. To the fullest extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided, that, such Participant shall be subject to Section 2.11 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided, that, no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) (or, in each case, any amended or successor sections) of the Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(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.

#### 11.07 Treatment of Certain Information; Confidentiality.

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) as may be reasonably necessary in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 11.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to a Loan Party and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Loans to be made hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower, (i) to the members of its investment committee (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential) or (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 11.07 or (ii) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section 11.07, "Information" means all information received from a Loan Party or any Subsidiary relating to the Loan Parties or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by such Loan Party or any Subsidiary; provided, that, in the case of information received from a Loan Party or any Subsidiary after the Closing Date, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 11.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

#### 11.08 Set-off.

If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Required Lenders, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or its Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmaturing or are owed to a branch office or Affiliate of such Lender different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided, that, in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.12 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided, that, the failure to give such notice shall not affect the validity of such setoff and application.

#### 11.09 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### 11.10 Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

#### 11.11 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof and shall continue in full force and effect as long as any Loan or other Obligation (other than contingent indemnification or expense reimbursement obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied. 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 (other than contingent indemnification or expense reimbursement obligations for which no claim has been asserted) hereunder shall remain unpaid or unsatisfied.

#### 11.12 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Required Lenders, then such provisions shall be deemed to be in effect only to the extent not so limited.

#### 11.13 Replacement of Lenders.

If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.03 or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon written notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.02) and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, that:

(a) such Lender shall have received payment of an amount equal to one hundred percent (100%) of (i) the outstanding principal of its Loans, accrued interest thereon and all other amounts payable to it hereunder and under the other Loan Documents (other than repayment premium and Final Payment Premium) from the assignee (to the extent of such outstanding principal and accrued interest) or the Borrower (in the case of all other amounts) and (ii) the repayment premium required by Section 2.03(d) and the Final Payment Premium required by Section 2.07(b), in each case, from the Borrower, as if such assignment was a prepayment of one hundred percent (100%) of the outstanding principal amount of such assignor’s Loans on the effective date of such assignment;

(b) such assignment does not conflict with applicable Laws; and

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.02 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

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11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY OTHER FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK AND ANY UNITED STATES DISTRICT COURT IN THE STATE OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF LOCATED IN NEW YORK COUNTY, NEW YORK, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (B) OF THIS SECTION 11.14. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Waiver of Right to Trial by Jury.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

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#### 11.16 Electronic Execution; Electronic Records; Counterparts.

This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Administrative Agent and each Lender agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into .pdf format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is not under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, that, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party and/or any Lender without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and reasonably believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Each of the Loan Parties and each Lender hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document based solely on the lack of paper original copies of this Agreement, such other Loan Document, and (ii) any claim against the Administrative Agent, each Lender and each Related Party for any liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

#### 11.17 USA PATRIOT Act.

Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. The Borrower and the Loan Parties agree to, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

#### 11.18 No Advisory or Fiduciary Relationship.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a)(i) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Lenders on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b)(i) the Administrative Agent and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not and will not be acting as an advisor, agent or fiduciary, for the Borrower or any of Affiliates or any other Person and (ii) neither the Administrative Agent nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases, any claims that it may have against the Administrative Agent or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

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11.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

11.20 Intended Tax Treatment of the Loans.

The parties hereto agree that, for U.S. federal and applicable state and local income tax purposes, the Loans are intended to constitute variable rate debt instruments within the meaning of Treasury Regulation 1.1275-5. The parties shall not take and shall not cause or permit their Affiliates to take, any position that is inconsistent with the foregoing on any Tax return or for any other Tax purpose, unless required by Law or the good faith resolution of a Tax audit or other Tax proceeding.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER: ZEVRA THERAPEUTICS, INC.,  
a Delaware corporation

By: /s/ R. LaDuane Clifton  
Name: R. LaDuane Clifton  
Title: Chief Financial Officer, Secretary and Treasurer

SUBSIDIARY GUARANTORS: ACER THERAPEUTICS INC.,  
a Delaware corporation

By: /s/ R. LaDuane Clifton  
Name: R. LaDuane Clifton  
Title: Chief Financial Officer, Secretary and Treasurer

EPYON THERAPEUTICS INC.,  
a Delaware corporation

By: /s/ R. LaDuane Clifton  
Name: R. LaDuane Clifton  
Title: President and Chief Executive Officer

ZEVRA DENMARK A/S,  
a public limited liability company

By: /s/ R. LaDuane Clifton  
Name: R. LaDuane Clifton  
Title: Chief Executive Officer, Director, and Special Attorney

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ADMINISTRATIVE AGENT: ALTER DOMUS (US) LLC,  
not in its individual capacity but solely in its capacity as Administrative Agent

By: /s/ Matthew Trybula  
Name: Matthew Trybula  
Title: Associate Counsel

LENDERS: HCR STAFFORD FUND II, L.P.,  
a Delaware limited partnership

By: HCR Stafford Fund II GP, LLC,  
its General Partner

By: /s/ Clarke B. Futch  
Name: Clarke B. Futch  
Title: Managing Member  
HCR POTOMAC FUND II, L.P.,  
a Delaware limited partnership

By: HCR Potomac Fund II GP, LLC,  
its General Partner

By: /s/ Clarke B. Futch  
Name: Clarke B. Futch  
Title: Managing Member  
PERCEPTIVE CREDIT HOLDINGS IV, LP,  
a Delaware limited partnership

By: Perceptive Credit Opportunities GP, LLC,  
its General Partner

By: /s/ Sandeep Dixit  
Name: Sandeep Dixit  
Title: Chief Credit Officer

By: /s/ Sam Chawla  
Name: Sam Chawla  
Title: Portfolio Manager



## CERTIFICATION

I, Neil F. McFarlane, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Zevra Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

May 9, 2024

/s/ Neil F. McFarlane

Name: Neil F. McFarlane

Title: President and Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATION

I, R. LaDuane Clifton, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Zevra Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

May 9, 2024

/s/ R. LaDuane Clifton

Name: R. LaDuane Clifton, MBA, CPA

Title: Chief Financial Officer, Secretary and Treasurer  
(Principal Financial Officer)

**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Zevra Therapeutics, Inc., (the "Company") for the quarterly period ended March 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Neil F. McFarlane, Principal Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

May 9, 2024

/s/ Neil F. McFarlane

\_\_\_\_\_  
Name: Neil F. McFarlane

Title: President and Chief Executive Officer  
(Principal Executive Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350, is not being "filed" by the Company as part of the Report or as a separate disclosure document and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

**CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Zevra Therapeutics, Inc., (the "Company") for the quarterly period ended March 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, R. LaDuane Clifton, Principal Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

May 9, 2024

/s/ R. LaDuane Clifton

\_\_\_\_\_  
Name: R. LaDuane Clifton, MBA, CPA

Title: Chief Financial Officer, Secretary and Treasurer  
(Principal Financial Officer)

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350, is not being "filed" by the Company as part of the Report or as a separate disclosure document and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.