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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): March 4, 2022

ACER THERAPEUTICS INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-33004
(Commission
File Number)

32-0426967
(IRS Employer
Identification No.)

**One Gateway Center, Suite 351
300 Washington Street
Newton, Massachusetts**
(Address of principal executive offices)

02458
(Zip Code)

Registrant's telephone number, including area code: (844) 902-6100

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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	ACER	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

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.

Item 1.01 Entry into a Material Definitive Agreement

SWK Credit Agreement

On March 4, 2022, Acer Therapeutics Inc. (the "**Company**") entered into a Credit Agreement (the "**SWK Credit Agreement**") with the lenders party thereto and SWK Funding LLC ("**SWK**"), as the agent, sole lead arranger and sole bookrunner, which provides for a senior secured term loan facility in an aggregate amount of \$6.5 million in a single borrowing (the "**Bridge Loan**"). The Bridge Loan may be borrowed upon consummation of the Convertible Note Financing (as defined and described below) as well as the satisfaction of other closing conditions as set forth in the SWK Credit Agreement, but funding is expected to take place no later than March 14, 2022. The proceeds of the Bridge Loan will be used to pay fees, costs and expenses related to the SWK Credit Agreement, the Secured Convertible Note Purchase Agreement (as defined and described below) and the Marathon Credit Agreement (as defined and described below) and for other working capital and general corporate purposes.

The Bridge Loan will bear interest at an annual rate of the sum of (i) 3-month LIBOR (or such other rate as may be agreed by the Company and SWK following the date on which 3-month LIBOR is no longer available), subject to a 1% floor, plus (ii) a margin of 11%, with such interest payable quarterly in arrears. The Company has the option to capitalize such interest commencing on the date on which the Bridge Loan is funded and continuing until November 15, 2022. Commencing on November 15, 2022, the principal amount of the Bridge Loan will amortize at a rate of \$650,000 payable quarterly. The final maturity date of the Bridge Loan is (a) if full approval by the United States Food and Drug Administration for marketing of the Company's product known as ACER-001 (sodium phenylbutyrate) ("**ACER-001 Approval**") occurs on or before September 30, 2022, then the date which is 12 business days after ACER-001 Approval, or (b) if ACER-001 Approval does not occur on or before September 30, 2022, then March 4, 2024. The Company has the option to prepay the Bridge Loan in whole or in part. Upon the repayment of the Bridge Loan (whether voluntary or at scheduled maturity), the Company must pay an exit fee so that SWK receives an aggregate amount (inclusive of all principal, interest and origination and other fees paid to SWK under the SWK Credit Agreement) equal to (a) 1.3 times the outstanding principal amount of the Bridge Loan if ACER-001 Approval or such payment occurs on or prior to September 30, 2022, or (b) 1.5 times the outstanding principal amount of the Bridge Loan if each of ACER-001 Approval and such payment does not occur until after September 30, 2022.

The Bridge Loan will be secured by a first priority lien on all assets of the Company and any of its future subsidiaries pursuant to a Guarantee and Collateral Agreement entered into on March 4, 2022, between the Company and SWK, as agent (the "**SWK Security Agreement**"). The SWK Credit Agreement contains customary representations and warranties and affirmative and negative covenants. The Company will pay to SWK \$97,500 in origination fees on the date on which the Bridge Loan is funded.

In addition, the Company issued to SWK a warrant (the "**SWK Warrant**") to purchase 150,000 shares of the Company's common stock, \$0.0001 par value per share ("**Common Stock**"), at an exercise price of \$2.46 per share. SWK may exercise the SWK Warrant in accordance with the terms thereof for all or any part of such shares of Common Stock from the date on which the Bridge Loan is funded until and including March 4, 2029. If the Bridge Loan is not funded by March 14, 2022, then the SWK Warrant automatically expires.

The foregoing description of the SWK Credit Agreement and the SWK Warrant does not purport to be complete and is qualified in its entirety by reference to the SWK Credit Agreement, the SWK Security Agreement and the SWK Warrant, which are attached as Exhibits 10.1, 10.2 and 10.3, respectively, to this Current Report on Form 8-K, and incorporated herein by reference.

Secured Convertible Notes

On March 4, 2022, the Company also entered into a Secured Convertible Note Purchase Agreement with MAM Aardvark, LLC ("**Marathon**") and Marathon Healthcare Finance Fund, L.P. ("**Marathon Fund**") and together with "Marathon" each a "**Holder**" and collectively the "**Holders**") (the "**Secured Convertible Note Purchase Agreement**") pursuant to which the Company will issue and sell to the Holders secured convertible notes (the "**Secured Convertible Notes**") in an aggregate amount of up to \$6.0 million (the "**Convertible Note Financing**"). The Convertible Note Financing is subject to the satisfaction of closing conditions as set forth in the Secured Convertible Note Purchase Agreement, but is expected to take place no later than March 14, 2022. The proceeds of the Convertible Note Financing will be used to pay fees, costs and expenses related to the SWK Credit Agreement, the Secured Convertible Note Purchase Agreement and the Marathon Credit Agreement and for other working capital and general corporate purposes.

The Secured Convertible Notes will bear interest at an annual rate of 6.5%, with such interest payable quarterly; provided, however, that until the first to occur of ACER-001 Approval and the repayment in full of the Secured Convertible Notes, interest will not be payable in cash, but will accrue and be payable in cash within three business days of ACER-001 Approval. Each of the Holders has the right, during the 30-day periods beginning 12 months, 18 months and 24 months after the Convertible Note Financing, to require the Company to redeem the Convertible Secured Note held by such Holder at a redemption price of the outstanding principal amount plus any accrued but unpaid interest. Each of the Holders also has the right to convert all or any portion of the outstanding principal amount plus any accrued but unpaid interest under the Convertible Secured Note held by such Holder into shares of Common Stock at a conversion price of \$2.50 per share. Each Holder has certain rights with respect to the registration by the Company for resale of the shares of Common Stock issuable upon conversion of the Secured Convertible Note held by such Holder which are forth in the Secured Convertible Note Purchase Agreement. Any outstanding principal, together with all accrued and unpaid interest, will be payable on the third anniversary of the date of issuance, or upon a change of control of the Company if earlier.

Pursuant to the Secured Convertible Note Purchase Agreement, the Secured Convertible Notes will be secured by a lien on collateral representing substantially all assets of the Company, although such security interest will be subordinated to the Company's obligations under the SWK Credit Agreement and may also be subordinated to the Company's obligations under the Marathon Credit Agreement.

The foregoing description of the Secured Convertible Note Purchase Agreement and the Secured Convertible Notes does not purport to be complete and is qualified in its entirety by reference to the Secured Convertible Note Purchase Agreement and the form of Secured Convertible Note, which are attached as Exhibits 10.4 and 10.5, respectively, to this Current Report on Form 8-K, and incorporated herein by reference.

Marathon Credit Agreement

On March 4, 2022, the Company also entered into a Credit Agreement (the "**Marathon Credit Agreement**") with the lenders party thereto and Marathon, as the agent, sole lead arranger and sole bookrunner, which provides for a senior secured term loan facility in an aggregate amount of up to \$42.5 million in a single borrowing (the "**Term Loan**"). The Term Loan will be available to be borrowed only following ACER-001 Approval and until December 31, 2022 (i.e., if ACER-001 Approval does not occur on or before December 31, 2022, then the Term Loan will not be available), and funding of the Term Loan is also subject to the satisfaction of conditions as set forth in the Marathon Credit Agreement. The Term Loan will be used to refinance certain other indebtedness of the Company (including the Bridge Loan), to pay fees, costs and expenses related to the Marathon Credit Agreement and for other working capital and general corporate purposes. The Marathon Credit Agreement also includes an accordion feature pursuant to which the Company, Marathon and the lenders under the Marathon Credit Agreement may agree to increase the Term Loan commitments by up to an additional \$50.0 million dollars for a total commitment of \$92.5 million; provided, however, that any such increase is within the sole discretion of each party (i.e., the Company cannot unilaterally trigger such an increase).

The Term Loan will bear interest at an annual rate of 13.5% and will be payable quarterly in arrears. The Company has the option to capitalize up to 4% of such interest commencing on the date on which the Term Loan is funded (the "**Term Loan Funding Date**") and continuing until the third anniversary of the Term Loan Funding Date. Commencing on the third anniversary of the Term Loan Funding Date, the principal outstanding amount of the Term Loan will amortize at a rate of 2.78%, payable monthly. The final maturity date of the Term Loan is the earlier of six years after the Term Loan Funding Date or December 31, 2028. The Company has the option to prepay the Term Loan in whole or in part at any time, subject to a prepayment fee equal to (a) if the prepayment is made prior to March 4, 2025, then the greater of 5% or the amount of interest that would have accrued from the date of prepayment until March 4, 2025, (b) if the prepayment is made on or after March 4, 2025, but prior to March 4, 2026, then 3%, (c) if the prepayment is made on or after March 4, 2026, but prior to March 4, 2027, then 2%, or (d) if the prepayment is made on or after March 4, 2027, then 1%.

The Term Loan will be secured by a first priority lien on all assets of the Company and any of its future subsidiaries pursuant to a Guarantee and Collateral Agreement to be entered into on the Term Loan Funding Date between the Company and Marathon, as agent (the "**Marathon Security Agreement**"). The Marathon Credit Agreement contains customary representations and warranties and affirmative and negative covenants. The Company will pay \$212,500 in commitment fees to Marathon in connection with obtaining the commitments in respect of the Term Loan and will pay \$637,500 in additional commitment fees to Marathon following ACER-001 Approval or any change of control of the Company or sale or transfer of the ACER-001 product.

In connection with the Marathon Credit Agreement, on March 4, 2022, the Company, Marathon and the Marathon Fund also entered into a Synthetic Royalty Agreement (the "**Royalty Agreement**") pursuant to which, in the event of the funding of the Term Loan, the Company will pay Marathon and the Marathon Fund, on a quarterly basis, 2% of certain aggregate revenue from ACER-001 during that quarter (i.e., 2% of the net sales and of the amount of certain other payments), subject to a cap on the aggregate amount of such payments of \$15.0 million. Upon a change of control of the Company or the sale of the ACER-001 business to a third party, the Company would pay Marathon and the Marathon Fund the difference between \$15.0 million and the aggregate amount of the payments previously made by the Company to Marathon and the Marathon Fund pursuant to the Royalty Agreement.

The foregoing descriptions of the Marathon Credit Agreement, the Marathon Security Agreement and the Royalty Agreement do not purport to be complete and are qualified in their entirety by reference to the Marathon Credit Agreement, the form of Marathon Security Agreement and the Royalty Agreement, which are attached as Exhibits 10.6, 10.7 and 10.8, respectively, to this Current Report on Form 8-K, and incorporated herein by reference.

Financial Advisor

Reedland Capital Partners, acting through Weild & Co., member FINRA/SIPC ("**Reedland**"), served as the Company's exclusive financial advisor with respect to the financings contemplated by the SWK Credit Agreement, the Secured Convertible Note Purchase Agreement and the Marathon Credit Agreement. In connection with the funding of the Bridge Loan and the Convertible Note Financing, the Company will pay Reedland a fee of approximately \$500,000 for its services. In connection with a funding of the Term Loan, the Company expects to pay Reedland an additional fee of approximately \$700,000 for its services.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information required by Item 2.03 relating to the SWK Credit Agreement, the Bridge Loan, the Secured Convertible Note Purchase Agreement, the Secured Convertible Note, the Marathon Credit Agreement Credit Agreement and the Royalty Agreement is contained in Item 1.01 of this Current Report on Form 8-K and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information required by Item 3.02 relating to the issuance of the SWK Warrant and the Secured Convertible Note is contained in Item 1.01 of this Current Report on Form 8-K and is incorporated herein by reference. The issuances of the SWK Warrant to SWK and the issuance of the Secured Convertible Note to Marathon have been made in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933 (the "**Securities Act**").

Item 7.01 Regulation FD Disclosure.

On March 7, 2022, the Company issued a press release announcing the SWK Credit Agreement, the Secured Convertible Note Purchase Agreement, the Marathon Credit Agreement Credit Agreement and the Royalty Agreement. A copy of the press release is furnished as Exhibit 99.1 hereto.

The information in Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1, shall not be deemed to be filed for purposes of Section 18 of the Securities Exchange Act of 1934 (the "**Exchange Act**"), or otherwise subject to the liability of that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Forward-Looking Statements

This Current Report on Form 8-K contains statements, including statements regarding various proposed financings for the Company as well as an approval for marketing of ACER-001, that are forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act that are intended to be covered by the "safe harbor" created by those sections. Forward-looking statements, which are based on certain assumptions and describe future plans, strategies, expectations and events, can generally be identified by the use of forward-looking terms such as "expect," "may," "will," "shall," "would," "anticipate" or other comparable terms. All statements, other than statements of historical facts, included in this Current Report on Form 8-K regarding financings, future operations, timelines, future revenues, regulatory

submissions, product approvals, liquidity, prospects, plans and objectives of the Company's management are forward-looking statements. Examples of such statements include, but are not limited to, statements relating to the funding of the Company pursuant to the identified financing arrangements, the ability of ACER-001 to safely and effectively treat disease and to be approved for marketing, and the commercial or market opportunity for ACER-001. Such statements are based on the current expectations of the Company's management and involve risks and uncertainties. Actual results and performance could differ materially from those projected in the forward-looking statements as a result of many factors, including, without limitation, risks and uncertainties associated with the ability to project future cash utilization and reserves needed for contingent future liabilities and business operations, the availability of sufficient resources to fund the Company's various product candidate development programs and to meet the Company's business objectives and operational requirements, the fact that the results of earlier studies and trials may not be predictive of future clinical trial results, the protection and market exclusivity provided by the Company's intellectual property, risks related to the drug development and regulatory approval processes, including the timing and requirements of regulatory actions, the impact of competitive products and technological changes, and the risks and uncertainties set forth in the Company's filings with the Securities and Exchange Commission, including the Company's Quarterly Reports on Form 10-Q and 10-Q/A and Annual Report on Form 10-K. There can be no assurance that any of the proposed financings will in fact be consummated in the manner described or at all, or that ACER-001 will ever receive marketing approval. Forward-looking statements speak only as of the date hereof, and the Company disclaims any obligation to update any forward-looking statements.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1*	<u>Credit Agreement dated March 4, 2022, among Acer Therapeutics Inc., the lenders party thereto and SWK Funding LLC, as the agent, sole lead arranger and sole bookrunner.</u>
10.2*	<u>Guarantee and Collateral Agreement dated March 4, 2022, among Acer Therapeutics Inc. and SWK Funding LLC, as agent.</u>
10.3	<u>Warrant issued on March 4, 2022, by the Company to SWK Funding LLC pursuant to the Credit Agreement dated March 4, 2022, among Acer Therapeutics Inc., the lenders party thereto and SWK Funding LLC, as the agent, sole lead arranger and sole bookrunner.</u>
10.4*	<u>Secured Convertible Note Purchase Agreement dated March 4, 2022, between Acer Therapeutics Inc., MAM Aardvark, LLC and Marathon Healthcare Finance Fund, L.P.</u>
10.5	<u>Form of Secured Convertible Note issuable by Acer Therapeutics Inc. to MAM Aardvark, LLC and Marathon Healthcare Finance Fund, L.P. pursuant to the Secured Convertible Note Purchase Agreement dated March 4, 2022, between Acer Therapeutics Inc. and MAM Aardvark, LLC and Marathon Healthcare Finance Fund, L.P.</u>
10.6*	<u>Credit Agreement dated March 4, 2022, among Acer Therapeutics Inc., the lenders party thereto and MAM Aardvark, LLC, as the agent, sole lead arranger and sole bookrunner.</u>
10.7	<u>Form of Guarantee and Collateral Agreement to be dated the Term Loan Funding Date among Acer Therapeutics Inc. and MAM Aardvark, LLC, as agent.</u>
10.8	<u>Synthetic Royalty Agreement dated March 4, 2022, between Acer Therapeutics Inc., MAM Aardvark, LLC and Marathon Healthcare Finance Fund, L.P.</u>
99.1	<u>Press release issued by Acer Therapeutics Inc. on March 7, 2022, titled "Acer Therapeutics Secures up to \$48.5 Million in Convertible Note and Secured Loan Financing Facilities."</u>
104	Cover Page Interactive Data File (embedded within the inline XBRL document).

* Certain schedules and exhibits to this agreement have been omitted pursuant to Item 601(a)(5) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC upon request.

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.

Dated: March 7, 2022

ACER THERAPEUTICS INC.

By: /s/ Harry S. Palmin

Harry S. Palmin

Chief Operating Officer and Chief Financial Officer

CREDIT AGREEMENT

among

ACER THERAPEUTICS INC.,
as Borrower,

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

and

the financial institutions party hereto from time to time as Lenders

Dated as of March 4, 2022

Table of Contents

	Page
Section 1	1
1.1	1
1.2	15
Section 2	16
2.1	16
2.2	16
2.3	16
2.4	17
2.5	18
2.5.1	18
2.5.2	18
2.6	18
2.6.1	18
2.6.2	19
2.6.3	20
2.7	20
2.8	21
2.8.1	21
2.8.2	21
2.9	21
2.9.1	21
2.9.2	21
2.9.3	21
2.9.4	22
Section 3	22
3.1	22
3.2	24
3.3	25
Section 4	25
4.1	25
4.2	26
Section 5	26
5.1	26
5.2	27
5.3	27
5.4	27
5.5	27
5.6	28

5.7	Ownership of Properties; Liens	28
5.8	Capitalization	28
5.9	Pension Plans	28
5.10	Investment Company Act	28
5.11	No Default	28
5.12	Margin Stock	28
5.13	Taxes	29
5.14	Solvency	29
5.15	Environmental Matters	29
5.16	Insurance	29
5.17	Information	29
5.18	Intellectual Property; Products and Services	30
5.19	Restrictive Provisions	30
5.20	Labor Matters	31
5.21	Material Contracts	31
5.22	Compliance with Laws; Health Care Laws	31
5.23	Existing Indebtedness; Investments, Guarantees and Certain Contracts	32
5.24	Affiliated Agreements	33
5.25	Names; Locations of Offices, Records and Collateral; Deposit Accounts	33
5.26	Non-Subordination	33
5.27	Broker's or Finder's Commissions	33
5.28	Anti-Terrorism; OFAC	34
5.29	Security Interest	34
5.30	Survival	34
Section 6	Affirmative Covenants	34
6.1	Information	34
6.1.1	Annual Report	34
6.1.2	Interim Reports	35
6.1.3	Quarterly Review Meeting	35
6.1.4	Compliance Certificate	36
6.1.5	Reports to Governmental Authorities, Board of Directors and Shareholders	36
6.1.6	Notice of Default; Litigation	36
6.1.7	Management Report	37
6.1.8	Projections	37
6.1.9	Updated Schedules to Guarantee and Collateral Agreement	38
6.1.10	Other Information	38
6.1.11	Reduction of Information	38
6.2	Books; Records; Inspections	39
6.3	Conduct of Business; Maintenance of Property; Insurance	39
6.4	Compliance with Laws; Payment of Taxes and Liabilities	40
6.5	Maintenance of Existence	41
6.6	Employee Benefit Plans	41
6.7	Environmental Matters	41
6.8	Further Assurances	41
6.9	Compliance with Health Care Laws	42
6.10	Cure of Violations	43
6.11	Payment of Debt	43
6.12	Post-Closing Covenants	43

Section 7	Negative Covenants	44
7.1	Debt	44
7.2	Liens	45
7.3	Dividends; Redemption of Equity Interests	46
7.4	Mergers; Consolidations; Asset Sales	47
7.5	Modification of Organizational Documents	48
7.6	Use of Proceeds	48
7.7	Transactions with Affiliates	48
7.8	Inconsistent Agreements	48
7.9	Business Activities	49
7.10	Investments	49
7.11	Restriction of Amendments to Certain Documents	50
7.12	Fiscal Year	50
7.14	Deposit Accounts	50
7.15	Subsidiaries	51
7.16	Regulatory Matters	51
7.17	Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names	51
7.18	Truth of Statements	52
Section 8	Events of Default; Remedies	52
8.1	Events of Default	52
8.1.1	Non-Payment of Credit	52
8.1.2	Default Under Other Debt	52
8.1.3	Bankruptcy; Insolvency	52
8.1.4	Non-Compliance with Loan Documents	53
8.1.5	Representations; Warranties	53
8.1.6	Pension Plans	53
8.1.7	Judgments	53
8.1.8	Invalidity of Loan Documents or Liens	53
8.1.9	Invalidity of Subordination Provisions	54
8.1.10	Change of Control	54
8.1.11	Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters	54
8.1.12	Material Adverse Effect	54
8.2	Remedies	54
Section 9	Agent	55
9.1	Appointment; Authorization	55
9.2	Delegation of Duties	56
9.3	Limited Liability	56
9.4	Reliance	56
9.5	Notice of Default	56
9.6	Credit Decision	57
9.7	Indemnification	57
9.8	Agent Individually	57
9.9	Successor Agent	58
9.10	Collateral and Guarantee Matters	58
9.11	Intercreditor and Subordination Agreements	59
9.12	Actions in Concert	59

Section 10	Miscellaneous	59
10.1	Waiver; Amendments	59
10.2	Notices	60
10.3	Computations	61
10.4	Costs; Expenses	61
10.5	Indemnification by Borrower	61
10.6	Marshaling; Payments Set Aside	62
10.7	Non-liability of Lenders	62
10.8	Assignments	62
10.8.1	Assignments	62
10.9	Participations	64
10.10	Confidentiality	64
10.11	Captions	65
10.12	Nature of Remedies	65
10.13	Counterparts; Electronic Signatures	66
10.14	Severability	66
10.15	Entire Agreement	66
10.16	Successors; Assigns	66
10.17	Governing Law	66
10.18	Forum Selection; Consent to Jurisdiction	67
10.19	Waiver of Jury Trial	67
10.20	Patriot Act	67
10.21	Independent Nature of Relationship	67

Annexes

Annex I Commitments and Pro Rata Term Loan Shares
Annex II Addresses

Exhibits

Exhibit A Form of Assignment Agreement
Exhibit B Form of Compliance Certificate
Exhibit C Form of Note

Schedules

Schedule 1.1 Pending Acquisitions as of the Closing Date
Schedule 4.2 Prior Debt
Schedule 5.1 Jurisdictions of Qualification
Schedule 5.7 Ownership of Properties; Liens
Schedule 5.8 Capitalization
Schedule 5.16 Insurance
Schedule 5.18(a) Borrower's Registered Intellectual Property
Schedule 5.18(b) Products and Required Permits
Schedule 5.21 Material Contracts
Schedule 5.25A Names
Schedule 5.25B Offices
Schedule 5.25C Location of Foreign Tangible Collateral
Schedule 5.27 Broker's Commissions
Schedule 7.1 Closing Date Debt
Schedule 7.2 Closing Date Liens
Schedule 7.7 Transactions with Affiliates
Schedule 7.10 Closing Date Investments
Schedule 7.14 Deposit Accounts

CREDIT AGREEMENT

This CREDIT AGREEMENT (as may be amended, restated, supplemented, or otherwise modified from time to time, this “Agreement”) dated as of March 4, 2022 (the “Closing Date”), among ACER THERAPEUTICS INC., a Delaware corporation (“Borrower”), the financial institutions party hereto from time to time as lenders (each a “Lender” and collectively, the “Lenders”) and SWK FUNDING LLC, a Delaware limited liability company (in its individual capacity, “SWK”), as Agent for all Lenders.

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

Section 1 Definitions; Interpretation.

1.1 Definitions.

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

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

Acer-001 means the Borrower’s Product known as “ACER-001 (sodium phenylbutyrate) for the treatment of various inborn errors of metabolism, including urea cycle disorders and Maple Syrup Urine Disease.

Acer-001 Approval Date means the date on which Borrower receives the full FDA approval for marketing of Acer-001.

Acer-001 CRL Date means date on which Borrower receives a Complete Response Letter (CRL) from the FDA in relation to Acer-001.

Acquisition means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) the acquisition of a product license or a product line (excluding, for purposes of Section 7.10 hereof, any pending Acquisitions as of the Closing Date as set forth on Schedule 1.1 hereto), or (d) a merger or consolidation or any other combination (other than a merger, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary); provided that, notwithstanding the foregoing and for the avoidance of doubt, an Acquisition shall not include any acquisition of assets, including Intellectual Property, in connection with the development of products in the ordinary course of business.

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any managing member, manager, executive officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. For purposes of the definition of the term “Affiliate”, a Person shall be deemed to be “controlled by” any other Person if such Person possesses, directly or

indirectly, power to vote twenty-five percent (25%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers the power to direct or cause the direction of the management and policies of such Person whether by exercise of voting power, by contract or otherwise. Unless expressly stated otherwise herein, neither Agent nor any Lender shall be deemed an Affiliate of Borrower, any Loan Party or any Affiliate thereof.

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

Agreement shall have the meaning set forth in the Preamble.

Amortization Payment Date means the Payment Date occurring in November 2022.

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

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

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

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

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in New York, New York.

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

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

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

- (i) any Person acquires the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding total combined voting Equity Interests of Borrower;
- (ii) Borrower shall at any time fail to own, directly or indirectly, one hundred percent (100%) of the Equity Interests of each of its Subsidiaries, except to the extent permitted by Section 7.4; or
- (iii) a Key Person Event.

CLIA means (a) the Clinical Laboratory Improvement Act of 1967, as the same may be amended, modified or supplemented from time to time, including without limitation the Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a et seq. (“CLIA 88”), and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder, or (b) any equivalent state statute (and any and all rules or regulations promulgated from time to time thereunder) recognized by the relevant Governmental Authority as (x) having an “Equivalency” (as defined by CLIA) to CLIA, and (y) offering a compliance and regulatory framework that is applicable to a Person in such state in lieu of CLIA.

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

Closing Date Warrant means that certain warrant issued to SWK by Borrower on the Closing Date.

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

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

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

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

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

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

Consolidated Net Income means, with respect to any Person and its Subsidiaries, for any period, the consolidated net income (or loss) of such Person and its respective Subsidiaries for such period, as determined under GAAP.

Consolidated Unencumbered Liquid Assets means as of any date of determination (i) any Cash Equivalent Investment owned by Loan Parties, on a consolidated basis, that are not the subject of any Lien or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Loan Parties (other than Permitted Liens), minus (ii) the aggregate amount of Borrower's accounts payable which are unpaid more than ninety (90) days beyond trade terms consistent with Borrower's past practice.

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

Contract Rate means a rate per annum equal to (x) the LIBOR Rate, plus (y) eleven percent (11.0%).

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

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

Convertible Note has the meaning set forth in Section 7.1(d).

Copyrights means all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

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

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), other than royalty payments or cash milestone payments made or to be made by such Person from time to time in connection with an Acquisition, (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount

thereof being measured as the lesser of (x) the aggregate unpaid amount of such indebtedness and (y) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for Tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

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

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

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

Defaulting Lender has the meaning set forth in Section 2.3.

Deposit Account means, individually and collectively, any bank or other depository accounts of a Loan Party (including without limitation, any "deposit account" or "securities account" as defined in the Uniform Commercial Code).

Disposition means, as to any asset or right of any Loan Party, (a) any sale, lease, assignment or other transfer (other than to any other Loan Party), but specifically excluding any license or sublicense, (b) any loss, destruction or damage thereof or (c) any condemnation, expropriation, confiscation, requisition, seizure or taking thereof, in each case excluding (i) the sale of inventory or Product in the ordinary course of business, (ii) any issuance of Equity Interests by Borrower, (iii) any Disposition of obsolete or unused equipment or the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties and (iv) any other Disposition where the Net Cash Proceeds of any sale, lease, assignment, transfer, condemnation, expropriation, confiscation, requisition, seizure or taking do not in the aggregate exceed \$250,000 in any Fiscal Year.

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

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

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

EBITDA means, for any Person and its Subsidiaries for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income for such period (and without duplication), (i) Interest Expense, (ii) income tax expense (including tax accruals), (iii) depreciation and amortization, (iv) non-cash expenses relating to equity-based compensation or purchase accounting, and (v) other non-recurring and/or non-cash expenses or charges approved by the Agent in its reasonable discretion.

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

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

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, SAFE's or similar instruments, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing.

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

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

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

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

Fair Valuation means the determination of the value of the consolidated assets of a Person on the basis of the amount which may be realized by a willing seller within a reasonable time through collection or sale of such assets at market value on a going concern basis to an interested buyer who is willing to purchase under ordinary selling conditions in an arm's length transaction.

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

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

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

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

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

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

Fiscal Quarter means a calendar quarter of a Fiscal Year.

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

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

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

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

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

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

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

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

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

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

Intellectual Property means all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses (as defined in the Guarantee and Collateral Agreement), internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source

and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any Intellectual Property rights relating thereto) and Copyright Licenses (as defined in the Guarantee and Collateral Agreement) and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses (as defined in the Guarantee and Collateral Agreement); Mask Works (as defined in the Guarantee and Collateral Agreement); industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

Interest Expense means for any Person and its Subsidiaries for any period the consolidated interest expense of such Person and its Subsidiaries for such period (including all imputed interest on Capital Leases).

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

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

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

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

IRS means the United States Internal Revenue Service.

Key Person means Chris Schelling.

Key Person Event means, unless such actions are consented to in advance in writing by Agent, the Key Person shall no longer serve as Chief Executive Officer of Borrower, unless such Key Person is replaced within one hundred eighty (180) days with a person holding the necessary qualifications and experience to assume the responsibilities and capacity of the departing Key Person, and which has been approved in writing by Agent in its reasonable discretion (such consent not to be unreasonably withheld, conditioned or delayed).

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses. Notwithstanding anything to the contrary in any Loan Document, all references in any Loan Document to counsel or attorneys' fees or charges and disbursements of counsel shall be limited to the reasonable and duly documented fees of one legal counsel for Agent and Lenders taken as a whole, and if necessary one local counsel in any relevant jurisdiction and in the case of an actual or reasonably perceived conflict of interest where the Agent or a Lender notifies Borrower of the existence of such conflict, of another firm or counsel for Agent or such Lender in each relevant jurisdiction.

Lenders has the meaning set forth in the Preamble.

LIBOR Rate means a fluctuating rate per annum equal to the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. Dollar deposits are offered by leading banks in the London interbank deposit market), as the offered rate for loans in Dollars for a three (3) month period, rounded upwards, if necessary, to the nearest 1/100 of 1%. The rate is set by the ICE Benchmark Administration as of 11:00 a.m. (London time) as determined two (2) Business Days prior to each Payment Date, and effective on the Payment Date immediately following such determination date and continuing to but not including the next succeeding Payment Date. If Bloomberg Professional Service (or another nationally-recognized rate reporting source acceptable to Agent) no longer reports the LIBOR Rate or Agent determines in good faith that the rate so reported no longer accurately reflects the rate available to Agent in the London Interbank Market or if such index no longer exists or if page USD-LIBOR-BBA (ICE) no longer exists or accurately reflects the rate available to Agent in the London Interbank Market, Agent may select a replacement index that approximates as near as possible such prior index. Notwithstanding the foregoing, (i) if at any time Agent determines (which determination shall be conclusive absent manifest error) that the LIBOR Rate is no longer available for determining interest rates for loans or notes similar to the Loans, then Agent and Borrower shall select an alternate rate of interest to the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for loans or notes similar to the Loans in the United States at such time, and, if requested by Agent, Agent and Lenders at such time party hereto and the Borrower shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (including, for the avoidance of doubt, any amendments to the definition of "Contract Rate" to ensure that the interest rate payable by Borrower hereunder is substantially similar to the interest rate that would otherwise be paid prior to the selection of such alternate rate of interest), and (ii) in no event shall the "LIBOR Rate" or any such alternate rate of interest to the LIBOR Rate ever be less than one percent (1.00%).

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

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

Loan Documents means this Agreement, any Notes, any subordination agreements, the Collateral Documents, any intercreditor agreement entered into in connection with the Loan from time to time, and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each of its Subsidiaries, if any.

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

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

Material Contract has the meaning assigned in Section 5.21 hereof.

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

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

Note means any promissory note issued pursuant to Section 2.5.2.

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

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

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

Osanetant means the Borrower's Product known as "Osanetant".

Osanetant Trigger Date means the date on which the Phase IIa trial of Osanetant generates positive safety and efficacy data as defined in the Osanetant trial objectives, as evidenced by the top-line results from such trial.

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

Patents means all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title and interest in and to: (i) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of any of the foregoing.

Payment Date means the fifteenth (15th) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15th day is not a Business Day), commencing with May 16, 2022.

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

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

Permit means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject, including without limitation all registrations with Governmental Authorities.

Permitted Liens means Liens permitted by Section 7.2.

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

Prior Debt means the Debt listed on Schedule 4.2.

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

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

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

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

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

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

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Loan Parties with respect to the sale of Products or the provision of services by independent licensees of Borrower and/or its Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

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

Solvent means, as to any Person at any time, that (a) the fair value of the tangible and intangible property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the tangible and intangible property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

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

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

SWK has the meaning set forth in the Preamble.

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

Term Loan has the meaning set forth in Section 2.1.

Term Loan Commitment means \$6,500,000.

Term Loan Maturity Date means (i) in the event that the Acer-001 Approval Date occurs on or before September 30, 2022, the date that is twelve (12) Business Days following such Acer-001 Approval Date, or (ii) in the event that the Acer-001 Approval Date does not occur on or before September 30, 2022, March 4, 2024.

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

Trademarks means all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) all of such Loan Party's (or if referring to another Person, such other Person's) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business

identifiers, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and all research and development and the goodwill of the business relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature.

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

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

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

1.2 Interpretation.

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

(b) For purposes of converting any amount reported or otherwise denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion via the applicable exchange rate identified and normally published by Bloomberg Professional Service as the applicable exchange rate as of the close of currency trading on each trading date during the applicable period of measurement, or, if such currency conversion deals exclusively

with a particular date of determination, as of the close of currency trading on such date of determination (or the following trading date to the extent no currency trading took place on such date of determination). If Bloomberg Professional Service no longer reports such currency exchange rate, Agent shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision in any Loan document, the definitions set forth in this Agreement and any financial calculations required by the Loan Documents shall be computed to exclude any change to lease accounting rules as a result of Financial Accounting Standards Board Accounting Standards Codification 842 (Leases) from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance.

Section 2 Credit Facility.

2.1 Term Loan Commitments.

On and subject to the terms and conditions of this Agreement, each Lender, severally and for itself alone, agrees to make a term loan to Borrower (the "**Term Loan**"), within two (2) Business Days of request therefore by Borrower, in an amount equal to such Lender's applicable Pro Rata Term Loan Share of the Term Loan Commitment. The Commitments of Lenders to make any portion of the Term Loan shall terminate concurrently with the making of such Term Loan. The Term Loan is not a revolving credit facility, and therefore any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.2 [Reserved].

2.3 Commitments Several.

The failure of any Lender to fund its Pro Rata Share of the Term Loan Commitment shall not relieve any other Lender of its obligation (if any) to fund its Pro Rata Portion of the Term Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender. Any Lender who (i) fails to fund its Pro Rata Share of any Term Loan Commitment within two (2) Business Days after the date such Term Loans were required to be funded hereunder or (ii) notifies Borrower and Agent in writing, or makes a public statement to the effect, that it does not intend to comply with its funding obligations hereunder, unless, in each case, such Lender gives written notice to Agent and Lender stating that, and specifically identifying which, one or more conditions to funding has not or cannot be satisfied, shall be a "**Defaulting Lender**" hereunder. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be suspended, such Defaulting Lender shall not be entitled to receive any commitment or other fees hereunder and Borrower may, by written notice to Agent, terminate the unused amount of the Term Loan Commitment of such Defaulting Lender.

2.4 Indebtedness Absolute; No Offset; Waiver.

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

2.5 Loan Accounting.

2.5.1 Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Term Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.5.2 Notes.

(a) Borrower agrees that upon written notice by Agent to Borrower that a promissory note or other evidence of indebtedness is requested by Lenders to evidence the Loan and other Obligations owing or payable to, or to be made by, Lenders, Borrower shall promptly (and in any event within ten (10) Business Days of any such request) execute and deliver to Agent a promissory note in favor of Agent, for the benefit of Lenders, in the form attached hereto as Exhibit C.

(b) Upon Agent's written request, and in any event within ten (10) Business Days of any such request, Borrower shall execute and deliver to Agent new Notes (on substantially the same terms and in substantially the same form) and/or divide the Notes in exchange for then existing Notes in such smaller amounts or denominations as Agent shall specify in its sole discretion; provided that the aggregate principal amount of such new Notes shall not exceed the aggregate principal amount of the Notes outstanding at the time such request is made; and provided, further, that such Notes that are to be replaced shall then be deemed no longer outstanding hereunder and replaced by such new Notes and returned to Borrower within ten (10) days after Agent's receipt of the replacement Notes; and

(c) upon receipt of evidence reasonably satisfactory to Borrower of the mutilation, destruction, loss or theft of any Notes and the ownership thereof, Borrower shall, upon the written request of the holder of such Notes, execute and deliver in replacement thereof new Notes in the same form, in the same original principal amount and dated the same date as the Notes so mutilated, destroyed, lost or stolen; and such Notes so mutilated, destroyed, lost or stolen shall then be deemed no longer outstanding hereunder. If the Notes being replaced have been mutilated, they shall be surrendered to Borrower after Agent's receipt of the replacement Notes; and if such replaced Notes have been destroyed, lost or stolen, such holder shall furnish Borrower with an indemnity in writing reasonably acceptable to Borrower to save them harmless in respect of such replaced Note.

2.6 Payment of Interest and Principal.

2.6.1 Interest Rate Calculation.

(a) The outstanding principal balance under the Loan shall bear interest at a per annum rate of interest equal to the Contract Rate (as may be adjusted from time to time in accordance with this Section 2.6.1). Whenever, subsequent to the date hereof, the LIBOR Rate is increased or decreased (as determined on the date that is two (2) Business Days prior to each Payment Date), the Contract Rate, as set forth herein, shall be similarly changed effective as of such subsequent Payment Date, without notice or demand of any kind by an amount equal to the amount of such change in the LIBOR Rate on the date that is two (2) Business Days prior to each such Payment Date. The interest due on the principal balance

of the Loan outstanding as of any Payment Date shall be computed for the actual number of days elapsed during the period in question on the basis of a year consisting of three hundred sixty (360) days and shall be calculated by determining the daily principal balance outstanding for each day of such period in question. The daily rate shall be equal to 1/360th times the Contract Rate. If any statement furnished by Agent for the amount of a payment due exceeded the actual amount that should have been paid because the LIBOR Rate decreased and such decrease was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall receive a credit for the overpayment, which credit shall be applied towards the next subsequent payment due hereunder. If any statement furnished by Agent for the amount of a payment due was less than the actual amount that should have been paid because the LIBOR Rate increased and such increase was not reflected in such statement, Borrower shall make the payment specified in such statement from Agent and Borrower shall be required to pay any resulting underpayment with the next subsequent payment due hereunder.

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

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

2.6.2 Payments of Interest.

Borrower shall pay to Agent, for the benefit of Lenders, all accrued interest on the Loan in arrears on each Payment Date, upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. Notwithstanding the forgoing, so long as no Event of Default has occurred and is continuing, Borrower may elect in writing (which may include electronic email) to Agent on or before any such Payment Date occurring on or prior to the Amortization Payment Date to capitalize all or a portion of the interest otherwise due and payable on any such Payment Date (each a "**PIK Amount**") into the unpaid principal balance of the Term Loan. For the avoidance of doubt, to the extent Borrower exercises its rights pursuant to the prior sentence, all such PIK Amounts will accrue interest in accordance with this Agreement from the related Payment Date until paid in full and shall be subject to the general payment provisions of this Agreement as are applicable to rest of the Term Loan.

2.6.3 Payments of Principal.

On the Amortization Payment Date and on each Payment Date thereafter, Borrower shall make an amortization payment to Agent, for the benefit of Lenders, in the amount of \$650,000, with such amount to be applied to the Term Loan pro rata based on each Lender's Pro Rata Term Loan Share. Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing shall be Paid in Full on the Termination Date.

2.7 Fees.

(a) Origination Fee. Upon the date on which the Term Loan is funded, Borrower shall pay to Agent, for its own account, a fee (the "**Origination Fee**") in the amount of \$97,500, which Origination Fee shall be deemed fully earned and non-refundable on the Closing Date.

(b) Exit Fee. Upon the Termination Date, Borrower shall pay an exit fee (the "**Exit Fee**") to Agent, for the benefit of Lenders, which Exit Fee shall be deemed fully earned and non-refundable on the Termination Date, in the amount calculated as follows:

(i) in the event that the Acer-001 Approval Date or the Termination Date occurs on or before September 30, 2022, the additional amount that would be needed to be paid such that the sum of (w) such Exit Fee, plus (x) the Origination Fee, plus (y) aggregate payments actually made in cash to Agent, for the benefit of Lenders, on or prior to such date in respect of the principal amount of the Term Loan (excluding, in each case, any amounts paid in respect of costs, indemnifications or reimbursements, any amounts realized by Agent and Lenders in connection with the Closing Date Warrant and/or any fees paid to Agent and Lenders other than the Exit Fee and the Origination Fee), plus (z) the aggregate interest payments actually made in cash to Agent, for the benefit of Lenders, on or prior to such date (excluding, for the avoidance of doubt, any interest accrued at the Default Rate), results in an amount equal to one and three tenths (1.3) times the aggregate, outstanding principal balance of the Term Loan (inclusive, for the avoidance of doubt, any and all PIK Amounts); or

(ii) in the event that the Acer-001 Approval Date and the Termination Date occur after September 30, 2022, the additional amount that would be needed to be paid such that the sum of (w) such Exit Fee, plus (x) the Origination Fee, plus (y) aggregate payments actually made in cash to Agent, for the benefit of Lenders, on or prior to such date in respect of the principal amount of the Term Loan (excluding, in each case, any amounts paid in respect of costs, indemnifications or reimbursements, any amounts realized by Agent and Lenders in connection with the Closing Date Warrant and/or any fees paid to Agent and Lenders other than the Exit Fee and the Origination Fee), plus (z) the aggregate interest payments actually made in cash to Agent, for the benefit of Lenders, on or prior to such date (excluding, for the avoidance of doubt, any interest accrued at the Default Rate), results in an amount equal to one and five tenths (1.5) times the aggregate, outstanding principal balance of the Term Loan (inclusive, for the avoidance of doubt, any and all PIK Amounts).

2.8 Prepayment.

2.8.1 Mandatory Prepayment.

Borrower shall prepay the Obligations, or any portion thereof, as applicable, (which shall include the amounts due and payable under Section 2.7(b) hereof) until paid in full within two (2) Business Days after the receipt by a Loan Party of any Net Cash Proceeds from any Disposition, in an amount equal to such Net Cash Proceeds.

2.8.2 Voluntary Prepayment.

Subject to clause (b) below, Borrower may, on at least five (5) Business Days' written notice or telephonic notice (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 3:00 p.m. New York City time on such day, prepay the Term Loan and all related Obligations in whole or in part at any time prior to the Termination Date. Such notice to Agent shall specify the amount and proposed date of such prepayment.

2.9 Payment Mechanics.

2.9.1 Making of Payments.

Except as set forth in the last sentence of this Section 2.9.1, all payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via wire transfer as directed by Agent in writing, not later than 3:00 p.m. New York City time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

2.9.2 Application of Payments and Proceeds Following an Event of Default.

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

2.9.3 Set-off.

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists, Agent and each Lender may, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent.

2.9.4 Proration of Payments.

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

Section 3 Yield Protection.

3.1 Taxes.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder by or on behalf of Borrower to or for the account of Agent or any Lender shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, withholdings or other similar charges imposed by any Governmental Authority that is a taxing authority ("**Tax**" or "**Taxes**"), excluding (i) taxes imposed on or measured by Agent's or any Lender's net income (however denominated) or gross profits, and franchise taxes, imposed by any jurisdiction (or subdivision thereof) under the laws of which Agent or such Lender is organized or in which Agent or such Lender conducts business or, in the case of any Lender, in which its applicable lending office is located at the time such Lender acquires its initial interest in any Term Loan Commitment, (ii) any branch profit taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Agent or a Lender is located or conducts business; (iii) in the case of any Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or designates a new lending office; (iv) in the case of any U.S. Lender, any United States federal backup withholding tax; and (v) taxes imposed under FATCA; (vi) Taxes attributable to a Foreign Lender's failure to comply with Section 3.1(c) or inability to provide the applicable IRS Form set forth in Section 3.1(c) to Borrower and Agent; (vii) with respect to Agent or any Lender, Taxes imposed as a result of a present or former connection between such Agent or Lender and the jurisdiction imposing such Tax (other than connections arising from such Agent or Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document); and (viii) in the case of a Lender, U.S. federal withholding Taxes, if any and not otherwise included in clauses (i) through (vii), imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which such Lender acquires such interest in the Loan or Commitment or changes its lending office (items in clauses (i) through (viii), "**Excluded Taxes**", and all Taxes other than Excluded Taxes, "**Indemnified Taxes**"). If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then Borrower shall: (w) make such withholding or deduction; (x) pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted; (y) as promptly as practicable forward to Agent the original or a certified copy of an official receipt or other documentation reasonably satisfactory to Agent evidencing such payment to such Governmental Authority; and (z) if the withholding or deduction is with respect to Indemnified Taxes, pay to Agent for the account of Lenders such additional amount or amounts as is

necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction of Indemnified Taxes been required. To the extent that any amounts shall ever be paid by Borrower in respect of Indemnified Taxes, such amounts shall, for greater certainty, be considered to have accrued and to have been paid by Borrower as interest on the Loans.

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

(c) Each Foreign Lender that is a party hereto on the Closing Date or becomes an assignee of an interest under this Agreement under Section 10.8.1 after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

(i) Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;

(ii) two duly completed and executed originals of IRS Form W-8ECI;

(iii) a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that such Foreign Lender is not (w) a conduit entity participating in a conduit financing arrangement as defined in Treasury Regulation 1.881-3, (x) a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, (y) a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (z) a "controlled foreign corporation" described in Sections 881(c)(3)(C) and 864(d)(4) of the IRC, together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or

(iv) if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BENE), IRS Form W-9 or a portfolio interest certificate described in clause (iii) above from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

Each Foreign Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent. Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c), or (B) if such Lender shall fail to comply with the certification requirements of this clause (c). For the avoidance of doubt, all references to IRS Forms in this clause (c) shall include, in each case, any successor form.

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

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

3.2 Manner of Funding; Alternate Funding Offices.

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

3.3 Conclusiveness of Statements: Survival.

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

Section 4 Conditions Precedent.

4.1 Conditions to Effectiveness of this Agreement. The effectiveness of this Agreement is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to Agent:

(a) General. Borrower shall have delivered the following documents in form and substance acceptable to Agent in its reasonable discretion (and, as applicable, duly executed and dated the Closing Date or an earlier date satisfactory to Agent):

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

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

(iii) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified by the appropriate Governmental Authority, (ii) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction set forth on Schedule 5.1 to the extent reasonably requested by Agent, (iii) bylaws (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party, the Closing Date Warrant and the transactions contemplated thereby, and (v) signature and incumbency certificates of its officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

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

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

(b) Diligence. Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be satisfactory in form and substance to Lenders.

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

(d) Closing Date Warrant. Agent shall have received the fully executed Closing Date Warrant.

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

(a) Fees. The Lenders and Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including Legal Costs), required to be paid under the Loan Documents on or before the Closing Date; provided, that any such expenses shall be first deducted from the Fifty Thousand Dollar (\$50,000) expense deposit paid by Borrower to Agent prior to the Closing Date.

(b) Representations, Warranties, Defaults. (i) All representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all respects as if made on and as of the date of funding (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all respects as of such earlier date) and (ii) no Default or Event of Default shall exist.

(c) Prior Debt. The Prior Debt, if any, (i) has been (or concurrently with the initial borrowing will be) paid in full and all related Liens, if any, have been (or concurrently with the initial borrowing will be) released or (ii) otherwise subject to an intercreditor arrangement or subordination agreement acceptable to Agent in its commercially-reasonable discretion.

(d) Convertible Note. Agent shall have received evidence, acceptable to Agent, that Borrower shall have issued, or contemporaneously with the closing of the Term Loan shall issue, the Convertible Note resulting in gross cash proceeds to Borrower of not less than \$6,000,000.

Section 5 Representations and Warranties.

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

5.1 Organization.

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

5.2 Authorization: No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guaranty monies thereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any applicable Health Care Law), (ii) the charter, by-laws or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the date of funding of the Term Loan) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents).

5.3 Validity: Binding Nature.

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

5.4 Financial Condition.

(a) The financial statements and/or similar information delivered pursuant hereto, were prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition of Borrower and its Subsidiaries as at such dates and the results of its operations for the periods then ended.

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

5.5 No Material Adverse Effect.

Since December 31, 2021, there has been no material adverse change in the financial condition, operations, assets, business or properties of Loan Parties.

5.6 Litigation.

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

5.7 Ownership of Properties; Liens.

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

5.8 Capitalization.

All issued and outstanding Equity Interests of Loan Parties are duly authorized, validly issued, fully paid, non-assessable, and such securities were issued in compliance in all material respects with all applicable state and federal laws concerning the issuance of securities. Schedule 5.8 sets forth the authorized Equity Interests and ownership the Equity Interests of each Wholly-Owned Subsidiary of Borrower.

5.9 Pension Plans.

No Loan Party has, nor to Borrower's knowledge has any Loan Party ever had, a Pension Plan.

5.10 Investment Company Act.

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

5.11 No Default.

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

5.12 Margin Stock.

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

5.13 Taxes.

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

5.14 Solvency.

On the Closing Date, and immediately prior to and after giving effect to each advance of the Term Loan hereunder and the use of the proceeds hereof, Borrower is, and will be, Solvent.

5.15 Environmental Matters.

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

5.16 Insurance.

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

5.17 Information.

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

5.18 Intellectual Property: Products and Services.

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

(b) Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all material Products and Services of the Loan Parties.

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

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

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

5.19 Restrictive Provisions.

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

5.20 Labor Matters.

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

5.21 Material Contracts.

Except for the agreements set forth as exhibits or incorporated by reference into Borrower's Annual Report on Form 10-K for the Fiscal Year ended December 31, 2021, as filed with the Securities and Exchange Commission (the "**Form 10-K**"), or Quarterly Reports on Form 10-Q for the Fiscal Quarters ended March 31, 2020, June 30, 2021 and September 30, 2021, as filed with the Securities and Exchange Commission (each a "**Form 10-Q**") and those agreements not included on the Form 10-K or any Form 10-Q but included herein on Schedule 5.21 (collectively, the "**Material Contracts**"), as of the Closing Date there are no (i) employment agreements covering the management of any Loan Party, (ii) collective bargaining agreements or other labor agreements covering any employees of any Loan Party, (iii) agreements for managerial, consulting or similar services to which any Loan Party is a party or by which it is bound, (iv) agreements regarding any Loan Party, its assets or operations or any investment therein to which such Loan Party and any of its equity holders are a party, (v) patent licenses, trademark licenses, copyright licenses or other lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee (other than widely-available software subject to "shrink-wrap" or "click-through" software licenses), (vi) distribution, marketing or supply agreements to which any Loan Party is a party, (vii) customer agreements to which any Loan Party is a party (in each case with respect to any agreement of the type described in the preceding clauses (i), (iii), (iv), (v), (vi) and (vii) requiring payments in the aggregate of more than \$250,000 in any year), (viii) partnership agreements pursuant to which any Loan Party is a partner, limited liability company agreements pursuant to which any Loan Party is a member or manager, or joint venture agreements to which any Loan Party is a party (in each case other than the applicable Loan Parties' organizational documents), (ix) real estate leases, or (x) any other agreements or instruments to which any Loan Party is a party, in each case the breach, nonperformance or cancellation of which, would reasonably be expected to have a Material Adverse Effect. Schedule 5.21 sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.22 Compliance with Laws; Health Care Laws.

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

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

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

(ii) Each Loan Party (either directly or through one or more authorized third parties) has (i) all licenses, consents, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all applicable declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an "**Authorization**") necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to obtain would not reasonably be expected to have a Material Adverse Effect, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with the rules, guidance documents, directives and regulations of the applicable regulatory authorities having jurisdiction with respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

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

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

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

5.23 Existing Indebtedness; Investments, Guarantees and Certain Contracts.

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

5.24 Affiliated Agreements.

Except as set forth on Schedule 7.7 and employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, (i) there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers, directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand, and (ii) to Borrower's knowledge, no manager, officer or director of any Loan Party is directly or indirectly, indebted to or has any direct or indirect ownership or voting interest in any Person with which any Loan Party has a business relationship or which competes with any Loan Party (except that any such Persons may own equity interests in (but not exceeding five percent (5%) of the outstanding equity interests of) any publicly traded company that may compete with Loan Parties)).

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

No Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) other than such names set forth on Schedule 5.25A. Each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A, and any and all business conducted and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains, and during the last five (5) years has maintained, respective places of business only at the locations set forth on Schedule 5.25B, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations (other than (i) Deposit Accounts, (ii) Collateral in the possession of Agent, for the benefit of Agent and Lenders, and (iii) other locations disclosed to Agent from time to time in writing). Schedule 7.14 lists all of Loan Parties' Deposit Accounts as of the Closing Date. Except as set forth on Schedule 5.25C hereto, all of the tangible Collateral is located exclusively within the United States.

5.26 Non-Subordination.

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

5.27 Broker's or Finder's Commissions.

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

5.28 Anti-Terrorism OFAC.

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

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

5.29 Security Interest.

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

5.30 Survival.

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

Section 6 Affirmative Covenants.

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

6.1 Information.

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

6.1.1 Annual Report.

Promptly when available and in any event within ninety (90) days after the close of each Fiscal Year (unless Borrower files a Notice of Late Filing (12b-25 Notice) in which case such report shall be due within one hundred five (105) days of the end of the relevant Fiscal Year): (a) a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (i) a

consolidated and consolidating balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants) by independent auditors of recognized standing selected by Borrower and reasonably acceptable to Agent, and (ii) a comparison with the previous Fiscal Year; and (b) upon Agent's reasonable request, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated statements of earnings and cash flows for Borrower and its Subsidiaries for such Fiscal Year, together with a comparison of actual results for such Fiscal Year with the budget for such Fiscal Year, each certified by the chief financial officer or another executive officer of Borrower; provided, that, for long as Borrower's Equity Interests are listed on the NASDAQ exchange, Borrower's prompt filing of such annual report described in this Section 6.1 with the U.S. Securities and Exchange Commission shall satisfy Borrower's obligations under this Section 6.1.1.

6.1.2 Interim Reports.

(a) Promptly when available and in any event within forty-five (45) days after the end of each Fiscal Quarter (unless Borrower files a Notice of Late Filing (12b-25 Notice) in which case such report shall be due within fifty (50) days of the end of the relevant Fiscal Quarter), unaudited consolidated balance sheets of Loan Parties as of the end of such Fiscal Quarter, together with consolidated statements of earnings and cash flows for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form), certified by the chief financial officer or other executive officer of Borrower; provided, that, for as long as Borrower's Equity Interests are listed on the NASDAQ exchange, Borrower's prompt filing of such annual report described in this Section 6.1.2(a) with the U.S. Securities and Exchange Commission shall satisfy Borrower's obligations under this Section 6.1.2(a).

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

(c) Promptly when available and in any event within five (5) days after the end of each calendar month, a statement of prior month-end Consolidated Unencumbered Liquid Assets of Loan Parties in form and substance reasonably acceptable to Agent.

6.1.3 Quarterly Review Meeting.

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

6.1.4 Compliance Certificate.

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

6.1.5 Reports to Governmental Authorities, Board of Directors and Shareholders.

Upon the request of Agent, copies of (a) solely to the extent not otherwise filed with the U.S. Securities and Exchange Commission, all regular, periodic or special reports of each Loan Party filed with any Governmental Authority (excluding all regular and periodic filings related to Taxes (other than annual income tax filings)), and (b) copies of all registration statements (or such equivalent documents) and annual, quarterly, monthly or other regular reports of each Loan Party filed with the U.S. Securities and Exchange Commission provided, that, for long as Borrower's Equity Interests are listed on the NASDAQ exchange, Borrower's prompt filing of such annual report described in this Section 6.1.5 with the U.S. Securities and Exchange Commission shall satisfy Borrower's obligations under this Section 6.1.5. In addition to the forgoing, Borrower shall promptly (and in any event within fourteen (14) days following such each such meeting) provide copies to Agent of (x) all proxy statements or other communications made to the holders of Borrower's Equity Interests generally and (y) all information delivered to the Board in connection with Board meetings as and when such information is delivered to the Board, provided that Borrower reserves the right to withhold or redact from such materials any such information (a) that the Board believes that such exclusion is reasonably necessary to preserve the attorney-client privilege, confidential information or trade secrets or other sensitive information or material non-public technical information and (b) relating to Borrower's strategy, negotiating position or similar matters with respect to the Term Loan, any refinancing or replacement thereof or any related matters.

6.1.6 Notice of Default; Litigation.

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

(a) the occurrence of an Event of Default;

(b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in each case would reasonably be expected to have a Material Adverse Effect;

(c) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond

or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise Tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent;

(d) any cancellation or material adverse change in any insurance maintained by Borrower or any other Loan Party;

(e) any other event (including (i) any violation of any law, including any Environmental Law, or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule or regulation) which would reasonably be expected to have a Material Adverse Effect or otherwise lead to an Event of Default; or

(f) to the extent that it would reasonably be expected to result in a Material Adverse Effect (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for Borrower or any other Loan Party, is threatened or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law and Regulation, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non-compliance with CLIA or any other applicable Health Care Law, (iv) the occurrence of any violation of any applicable Health Care Law by Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that would reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) any officer, employee or agent of Borrower or any of the other Loan Parties is convicted of any crime or has engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) any officer, employee or agent of Borrower or any of the other Loan Parties has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

6.1.7 Management Report.

Promptly upon receipt thereof, copies of all detailed financial and management reports submitted to Borrower or any other Loan Party by independent auditors in connection with each annual or interim audit made by such auditors of the books of Borrower or any other Loan Party.

6.1.8 Projections.

As soon as practicable, and in any event not later than ninety (90) days after the commencement of each Fiscal Year, financial projections on a quarterly basis of revenues and EBITDA for Loan Parties for such Fiscal Year prepared in a manner consistent with the projections delivered by

Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a chief financial officer (or other executive officer) of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections, (c) such projections have been prepared in accordance with such assumptions and (d) such projections have been approved in writing by the Board as the operating plan for the subsequent Fiscal Year.

6.1.9 Updated Schedules to Guarantee and Collateral Agreement.

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

6.1.10 Other Information.

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

(a) Subject to any applicable confidentiality restrictions binding on Borrower or its Affiliates, copies of any reports, statements or written materials (other than routine communications (electronic or otherwise) between Borrower or its Affiliates and such entities that are not material in nature) in relation to any Material Contract;

(b) such other information concerning the financial condition of the Borrower and any other Loan Party or its compliance with the terms of the Loan Documents as Agent may reasonably request;

(c) to the extent not prohibited by applicable law and subject to any applicable confidentiality restrictions binding on Borrower or its Affiliates, copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority (other than routine communications (electronic or otherwise) between Borrower or its Affiliates and such Governmental Authorities that are not material in nature); and

(d) copies of (x) any notices or other communications relating to any breach, default, or event of default with respect to any Subordinated Debt and (y) any other modifications or amendments entered into in relation to any Subordinated Debt; other than, in either case, as it relates to any such Subordinated Debt held by Agent or any Affiliate of Agent.

6.1.11 Reduction of Information.

Notwithstanding the forgoing, Agent may, upon written notice to Borrower, elect to stop receiving any or all of the information and/or reports described in this Section 6.1, and, upon receipt of such written notice, Borrower shall promptly discontinue delivering such designated information and/or reports without the need to amend this Agreement or any further action by Agent or Lenders.

6.2 Books; Records; Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause each other Loan Party to permit (at any reasonable time and with reasonable notice), Agent or any representative thereof to, no more often than once on an annual basis prior to the occurrence and during the continuation of an Event of Default, inspect the properties and operations of Borrower or any other Loan Party; and permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable prior written notice (or at any time without notice if an Event of Default exists), Agent (accompanied by any Lender) or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with any Lender or Agent or any representative thereof), and to examine (and photocopy extracts from) any of its books or other records related to the financial condition of the Loan Parties or their compliance with the provision of the Loan Documents; and permit, and cause each other Loan Party to permit, (at any reasonable time and with reasonable notice) Agent and its representatives to inspect the Collateral and other tangible assets of Borrower or Loan Party, to perform appraisals of the equipment of Borrower or Loan Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral.

6.3 Conduct of Business; Maintenance of Property; Insurance.

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

(b) Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is (i) customarily maintained by Persons operating in the same geographical region as Borrower that are (A) subject to CLIA and other applicable Health Care Laws, or (B) otherwise delivering to customers products or services similar to the Services (in each case, as determined by Agent in its reasonable discretion), and (ii) otherwise in form, substance, and amounts acceptable to Agent in its reasonable discretion; *provided* that in any event, such insurance shall, unless the Agent otherwise agrees, insure against all risks and liabilities of the type insured against as of the Closing Date and shall have

insured amounts no less than, and deductibles no higher than, those amounts provided for as of the Closing Date. Upon request of Agent or any Lender, Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each other Loan Party. Borrower shall cause each issuer of an insurance policy to provide Agent with an endorsement (x) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of liability insurance promptly upon request by Agent, (y) providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice in the event of any non-payment of premiums) before the termination or cancellation of the policy prior to the expiration thereof and (z) reasonably acceptable in all other respects to Agent.

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

6.4 Compliance with Laws; Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations, (d) file, or cause to be filed, all federal and material state and foreign Tax returns and reports required by law to be filed by any Loan Party, and (e) pay, and cause each other Loan Party to pay, prior to delinquency, all federal and material state and foreign Taxes and other material governmental charges against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property; *provided* that the foregoing shall not require Borrower or any other Loan Party to pay any such tax, charge or claim so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP. For purposes of this Section 6.4, "Control" shall mean, when used with respect to any Person, (x) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (y) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

6.5 Maintenance of Existence.

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

6.6 Employee Benefit Plans.

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of \$100,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law and regulations.

6.7 Environmental Matters.

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

6.8 Further Assurances.

(a) Subject, in each case, to the limitations set forth in the Guaranty and Collateral Agreement, take, and cause each other Loan Party to take, such actions as are reasonably necessary or as Agent may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower and each Subsidiary of Borrower (as well as all equity interests of each Subsidiary of Borrower) and guaranteed by all of the Subsidiaries of Borrower (including, promptly (and in any event within thirty (30) days following the acquisition or creation thereof, any Subsidiary of Borrower acquired or created after the Closing Date), in each case including (a) the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession but excluding (i) the requirement for the Loan Parties to execute and deliver leasehold mortgages, and (ii) any other Excluded Collateral as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time.

(b) In the event that Agent and Borrower agree, in their mutual and reasonable discretion, that being a party to the Guarantee and Collateral Agreement, granting of Liens thereunder and the related transactions contemplated herein or therein in relation to any Subsidiary that is organized outside of the United States (each an "Immaterial Foreign Subsidiary") may cause such Immaterial Foreign Subsidiary or Borrower to suffer a material, negative tax consequence (or any other undue burden in light of the operations and/or assets of such Immaterial Foreign Subsidiary) to Borrower and/or one of its Subsidiaries, then Agent and Borrower shall work together in good faith, as may be necessary to limit the obligations hereunder and under any other Loan Documents. Except as otherwise agreed to by Agent in its commercially-reasonable discretion, no Immaterial Foreign Subsidiary shall own any material assets or engage in any material business operations. As of the Closing Date, Borrower does not have any Immaterial Foreign Subsidiaries.

6.9 Compliance with Health Care Laws.

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

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

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

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

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

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

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

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

6.10 Cure of Violations.

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

6.11 Payment of Debt.

Except as otherwise prescribed in the Loan Documents, Borrower shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of payment practices) all of its material obligations and liabilities, except when the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied.

6.12 Post-Closing Covenants.

(a) Within forty-five (45) days of the Closing Date, Borrower shall have delivered to Agent a fully-executed Account Control Agreement in relation to that certain Deposit Account set forth on Schedule 7.14 as of the Closing Date, which Account Control Agreement shall (i) provide for Agent's sole dominion and control over such Deposit Account following the Acer-001 CRL Date and any Event of Default and (ii) otherwise be in form and substance acceptable to Agent in its reasonable discretion. Upon the request of Agent, Borrower or such other applicable Loan Party, shall use commercially-reasonable efforts to promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, in relation to any additional Deposit Account(s) established by Loan Parties from time to time.

(b) Within forty-five (45) days of the Closing Date (or such longer period as permitted by Agent in its reasonable discretion), Borrower shall deliver certificates or other evidence of insurance and endorsements naming Agent as lenders' loss payee and/or additional insured, as applicable, in form and substance reasonably satisfactory to Agent in relation to each insurance policy described on Schedule 5.16 hereto.

Section 7 Negative Covenants.

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

7.1 Debt.

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

(a) Obligations under this Agreement and the other Loan Documents;

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

(c) [Reserved];

(d) Subordinated Debt, including without limitation, the convertible notes issued to MAM Aardvark, LLC and Marathon Healthcare Finance Fund, L.P. on or prior to the date on which the Term Loan is funded (collectively, the "Convertible Note");

(e) Debt secured by Liens permitted by Section 7.2(b), Section 7.2(d) or Section 7.2(n) and extensions, renewals and re-financings thereof; *provided* that the aggregate amount of all such Debt permitted under Section 7.2(d) at any time outstanding shall not exceed \$100,000;

(f) Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(g) Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business, assets or Subsidiary of Borrower otherwise permitted hereunder, (ii) representing deferred compensation to employees of any Loan Party, or in respect of worker's compensation claims, payment obligations in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations, in each case incurred in the ordinary course of business, or (iii) representing trade payables incurred with suppliers in the ordinary course of business and customer deposits and advance payments received in the ordinary course of business from customers for goods purchased or services rendered in the ordinary course of business;

(h) Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, in each case incurred in the ordinary course of business;

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

(j) Debt or guarantees incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(k) guarantees by any Loan Party of any outstanding Debt of any other Loan Party that is permitted to be incurred under this Section 7.1;

(l) Debt in connection with corporate credit cards to the extent it is paid on or prior to the date which is 30 days after the invoice therefore;

(m) unsecured Debt (which for further clarity shall exclude accounts payable and other current liabilities incurred by Loan Parties in the ordinary course of business), in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding \$100,000;

(n) unsecured Debt among the Loan Parties; and

(o) extensions, refinancings, modifications, amendments and restatements of any Debt described in clauses (a) through (n) above, provided that the principal amount thereof is not increased.

7.2 Liens.

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

(a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement has occurred;

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

(c) Liens existing on the Closing Date and set forth on Schedule 7.2 and the replacement, extension or renewal of a Lien permitted by one of the foregoing clause in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof);

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

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

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

(g) Liens arising under the Loan Documents;

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

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

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

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

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

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

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

(o) Liens securing the Convertible Note.

7.3 Dividends; Redemption of Equity Interests.

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

purchase, redeem, retire or otherwise acquire its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Equity Interests, (iii) a Loan Party may repurchase or redeem any class of stock or other Equity Interest pursuant to employee, director or consultant repurchase plans or other similar agreements, provided the repurchase or redemption price does not exceed the original consideration therefore, (iv) a Loan Party may repurchase any Equity Interest upon the exercise of stock options or warrants if such repurchased Equity Interests represent a portion of the exercise price of such options or warrants pursuant to a "cashless exercise" or similar feature, (v) the Borrower may make cash payments in lieu of issuance of fractional shares made (x) to redeem, purchase, repurchase, or retire its obligations under any warrants issued by it in accordance with the terms thereof and (y) upon the conversion of the Convertible Note; provided further that, notwithstanding anything to the contrary in any Loan Document, neither the issuance of nor the performance of obligations under the Convertible Note shall be prohibited by this Section 7.3 or any other provision of any Loan Document.

7.4 Mergers; Consolidations; Asset Sales.

(a) Not be a party to any amalgamation or any other form of Division, merger or consolidation, unless agreed to by Agent in its sole discretion, nor permit any other Loan Party to be a party to any Division, amalgamation or any other form of merger or consolidation, unless either (i) a Loan Party merges into another Loan Party or such Loan Party or Borrower is the surviving entity of such merger or consolidation or (ii) as agreed to by Agent in its reasonable discretion.

(b) Not, and not permit any other Loan Party to, sell, transfer, dispose of, convey, lease or license any of its real or personal property assets or Equity Interests, except for (i) sales of Inventory in the ordinary course of business for at least fair market value, (ii) transfers, destruction or other disposition of obsolete or worn-out assets in the ordinary course of business and (iii) any other sales and dispositions of assets (excluding (A) any Equity Interests of Borrower or any Subsidiary or (B) sales of Inventory described in clause (i) above) for at least fair market value (as determined by the Board) so long as the net book value of all assets sold or otherwise disposed of in any Fiscal Year does not exceed \$250,000 with respect to sales and dispositions made pursuant to this clause (iii), (iv) sales and dispositions to Loan Parties, (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) issuances of Equity Interests by any Loan Party to any other Loan Party, (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (xi) a cancellation of any intercompany Debt among the Loan Parties, (xii) a disposition which constitutes an insured event or pursuant to a condemnation, expropriation, "eminent domain" or similar proceeding, (xiii) sales and dispositions among Loan Parties, and (xiv) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged. Notwithstanding anything set forth in any Loan Document to the contrary, Borrower shall not consummate any Disposition in relation to Acer-001 and/or Osanetant without the prior written consent of Agent in its sole discretion.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with the licensing or sublicensing of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of a Loan Party's business, (ii) on an arms-length basis and (iii) prior to the occurrence of an Event of Default.

7.5 Modification of Organizational Documents.

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

7.6 Use of Proceeds.

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

7.7 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties and (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7. Notwithstanding anything set forth herein to the contrary, Loan Parties shall not make bonus payments (or any similar, non-salary type payments) to senior management and/or executive officers of Borrower in excess of \$300,000, in the aggregate, from the period beginning on the Closing Date until the earlier of (i) to the Acer-001 Approval Date or (ii) the Osanetant Trigger Date without the prior written consent of Agent in its sole discretion; provided, however, that Loan Parties may make such bonus payments (or similar, non-salary type payments) in excess of such \$300,000 limit exclusively via the proceeds of the issuance of additional Equity Interests and/or Subordinated Debt by Borrower without the prior written consent of Agent so long as no Event of Default has occurred and is continuing.

7.8 Inconsistent Agreements.

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

any Loan Document or any loan documents governing any Subordinated Debt and (E) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder.

7.9 Business Activities.

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

7.10 Investments.

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

(a) Investments existing on the Closing Date and described in Schedule 7.10 and, after the Closing Date, the creation of any Wholly-Owned Subsidiary and contributions by Borrower to the capital of any Wholly-Owned Subsidiary of Borrower, so long as the recipient of any such contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its equity interests and substantially all of its real and personal property, in each case in accordance with Section 6.8;

(b) Cash Equivalent Investments;

(c) bank deposits in the ordinary course of business;

(d) any purchase or other acquisition by Borrower or any Wholly-Owned Subsidiary of Borrower of the assets or equity interests of any Subsidiary of Borrower;

(e) transactions among Loan Parties permitted by Section 7.4;

(f) Investments that also constitute Debt, including Hedging Obligations, permitted under Section 7.1;

(g) prepaid expenses, negotiable instruments held for collection or workers compensation, lease, utility and other similar deposits made in the ordinary course of business and notes receivable of, or prepaid royalties, of customers and other trade credit extended in the ordinary course of business;

(h) Investments consisting of the non-cash portion of the consideration received in respect of dispositions permitted hereunder;

(i) Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation or expropriation proceeds in accordance with the Loan Documents;

(j) extension of trade credit in the ordinary course of business (including notes receivable or prepaid royalties) to customers and suppliers who are not Affiliates and Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof;

(k) Investments consisting of non-cash loans to employees, officers or directors relating to the purchase of capital stock of Borrower pursuant to employee stock purchase plans or other similar arrangements approved by Borrower's board of directors;

(l) Investments consisting of employee loans and travel advances in the ordinary course of business in accordance with past business practices of Loan Parties;

(m) Investments consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support to joint ventures and other strategic or collaborative arrangements; and

(n) other Investments that do not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any fiscal year.

7.11 Restriction of Amendments to Certain Documents.

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

7.12 Fiscal Year.

Not change its Fiscal Year.

7.13 Minimum Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets, at any time, to be less than the lesser of (a) the principal amount of Loans outstanding hereunder, or (b) \$1,500,000; provided, however, such amount shall automatically be increased (without the need for any further action by Agent or Borrower) to (i) \$4,000,000 on the date that is twenty (20) days following the Acer-001 CRL Date, if any, and (ii) \$6,500,000 on the date that is forty (40) days following the Acer-001 CRL Date, if any. Notwithstanding the forgoing, such increased amount(s) described in the prior sentence shall automatically be reduced (without the need for any further action by Agent or Borrower) to \$2,000,000 in the event the Osanetant Trigger Date occurs following any such Acer-001 CRL Date.

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent.

7.15 Subsidiaries.

Not, and not permit any other Loan Party to, in each case without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) such Subsidiary shall have assumed and joined each Loan Document as a Loan Party as contemplated by Section 6.8 and (iii) all other Loan Parties shall have reaffirmed all Obligations as well as all representations and warranties under the Loan Documents (except to the extent such representations and warranties specifically relate to a prior date only).

7.16 Regulatory Matters.

To the extent that any of the following would reasonably be expected to result in a Material Adverse Effect, not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of CLIA or that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake action against such Loan Party, (ii) commence any clinical studies in the United States or sponsor the conduct of any clinical research in the United States, (iii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, (iv) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of the FD&C Act or that could otherwise reasonably be expected to provide the basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or (v) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17 Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names.

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

7.18 Truth of Statements.

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

Section 8 Events of Default; Remedies.

8.1 Events of Default.

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

8.1.1 Non-Payment of Credit.

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

8.1.2 Default Under Other Debt.

Any "Event of Default" (or such similar defined term) shall occur under the terms applicable to any Debt of any Loan Party (excluding the Obligations) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding \$250,000.

8.1.3 Bankruptcy; Insolvency.

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

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

8.1.4 Non-Compliance with Loan Documents.

(a) Any failure by Borrower to comply with or to perform any covenant set forth in Section 6.12 or Section 7; or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (b) for thirty (30) days after the earlier of any responsible officer of a Loan Party becoming aware of such failure or notice thereof to Borrower from Agent or any Lender.

8.1.5 Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6 Pension Plans.

(a) Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$250,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of \$250,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$250,000.

8.1.7 Judgments.

Final judgments which exceed an aggregate of \$250,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty (30) calendar days after entry or filing of such judgments.

8.1.8 Invalidity of Loan Documents or Liens.

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

8.1.9 Invalidity of Subordination Provisions.

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

8.1.10 Change of Control.

A Change of Control shall occur.

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

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

8.1.12 Material Adverse Effect.

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

8.2 Remedies.

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

(b) In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of any other Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Lenders, or Required Lenders at any place reasonably designated by Required Lenders in their sole discretion and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon.

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

(d) Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice, to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "**Protective Advance**"). Agent shall be reimbursed for all Protective Advances pursuant to Section 10.4, and any Protective Advances shall bear interest at the Default Rate from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1 Appointment; Authorization.

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

9.2 Delegation of Duties.

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

9.3 Limited Liability.

None of Agent or any of its Affiliates, directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance.

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

9.5 Notice of Default.

Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a "notice of default". Agent will notify Lenders of its receipt of any such notice or any such default in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders. Agent

shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2; provided that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of Lenders.

9.6 Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

9.7 Indemnification.

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

9.8 Agent Individually.

SWK and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party as though SWK were not Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, SWK or its Affiliates may receive information regarding Loan Parties or

their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), SWK and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though SWK were not Agent, and the terms "Lender" and "Lenders" include SWK and its Affiliates, to the extent applicable, in their individual capacities.

9.9 Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders (other than a Defaulting Lender) a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of Default exists) Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent for the benefit of Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

9.10 Collateral and Guarantee Matters.

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

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

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

9.11 Intercreditor and Subordination Agreements.

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

9.12 Actions in Concert.

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

Section 10 Miscellaneous.

10.1 Waiver; Amendments.

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

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

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

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

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

10.2 Notices.

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

10.3 Computations.

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

10.4 Costs; Expenses.

Borrower agrees to pay on demand the reasonable, out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution, syndication and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

10.5 Indemnification by Borrower.

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

10.6 Marshaling; Payments Set Aside.

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

10.7 Non-liability of Lenders.

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

10.8 Assignments.

10.8.1 Assignments.

(a) Any Lender may at any time assign to one or more Persons (other than a Loan Party and their respective Affiliates) (any such Person, an "Assignee") all or any portion of such Lender's Loans and Commitments, with (x) the prior written consent of Agent and (y) solely to the extent no Event of Default has occurred and is continuing, the prior written consent of Borrower; provided, however, that no such consent(s) shall be required:

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

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

(v) from Borrower, Agent or any Lender for (A) the assignment of SWK's Loans and Commitments to a Permitted Assignee (as defined below) or (B) a collateral assignment by SWK of, and the grant by SWK of a security interest in, all of SWK's right, title and interest in, to and under each of the Loan Documents, including, without limitation, all of SWK's rights and interests in, to and under this Agreement, the Obligations and the Collateral (collectively, the "Assigned Rights"), to a Permitted Assignee, provided that no such collateral assignment shall release SWK from any of its obligations under any of the Loan Documents. In connection with any enforcement of or foreclosure upon its security interests in any of the Assigned Rights, a Permitted Assignee, upon notice to Borrower, SWK and the other Lenders, shall be entitled to substitute itself, or its designee, for SWK as a Lender under this Agreement. For purposes hereof, the term "Permitted Assignee" shall mean any lender to or funding source of SWK or its Affiliate, together with its successors, assigns or designees (including, without limitation, any purchaser or other assignee of the Assigned Rights from such Person). Effective immediately upon the replacement of SWK as a Lender under this Agreement by a Permitted Assignee in accordance with this clause (v), SWK shall automatically be deemed to have resigned as Agent pursuant to Section 9.9 of this Agreement (without the need for Agent giving advance written notice of such resignation as required pursuant to such Section 9.9), and Required Lenders shall appoint a successor Agent in accordance with Section 9.9 of this Agreement.

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

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

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

10.9 Participations.

Any Lender may at any time sell to one or more Persons participating interests in its Loans, Commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; provided that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements, and provided, further, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, and interest, principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

10.10 Confidentiality.

Borrower, Agent and each Lender agree to use commercially reasonable efforts (equivalent to the efforts Borrower, Agent or such Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information (including, without limitation, any information provided by Borrower pursuant to Sections 6.1, 6.2 and 6.9) provided to them by any other party hereto and/or any other Loan Party, as applicable, except that (i) Borrower may disclose such information (a) to Persons employed or engaged by Borrower in connection with this Agreement that have a need to know and are bound by a duty of confidentiality or have agreed to the covenants set forth in this Section 10.10, (b) as required or requested by any federal or state regulatory authority or examiner, or as reasonably

believed by Borrower to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Borrower's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents; (f) to any nationally recognized rating agency; (g) that ceases to be confidential through no fault of Borrower; (h) to a Person that is an investor or prospective investor in Borrower and who agrees to treat such information as confidential and (ii) Agent and each Lender may disclose such information (a) to Persons employed or engaged by Agent or such Lender or any of their Affiliates (including collateral managers of Lenders) in evaluating, approving, structuring or administering the Loans and the Commitments (provided that such Persons have been informed of and agreed to be bound by the covenants contained in this Section 10.10); (b) to any assignee, funding source of Agent or any Lender, or participant or potential assignee or participant that has agreed to comply with the covenants contained in this Section 10.10 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that ceases to be confidential through no fault of Agent or any Lender; (h) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding Borrower and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization and who agrees to treat such information as confidential; or (i) to a Person that is a trustee, collateral manager, servicer, noteholder or secured party in a Securitization in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For purposes of this Section, "Securitization" means a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information, promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such disclosure provided, that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower. Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.11 Captions.

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

10.12 Nature of Remedies.

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

10.13 Counterparts: Electronic Signatures.

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

10.14 Severability.

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

10.15 Entire Agreement.

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

10.16 Successors: Assigns.

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

10.17 Governing Law.

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

10.18 Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT A GENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.19 Waiver of Jury Trial.

EACH OF BORROWER, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.20 Patriot Act.

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

10.21 Independent Nature of Relationship.

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

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

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

BORROWER:

ACER THERAPEUTICS INC.,
a Delaware corporation

By: /s/ Chris Schelling

Name: Chris Schelling

Title: Chief Executive Officer

AGENT AND LENDER:

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

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

By: /s/ Winston Black

Name: Winston Black

Title: Chief Executive Officer

GUARANTEE AND COLLATERAL AGREEMENT

dated as of March 4, 2022

among

ACER THERAPEUTICS INC.,

and each other Person that becomes a party hereto as a grantor,
each as a Grantor,

and

SWK FUNDING LLC,
as Agent

GUARANTEE AND COLLATERAL AGREEMENT

GUARANTEE AND COLLATERAL AGREEMENT, dated as of March 4, 2022 (as may be amended, restated, amended and restated, waived, supplemented, or otherwise modified from time to time, this “Agreement”), made by each signatory hereto (together with any other Person that becomes a party hereto as provided herein, each individually a “Grantor” and collectively, the “Grantors”), in favor of SWK FUNDING LLC, a Delaware limited liability company, as administrative and collateral agent (in such capacity, together with its successors and assigns, the “Agent”) for the benefit of all Lenders party to the Credit Agreement (as hereafter defined).

Lenders have severally agreed to extend credit to ACER THERAPEUTICS INC., a Delaware corporation (the “Borrower”), pursuant to the Credit Agreement (as defined herein). Borrower is affiliated with each other Grantor. Borrower and the other Grantors are engaged in interrelated businesses, and each Grantor will derive substantial direct and indirect benefit from extensions of credit under the Credit Agreement. It is a condition precedent to each Lender’s obligation to extend credit under the Credit Agreement that Grantors shall have executed and delivered this Agreement to Agent for the benefit of Agent and all Lenders.

In consideration of the premises and to induce Agent and Lenders to enter into the Credit Agreement and to induce Lenders to extend credit thereunder, each Grantor hereby agrees with Agent, for the benefit of Agent and all Lenders, as follows:

1. Definitions.

1.1. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and the following terms are used herein as defined in the Code (whether capitalized or lower case, plural or singular, as applicable): Accounts, Money, Certificated Security, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Farm Products, Goods, Health-Care-Insurance Receivables, Instruments, Inventory, Letter-of-Credit Rights, Software and Supporting Obligations.

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

“Agent” has the meaning set forth in the preamble hereto.

“Agreement” has the meaning set forth in the preamble hereto.

“Borrower Obligations” means all Obligations of Borrower under and as defined in the Credit Agreement.

“Code” means the Uniform Commercial Code as in effect from time to time 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, “Code” means the Uniform Commercial Code (hereinafter defined), as applicable if the context requires, as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“Collateral” has the meaning set forth in Section 3 hereof. Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor’s Collateral or the relevant part thereof.

“Copyright Licenses” means all written agreements naming any Grantor as licensor or licensee, including those listed on Schedule 4, granting any right under any Copyright, including the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright (other than agreements relating to widely-available software subject to “shrink-wrap” or “click-through” software licenses).

“Credit Agreement” means that certain Credit Agreement, dated as of the date hereof, among Borrower, the financial institutions from time to time party thereto (collectively, the “Lenders”) and Agent, as amended, supplemented, restated or otherwise modified from time to time.

“Excluded Property” means, with respect to a Grantor: (i) any item of General Intangibles or other property (including, without limitation, any Material Contract) that is now or hereafter held by such Grantor but only to the extent that such item of General Intangibles or property, including, for the avoidance of doubt, Intellectual Property (or any agreement evidencing such item of General Intangibles or property) contains a term or is subject to a rule of law, statute or regulation that restricts, prohibits, or requires a consent (that has not been obtained) of a Person (other than such Grantor) to, the creation, attachment or perfection of the security interest granted herein, and any such restriction, prohibition and/or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law (including, without limitation, pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Code); provided, however, that (x) Excluded Property shall not include any Proceeds of any item of General Intangibles or other property described in this definition, and (y) any item of General Intangibles or such other property described in this definition that at any time ceases to satisfy the criteria for Excluded Property (whether as a result of obtaining any necessary consent, any change in any rule of law, statute or regulation, or otherwise) shall no longer be Excluded Property; (ii) Trademark applications filed in the United States Patent and Trademark Office on the basis of such Grantor’s “intent to use” such Trademark, unless and until acceptable evidence of use of the Trademark has been filed with the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.); (iii) any asset subject to a Permitted Lien (other than Liens in favor of Agent) securing obligations permitted under the Credit Agreement to the extent that the grant of other Liens on such asset (A) would result in a breach or violation of, or constitute a default under, the agreement or instrument governing such Permitted Lien, (B) would result in the loss of use of such asset or (C) would permit the holder of such Permitted Lien to terminate such Grantor’s use of such asset; (iv) Exempt Accounts; (v) such voting Equity Interests in any Immaterial Foreign Subsidiary as agreed to by Agent in its reasonable discretion from time to time, including pursuant to Section 6.8(b) of the Credit Agreement; and (vi) leasehold and fee interests in real property.

“Fixtures” means all of the following, whether now owned or hereafter acquired by a Grantor: plant fixtures; business fixtures; other fixtures and storage facilities, wherever located; and all additions and accessories thereto and replacements therefor.

“General Intangibles” means all “general intangibles” as such term is defined in Section 9-102(a)(42) of the Code and, in any event, including with respect to any Grantor, all contracts, agreements, instruments and indentures in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same from time to time may be amended, supplemented or otherwise modified, including, without limitation, (a) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (b) all rights of such Grantor to damages arising thereunder and (c) all rights of such Grantor to perform and to exercise all remedies thereunder.

“Guarantor Obligations” means, collectively, with respect to each Guarantor, all payment and performance obligations of such Guarantor hereunder or under any other Loan Document to which such Guarantor is party.

“Guarantors” means the collective reference to each Grantor other than Borrower.

“Identified Claims” means the Commercial Tort Claims described on Schedule 6 as such schedule may be supplemented from time to time.

“Intercompany Note” means any promissory note evidencing loans made by any Grantor to any other Grantor or its Affiliate.

“Investment Property” means the collective reference to (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the Code, (b) all “financial assets” as such term is defined in Section 8-102(a)(9) of the Code, and (c) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Equity, in each case, other than Excluded Property.

“Issuers” means the collective reference to each issuer of any Investment Property.

“Mask Works” means all of any Grantor’s (or if referring to another Person, such other Person’s) now existing or hereafter acquired right, title, and interest in and to mask works or similar rights available for the protection of semiconductor chips.

“Patent Licenses” means all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including any of the foregoing referred to in Schedule 4.

“Permitted Liens” has the meaning ascribed such term in the Credit Agreement.

“Pledged Equity” means the equity interests listed on Schedule 1, as amended from time to time, together with any other equity interests, certificates, options or rights of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, Grantor while this Agreement is in effect, in each case, other than Excluded Property.

“Pledged Notes” means all promissory notes listed on Schedule 1, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor (other than promissory notes issued in connection with extensions of trade credit by any Grantor in the ordinary course of business), in each case, other than Excluded Property.

“Proceeds” means all “proceeds” as such term is defined in Section 9-102(a)(64) of the Code and, in any event, shall include all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

“Receivable” means any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Accounts).

“Secured Obligations” means, collectively, all Borrower Obligations and Guarantor Obligations.

“Securities Act” means the Securities Act of 1933, as amended.

“Trademark Licenses” means, collectively, each agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including any of the foregoing referred to in Schedule 4.

2. **Guarantee.**

2.1. Guarantee.

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to Agent, for the benefit of Agent and Lenders and their respective successors, indorsees, transfers and assigns to the extent permitted by and in accordance with the Credit Agreement, the prompt and complete payment and performance by Borrower when due (whether at the stated maturity, by acceleration or otherwise) of Borrower Obligations.

(b) The guarantee contained in this Section 2 shall remain in full force and effect and shall serve as a continuing security, until all of the Secured Obligations have been Paid in Full.

(c) No payment made by Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by Agent or any Lender from Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations), remain liable for the Secured Obligations up to the maximum liability of such Guarantor hereunder until the Secured Obligations are Paid in Full.

2.2. Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor’s right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to Agent and Lenders, and each Guarantor shall remain liable to Agent and Lenders for the full amount guaranteed by such Guarantor hereunder.

2.3. No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by Agent or any Lender, no Guarantor shall be entitled to be subrogated to any of the rights of Agent or any Lender against Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by Agent or any Lender for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all of the Secured Obligations are Paid in Full; provided, however, that each Guarantor agrees that such right of subrogation shall be automatically (without any further action) and irrevocably waived and released in its entirety if any Collateral is acquired by a Person as a result of the exercise of remedies under the Loan Documents, a court order or a plan of reorganization or similar dispositive plan. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Secured Obligations shall not have been Paid in Full (or when such right of subrogation shall have been waived), such amount shall be held by such Guarantor in trust for Agent and Lenders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be promptly turned over to Agent in the exact form received by such Guarantor (duly indorsed (but without any representation or warranty) by such Guarantor to Agent, if required), to be applied against the Secured Obligations, whether matured or unmatured, in a manner that is consistent with the provisions of Section 2.10.2 of the Credit Agreement.

2.4. Amendments, etc. with Respect to the Secured Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by Agent or any Lender may be rescinded by Agent or such Lender and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Agent or any Lender, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Agent (or the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time (provided that any such amendment, modification, supplement or termination complies with the relevant provisions of the Credit Agreement, this Agreement and/or such other Loan Document), and any collateral security, guarantee or right of offset at any time held by Agent or any Lender for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released to the extent permitted by the Credit Agreement, this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.5. Guarantee Absolute and Unconditional: Waivers.

(a) Each Guarantor agrees that this Agreement is a guarantee of payment and performance when due and not of collectability. The liability of Guarantors under this Agreement shall be absolute, irrevocable and unconditional irrespective of:

- (i) any lack of validity, regularity or enforceability of any Loan Document;
- (ii) any lack of validity, regularity or enforceability of this Agreement;
- (iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document;
- (iv) any exchange, release or non-perfection of any security interest in any Collateral, or any release or amendment or waiver of or consent to departure from any other guarantee, for all or any of the Secured Obligations;
- (v) any failure on the part of Agent or any other Person to exercise, or any delay in exercising, any right under any Loan Document; and
- (vi) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, any Guarantor or any other guarantor with respect to the Secured Obligations (including, without limitation, all defenses based on suretyship or impairment of collateral, and all defenses that Borrower may assert to the repayment of the Secured Obligations, including, without limitation, failure of consideration, breach of warranty, payment, statute of frauds, bankruptcy, lack of legal capacity, lender liability, accord and satisfaction, and usury), this Agreement and the obligations of Guarantors under this Agreement, other than Payment in Full of the Guarantor Obligations.

(b) Each Guarantor hereby agrees that if Borrower or any other guarantor of all or a portion of the Secured Obligations is the subject of a bankruptcy or insolvency case under applicable law, it will not assert the pendency of such case or any order entered therein as a defense to the timely payment of the Secured Obligations. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by Agent or any Lender upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2, and all dealings between Borrower and any of the Guarantors, on the one hand, and Agent and Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives (i) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon Borrower or any of the Guarantors with respect to the Secured Obligations; (ii) notice of the existence or creation or renewal or non-payment of all or any of the Secured Obligations; (iii) all diligence in collection or protection of or realization upon any Secured Obligations or any security for or guarantee of any Secured Obligations; (iv) any right to require Agent or any Lender, as a condition of payment or performance by Guarantor, to (A) proceed against Borrower, any other guarantor of the Guarantor Obligations or any other Person, (B) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (C) proceed against or have resort to any balance of any deposit account or credit on the books of Agent or any Lender in favor of Borrower or any other Person or (D) pursue any other remedy in the power of Agent or any Lender whatsoever; (v) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guarantor Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than payment in full of the Guarantor Obligations; (vi) any defense based upon Agent or any Lender's errors or omissions in the administration of the Guarantor Obligations, except errors and omissions resulting from Agent or any Lender's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a non-appealable order and (vii) (A) any legal or equitable discharge of Guarantor's obligations hereunder and (B) any rights to set-offs, recoupments and counterclaims.

(c) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Agent or any Lender against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings. Each Guarantor agrees that it is not a surety for purposes of any state statutes providing defenses for sureties, and each Guarantor waives any right that it may have under such statutes to assert the applicability thereof to the provisions of this Agreement to require that Agent commence action against Borrower or any other Person or against any of the Collateral.

(d) Agent or any Lender may, from time to time, at its sole discretion and without notice to any Guarantor, take any or all of the following actions: (i) retain or obtain a security interest in any property to secure any of the Secured Obligations or any obligation hereunder, (ii) retain or obtain the primary or secondary obligation of any obligor or obligors with respect to any of the Secured Obligations, (iii) extend or renew any of the Secured Obligations for one or more periods (whether or not longer than the original period), alter or exchange any of the Secured Obligations, or release or compromise any obligation of any Guarantor or any obligation of any nature of any other obligor with respect to any of the Secured Obligations, (iv) release any guarantee or right of offset or its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Secured Obligations or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property, and (v) resort to any Guarantor for payment of any of the Secured Obligations when due, whether or not Agent or such Lender shall have resorted to any property securing any of the Secured Obligations or any obligation hereunder or shall have proceeded against any other Guarantor or any other obligor primarily or secondarily obligated with respect to any of the Secured Obligations.

2.6. Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to Agent without set-off or counterclaim in Dollars at the office of Agent specified in the Credit Agreement.

2.7. Joint and Several Liability of Guarantors

(a) Each Guarantor is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under the Credit Agreement, for the mutual benefit, directly and indirectly, of each Guarantor and in consideration of the undertakings of the other Guarantors to accept joint and several liability for the Obligations.

(b) Each Guarantor, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Guarantors, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 2.7), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Guarantor without preferences or distinction among them.

(c) If and to the extent that any Guarantor shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Guarantors will make such payment with respect to, or perform, such Obligation until such time as all of the Obligations are Paid in Full.

(d) The Obligations of each Guarantor under the provisions of this Section 2.7 constitute the absolute and unconditional, full recourse Obligations of each Guarantor enforceable against each Guarantor to the full extent of its property and assets charged hereunder, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(e) Except as otherwise expressly provided in this Agreement, each Guarantor hereby waives, to the fullest extent permitted by applicable law, notice of acceptance of its joint and several liability, notice of any borrowing or any disbursement from any escrow account, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement or any other Loan Document, notice of any action at any time taken or omitted by the Agent of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the fullest extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Guarantor hereby assents to, and waives, to the extent permitted by law, notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Agent or the Lenders at any time or times in respect of any default by any Guarantor or any other Loan Party in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Agent or the Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Guarantor or any other Loan Party. Without limiting the generality of the foregoing, each Guarantor assents to any other action or delay in acting or failure to act on the part of the Agent or any Lender with respect to the failure by any Guarantor or any other Loan Party to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.7 afford grounds for terminating, discharging or relieving any Guarantor, in whole or in part, from any of its Obligations under this Section 2.7, it being the intention of each Guarantor that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Guarantor under this Section 2.7 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Guarantor under this Section 2.7 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to Loan Party or the Agent or any Lender.

(f) Each Guarantor is obligated to repay the Obligations as a joint and several obligor under this Agreement and the other Loan Documents. To the extent that any Guarantor shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Grantor hereunder or other Obligations incurred directly and primarily by any other Guarantor (an "Accommodation Payment"), then the Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount, for each of such other Guarantors, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors. As of any date of determination, the "Allocable Amount" of each Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder without (i) rendering such Guarantor "insolvent" within the meaning of Section 101(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act or Section 2 of the Uniform Fraudulent Conveyance Act, (ii) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the Uniform Fraudulent Transfer Act or Section 5 of the Uniform Fraudulent Conveyance Act, or (iii) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the Uniform Fraudulent Transfer Act or Section 5 of the Uniform Fraudulent Conveyance Act. All rights and claims of contribution, indemnification, and reimbursement under this Section 2.7(f) shall be subordinate in right of payment to the prior indefeasible Payment in Full of the Obligations. The provisions of this Section 2.7(f) shall, to the extent inconsistent with any provision in any Loan Document, supersede such inconsistent provision.

(g) Each Guarantor represents and warrants to the Agent and the Lenders that as of the date hereof such Guarantor is currently informed of the financial condition of each Loan Party and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Guarantor further represents and warrants to the Agent and the Lenders that such Guarantor has read and understands the terms and conditions of the Loan Documents. Each Guarantor hereby covenants that such Guarantor will continue to keep informed of Guarantors' financial condition, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(h) The provisions of this Section 2.7 are made for the benefit of the Agent, the Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Guarantors as often as occasion therefor may arise and without requirement on the part of the Agent, such Lender, successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against any Guarantor or to exhaust any remedies available to it or them against any Guarantor or any other Loan Party or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.7 shall remain in effect until all of the Obligations shall have been Paid in Full. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Guarantor, or otherwise, the provisions of this Section 2.7 will forthwith be reinstated in effect, as though such payment had not been made.

(i) Each Guarantor hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Guarantor with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agent or the Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been Paid in Full. Any claim which any Guarantor may have against any other Guarantor with respect to any payments to the Agent or any Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the Obligations having been Paid in Full and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Guarantor, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be Paid in Full before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Guarantor therefor.

(j) Each Guarantor hereby agrees that, after the occurrence and during the continuance of any Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Guarantor to any other Guarantor is hereby subordinated to the Obligations having been Paid in Full. Each Guarantor hereby agrees that after the occurrence and during the continuance of any Event of Default and notice by Agent, such Guarantor will not demand, sue for or otherwise attempt to collect any indebtedness of any other Guarantor owing to such Guarantor until the Obligations shall have been Paid in Full. If, notwithstanding the foregoing sentence, such Guarantor shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Guarantor in trust for the Agent and Lenders, and such Guarantor shall deliver any such amounts to the Agent for application to the Obligations in accordance with Section 2.10.2 of the Credit Agreement.

3. Grant of Security Interest.

(a) Each Grantor hereby assigns and transfers to Agent, and hereby grants to Agent, for the benefit of Agent and Lenders, a security interest in all of the following (if applicable):

(i) all of Grantor's right, title and interest in and to all of such Grantor's personal property assets, including any and all Accounts, Chattel Paper (including Electronic Chattel Paper), Deposit Accounts, Documents, Equipment, Farm Products, Fixtures, General Intangibles, Goods, Health-Care-Insurance Receivables, Instruments, Intellectual Property, Inventory, Investment Property, Letter-of-Credit Rights, Software, Money, Supporting Obligations, and Identified Claims, in each case whether now owned or at any time hereafter acquired or arising,

(ii) all books and records pertaining to any of the foregoing,

(iii) all Proceeds and products of any of the foregoing, and

(iv) all collateral security and guarantees given by any Person with respect to any of the foregoing.

(all of the foregoing, collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations; provided, that the Collateral shall not include the Excluded Property.

(b) Each Grantor has full right and power to grant to Agent, for the benefit of Agent and Lenders, a perfected, first-priority security interest (subject to Permitted Liens) and Lien on the Collateral pursuant to this Agreement, subject to no Liens of any kind in favor of any other Person (subject to any Permitted Liens). No Grantor is party to any agreement, document or instruction that conflicts with this Section 3.

(c) Subject to Section 6.8 of the Credit Agreement, each Grantor hereby authorizes Agent to prepare and file financing statements provided for by the Code, or any similar law in any other jurisdiction, and to take such other action as may be required, in Agent's sole discretion, to perfect and to continue the perfection of Agent's security interest in the Collateral.

(d) Irrespective of any provision in this Agreement, the prior consent of Agent shall not be required in connection with the licensing or sublicensing of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties ("Permitted Licenses") permitted by the Credit Agreement. Notwithstanding anything herein to the contrary, the Collateral grant provided in this Section 3 shall not be construed as an assignment of any Intellectual Property.

4. Representations and Warranties.

To induce Agent and Lenders to enter into the Credit Agreement and to induce Lenders to make their respective extensions of credit to Borrower thereunder, each Grantor jointly and severally hereby represents and warrants to Agent and each Lender that:

4.1. Title; No Other Liens. Except for Permitted Liens, the Grantors own each item of the Collateral, tangible and intangible, of any nature whatsoever that they purport to own free and clear of any and all Liens. As of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), no financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except filings evidencing Permitted Liens and filings which could not reasonably be expected to result in a Material Adverse Effect.

4.2. Perfected First Priority Liens. Each Grantor has full right and power to grant to Agent the security interests contemplated herein, and the security interests granted pursuant to this Agreement are prior and senior to all other Liens on the Collateral in existence on the date hereof except for Permitted Liens expressly permitted by the Credit Agreement.

4.3. Grantor Information. Schedule 2 sets forth, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), (a) each Grantor's jurisdiction of organization, (b) the location of each Grantor's chief executive office, (c) each Grantor's exact legal name as it appears on its organizational documents, (d) each Grantor's federal business or tax identification number, and (e) each Grantor's organizational identification number.

4.4. Collateral Locations. Schedule 3 sets forth, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), (a) all locations where Inventory and the Equipment with a fair market value greater than \$200,000 at any single location, owned by each Grantor is kept, and (b) whether each such Collateral location is owned or leased (and if leased, specifies the complete name and notice address of each lessor as set forth in the relevant lease). No Collateral with a fair market value greater than \$200,000 is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as indicated on Schedule 3.

4.5. Certain Property. Except as set forth on Schedule 8, none of the Collateral as of the Closing Date constitutes (a) Farm Products, (b) Health-Care-Insurance Receivables or (c) vessels, aircraft or any other property subject to any certificate of title or other registration statute of the United States, any state or other jurisdiction, except for personal vehicles owned by the Grantors and used by employees of the Grantors in the ordinary course of business.

4.6. Investment Property.

(a) Except as otherwise agreed to by Agent in its reasonable discretion, the shares of Pledged Equity pledged by each Grantor hereunder constitute all the issued and outstanding equity interests of each Issuer owned by such Grantor. Each Grantor hereby agrees that it shall take no action to classify any Pledged Equity issued by a limited liability company, general partnership or limited partnership as certificated securities under the terms of Article 8 of the Code.

(b) All of the Pledged Equity issued by a Subsidiary of each Grantor has been duly and validly issued and is fully paid and nonassessable.

(c) Each of the Pledged Notes (if any) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing).

(d) Schedule 1 lists all Investment Property owned by each Grantor as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor). Each Grantor is the record and beneficial owner of the Investment Property pledged by it hereunder that it purports to own, free of any and all Liens or options in favor of, or claims of, any other Person, except the security interest created by this Agreement and for Permitted Liens.

4.7. Receivables.

(a) No amount payable to such Grantor under or in connection with any Receivable with a fair market value greater than \$200,000 is evidenced by any Instrument or Chattel Paper which has not been delivered to Agent.

(b) The amounts represented by such Grantor to Lenders from time to time as owing to such Grantor in respect of the Receivables (to the extent such representations are required by any of the Loan Documents) will at all such times be accurate in all material respects, subject to the inability to collect Receivables in the ordinary course of business.

4.8. Intellectual Property.

(a) Schedule 4 lists all Registered Intellectual Property and, other than agreements relating to widely-available software subject to “shrink-wrap” or “click-through” software licenses, all material Copyright Licenses, Patent Licenses, and Trademark Licenses owned or leased by each Grantor in its own name (or a former name) on the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor).

(b) On the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), all Intellectual Property pledged as Collateral is valid, subsisting, unexpired and enforceable, has not been abandoned and, to Grantor’s knowledge, does not infringe on the intellectual property rights of any other Person, in each case, except as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

(c) Except as set forth in Schedule 4, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), none of the Intellectual Property pledged as Collateral is the subject of any licensing or franchise agreement pursuant to which any Grantor is the licensor or franchisor.

(d) Except as set forth in Schedule 4, no holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or any Grantor’s rights in, any Intellectual Property pledged as Collateral, except as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

(e) Except as set forth in Schedule 4, no action or proceeding is pending, or, to the knowledge of any Grantor, is threatened in writing, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor) (i) seeking to limit, cancel or question the validity of any Intellectual Property pledged as Collateral or any Grantor’s interest therein, or (ii) which, if adversely determined, would materially and adversely affect the value of any Intellectual Property pledged as Collateral, in each case, except as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

(f) Each Grantor owns and possesses or has a license or other right to use all Intellectual Property pledged as Collateral as is necessary for the conduct of the businesses of such Grantor as currently conducted, without any infringement, to such Grantor’s knowledge, upon rights of others, except such infringement as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

4.9. Deposit Accounts and Other Accounts. All Deposit Accounts and all other bank accounts, securities accounts and other accounts maintained by each Grantor as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), are described on Schedule 5 hereto, which description includes for each such account the name of such Grantor maintaining such account, the name and address of the financial institution at which such account is maintained, and the account number of such account.

4.10. Excluded Property. Except as set forth in Schedule 7, each Grantor represents, warrants and covenants that it does not, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), own any Excluded Property, which by itself is, and/or when aggregated, are material to the business of Borrower and its Subsidiaries, taken as a whole.

5. Covenants.

Each Grantor covenants and agrees with Agent and Lenders that, from and after the date of this Agreement until the Secured Obligations shall have been Paid in Full:

5.1. Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument (other than, for greater certainty, a license agreement), Certificated Security or tangible Chattel Paper, in each case with a fair market value greater than \$200,000 individually or \$500,000 in the aggregate, Grantor shall notify Agent, and upon request by Agent, such Instrument, Certificated Security or tangible Chattel Paper shall be promptly delivered to Agent, duly indorsed in a manner reasonably satisfactory to Agent, to be held as Collateral pursuant to this Agreement. In the event that a Default or an Event of Default shall have occurred and be continuing, upon the request of Agent, any Instrument, Certificated Security or Chattel Paper not theretofore delivered to Agent and at such time being held by any Grantor shall be immediately delivered to Agent, duly indorsed in a manner satisfactory to Agent, to be held as Collateral pursuant to this Agreement and in the case of Electronic Chattel Paper, the applicable Grantor shall cause Agent to have control thereof within the meaning set forth in Section 9-105 of the Code.

5.2. Maintenance of Perfected Security Interest; Further Documentation.

(a) Subject to Section 6.8 of the Credit Agreement and except as expressly permitted by this Agreement, the Credit Agreement, or the other Loan Documents, such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall use commercially reasonable efforts to defend such security interest against the claims and demands of all Persons whomsoever.

(b) Upon the reasonable written request of Agent, such Grantor will furnish to Agent and Lenders from time to time reasonably detailed statements and schedules further identifying and describing the assets and property of such Grantor .

(c) Subject to Section 6.8 of the Credit Agreement, at any time and from time to time, upon the reasonable written request of Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any financing or continuation statements under the Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby, and (ii) in the case of Investment Property, Deposit Accounts, Electronic Chattel Paper and Letter of Credit Rights and any other relevant Collateral, taking any actions necessary to enable Agent to obtain "control" (within the meaning of Code) with respect thereto, in each case pursuant to documents in form and substance reasonably satisfactory to Agent, provided that so long as no Event of Default has occurred and is continuing, no Grantor shall be required to cause the Agent to have control over such Investment Property, Electronic Chattel Paper, Letter of Credit Rights or other relevant Collateral (other than any Deposit Account) having a value less than \$200,000 individually or \$500,000 in the aggregate.

(d) Such Grantor authorizes Agent to, at any time and from time to time, at such Grantor's expense, file financing statements, continuation statements, and amendments thereto that describe the Collateral (including describing the Collateral as "all assets" of each Grantor, or words of similar effect), and which contain any other information required pursuant to the Code for the sufficiency of the applicable filing office acceptance of any financing statement, continuation statement, or amendment, and each Grantor agrees to furnish any such information to Agent promptly upon request. While an Event of Default is continuing, any such financing statement, continuation statement, or amendment may be signed (to the extent signature of a Grantor is required under applicable law) by Agent on behalf of any Grantor and may be filed in any applicable jurisdiction.

(e) Subject to Section 6.8 of the Credit Agreement, such Grantor shall, at any time and from time to time, upon reasonable request of Agent use commercially reasonable efforts (i) to obtain an acknowledgement, in form and substance reasonably satisfactory to Agent, of any bailee having possession of any of the Collateral (provided that such Grantor shall not be required to obtain any such acknowledgement as it relates to Collateral having a value less than \$200,000 individually or \$500,000 in the aggregate unless otherwise required by Agent in writing at any time following the occurrence and continuance of an Event of Default), stating that the bailee holds such Collateral for Agent, and (ii) otherwise to ensure the continued perfection and priority of Agent's security interest in any of the Collateral and of the preservation of its rights therein to the extent required by this Agreement and the Credit Agreement.

5.3. Changes in Locations, Name, etc. Except as permitted by the Credit Agreement, each Grantor shall not, except upon 5 days' prior written notice to Agent and delivery to Agent of (a) all additional financing statements and other documents reasonably requested by Agent as to the validity, perfection and priority of the security interests provided for herein and (b) if applicable and requested by Agent, a written supplement to Schedule 3 showing any additional location at which Inventory or Equipment having a fair market value greater than \$200,000 at any single location shall be kept:

(i) permit any of the Inventory or Equipment to be kept at a location other than those listed on Schedule 3; provided, that up to \$200,000 in fair market value of any such Inventory and Equipment may be kept at any other single location with an aggregate limit of up to \$500,000 in fair market value of any such Inventory and Equipment at all such other locations;

(ii) change the location of its chief executive office from that specified on Schedule 2 or in any subsequent notice delivered pursuant to this Section 5.3; or

(iii) change its name, identity, corporate structure (including without limitation, the merger into or with any other Person) or its jurisdiction of organization in a manner which might make any financing statement filed hereunder incorrect or misleading.

5.4. Investment Property.

(a) If such Grantor shall become entitled to receive or shall receive any certificate, option or rights in respect of the equity interests of any Issuer which constitutes Collateral, whether in addition to, in substitution of, as a conversion of, or in exchange for, any of the Pledged Equity, or otherwise in respect thereof, such Grantor shall accept the same as the agent of Agent and Lenders, hold the same in trust for the benefit of the Agent and Lenders, notify Agent in writing of such receipt or entitlement, and, if requested

by Agent, deliver the same forthwith to Agent in the exact form received, duly indorsed (but without any representation or warranty) by such Grantor to Agent, if required, together with an undated instrument of transfer covering such certificate duly executed in blank by such Grantor and with, if Agent so reasonably requests, signature guaranteed, to be held by Agent, subject to the terms hereof, as additional Collateral for the Secured Obligations. Upon the occurrence and during the continuance of an Event of Default and after Borrower's receipt of notice from the Agent, (i) any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to Agent to be held, at Agent's option, either by it hereunder as additional Collateral for the Secured Obligations or applied to the Secured Obligations as provided in Section 6.5, and (ii) in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected Lien in favor of Agent, be delivered to Agent to be held, at Agent's option, either by it hereunder as additional Collateral for the Secured Obligations or applied to the Secured Obligations as provided in Section 6.5. Upon the occurrence and during the continuance of an Event of Default, if any sums of money or property so paid or distributed in respect of the Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to Agent, hold such money or property in trust for Agent and Lenders, segregated from other funds of such Grantor, as additional Collateral for the Secured Obligations.

(b) Without the prior written consent of Agent, such Grantor will not, so long as an Event of Default has occurred and is continuing and to the extent permitted by the Credit Agreement, (i) vote to enable, or take any other action to permit, any Issuer of Investment Property to issue any equity interests of any nature or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any equity interests of any nature of any Issuer, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Credit Agreement), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for Permitted Liens, or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof, except, with respect to such Investment Property, shareholders' agreements entered into by such Grantor with respect to Persons in which such Grantor maintains an ownership interest of 50% or less.

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify Agent promptly in writing of the occurrence of any of the events described in Section 5.4(a) with respect to the Investment Property issued by it and (iii) the terms of Section 6.3(c) shall apply to such Grantor with respect to all actions that may be required of it pursuant to Section 6.3(c) regarding the Investment Property issued by it.

5.5. Receivables.

(a) Other than in the ordinary course of business or in such Grantor's reasonable business judgment, without the prior written consent of Agent, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could materially adversely affect the value thereof, to the extent that any action in clauses (i)—(iv) above could reasonably be expected to have a Material Adverse Effect.

(b) Such Grantor will deliver to Agent a copy of each material demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than \$200,000 of the aggregate amount of the then outstanding Receivables for all Grantors.

5.6. Intellectual Property.

(a) Except as permitted pursuant to the Credit Agreement, such Grantor will not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark pledged as Collateral may become invalidated or impaired in any way, to the extent that any such action could reasonably be expected to have a Material Adverse Effect.

(b) Except as permitted pursuant to the Credit Agreement, such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any Patent pledged as Collateral may become forfeited, abandoned or dedicated to the public, to the extent such act or omission could reasonably be expected to have a Material Adverse Effect.

(c) Except as permitted pursuant to the Credit Agreement, such Grantor will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of such Copyrights pledged as Collateral may become invalidated or otherwise impaired and which could reasonably be expected to have a Material Adverse Effect. Such Grantor will not (either itself or through licensees) do any act whereby any material portion of such Copyrights may fall into the public domain and which could reasonably be expected to have a Material Adverse Effect.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any Intellectual Property to infringe the intellectual property rights of any other Person except as could not reasonably be expected to have a Material Adverse Effect.

(e) Such Grantor will notify Agent and Lenders promptly if it knows, or has reason to know, that any application or registration relating to any Intellectual Property pledged as Collateral may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office, or any court or tribunal in any country) regarding, such Grantor's ownership of, or the validity of, any such Intellectual Property or such Grantor's right to register the same or to own and maintain the same, except to the extent that such forfeiture, abandonment or dedication, or adverse determination or development would not reasonably be expected to have a Material Adverse Effect.

(f) Whenever any Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to Agent concurrently with the next delivery of financial statements of Borrower and its Subsidiaries pursuant to Section 6.1.1 of the Credit Agreement. Upon the request of Agent and subject to Section 6.8 of the Credit Agreement, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as Agent may reasonably request to evidence Agent's and Lenders' security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Except to the extent permitted pursuant to the Credit Agreement, such Grantor will take all reasonable and necessary steps to maintain and pursue each application referred to in Section 5.6(f), (and to obtain the relevant registration), except to the extent the failure to maintain and pursue such application would not reasonably be expected to have a Material Adverse Effect, and to maintain each registration of all Intellectual Property owned by it, except to the extent that the failure to maintain registration of all Intellectual Property owned by it would not reasonably be expected to have a Material Adverse Effect.

(h) In the event that any Intellectual Property pledged as Collateral is infringed upon or misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, to the extent, in its reasonable judgment, such Grantor determines it appropriate under the circumstances, sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution and such Grantor shall promptly notify the Agent thereof.

5.7. Deposit Accounts and Other Accounts. Each Grantor hereby authorizes the financial institutions at which such Grantor maintains a Deposit Account, other bank account, securities account or other account (other than Exempt Accounts) to provide Agent with such information with respect to such account as Agent may from time to time reasonably request, and each Grantor hereby consents to such information being provided to Agent. Such Grantor will use commercially reasonable efforts to promptly cause each financial institution at which such Grantor maintains a Deposit Account or other account to enter into a control agreement or other similar agreement with Agent and such Grantor, in form and substance reasonably satisfactory to Agent, in order to give Agent "control" (within the meaning set forth in Section 9-104 of the Code) of such account, except for Exempt Accounts.

5.8. Other Matters. Grantor shall use commercially reasonable efforts to deliver to Agent, at Agent's request, a Collateral Access Agreement with respect to (a) each bailee with which such Grantor keeps Collateral as of the Closing Date having a fair market value in excess of \$200,000 and (b) each landlord which leases real property (and the accompanying facilities) to such Grantor as of the Closing Date at which it maintains its chief executive office or a substantial amount of its books or records. If such Grantor shall (x) cause to be delivered Inventory or other property constituting Collateral having a fair market value in excess of \$200,000 to any bailee after the Closing Date, such Grantor shall use commercially reasonable efforts to deliver, on or prior to such delivery, a signed Collateral Access Agreement from such bailee or (y) enter into any lease for real property after the Closing Date at which it maintains its chief executive office or a substantial amount of its books and records, such Grantor use commercially reasonable efforts to deliver, prior to the first day of the term of such lease, a signed Collateral Access Agreement from such landlord.

5.9. Commercial Tort Claims. If any Grantor shall at any time acquire any Commercial Tort Claim with a value greater than \$200,000, such Grantor shall promptly notify Agent thereof in writing, therein providing a reasonable description and summary thereof, and upon delivery thereof to Agent, such Grantor shall be deemed to thereby grant to Agent (and such Grantor hereby grants to Agent), for the benefit of Agent and Lenders, a security interest in such Commercial Tort Claim and all proceeds thereof, and subject to Section 6.8 of the Credit Agreement, such Grantor shall execute such documentation as Agent shall reasonably require in order to document and effectuate such grant of a security interest.

6. Remedial Provisions.

6.1. Certain Matters Relating to Receivables.

(a) After the occurrence and during the continuance of an Event of Default, Agent shall have the right to make test verifications of the Receivables pledged as Collateral in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information Agent may reasonably require in connection with such test verifications. After the occurrence and during the continuance of an Event of Default, upon Agent's reasonable request and at the expense of the relevant Grantor, such Grantor shall cause independent public accountants or others reasonably satisfactory to Agent to furnish to Agent reports showing reconciliations, agings and test verifications of, and trial balances for, such Receivables.

(b) If required by Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables pledged as Collateral, when collected or received by or on behalf of any Grantor, (i) shall be forthwith (and, in any event, within 2 Business Days) deposited by such Grantor in the exact form received, duly indorsed (but without any representation or warranty) by such Grantor to Agent if required, in a collateral account maintained under the sole dominion and control of Agent, for application to the Secured Obligations in accordance with Section 6.5, and (ii) until so turned over, shall be held by such Grantor in trust for Agent and Lenders, segregated from other funds of such Grantor. In connection with each such deposit of Proceeds of such Receivables such Grantor shall deliver to Agent a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) After the occurrence and during the continuance of an Event of Default, at Agent's request, each Grantor shall deliver to Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to such Receivables, including all original orders, invoices and shipping receipts.

6.2. Communications with Obligors; Grantors Remain Liable.

(a) Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables pledged as Collateral to verify with them to Agent's reasonable satisfaction the existence, amount and terms of such Receivables.

(b) Upon the request of Agent at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on such Receivables that such Receivables have been assigned to Agent for the benefit of Agent and Lenders and that payments in respect thereof shall be made directly to Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable in respect of each of the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither Agent nor any Lender shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by Agent or any Lender of any payment relating thereto, nor shall Agent or any Lender be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(d) Solely for the purpose of enabling Agent to exercise rights and remedies under this Agreement and while an Event of Default is continuing, each Grantor hereby grants to Agent, for the benefit of Agent and Lenders, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, license or sublicense any Intellectual Property that constitutes part of the Collateral now owned or hereafter acquired by such Grantor, to the extent such Intellectual Property may be so licensed or sublicensed, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

6.3. Investment Property.

(a) Unless an Event of Default shall have occurred and be continuing and Agent shall have given notice to the relevant Grantor of Agent's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends and distributions, payments and Proceeds paid in respect of the Pledged Equity, the Pledged Notes and all other Investment Property that constitutes Collateral, to the extent permitted in the Credit Agreement, and to exercise all voting and other rights and any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Equity, Pledged Notes and Investment Property (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by such Grantor of any right, privilege or option pertaining to such Pledged Equity, Pledged Notes or Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Pledged Equity, Pledged Notes and Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as such Grantor may determine); provided, that no vote shall be cast or other right exercised or action taken which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing, upon notice to the relevant Grantor, Agent shall have the right to (i) receive any and all cash dividends and distributions, payments or other Proceeds paid in respect of the Pledged Equity, the Pledged Notes and all other Investment Property pledged as Collateral and make application thereof to the Secured Obligations in accordance with Section 6.5, (ii) register any or all of such Investment Property in the name of Agent or its nominee, (iii) exercise, or permit its nominee to exercise, all voting and other rights pertaining to such Investment Property, and (iv) exercise, or permit its nominee to exercise, any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as Agent may determine), all without liability except to account for property actually received by it, but Agent shall have no duty to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement and the Credit Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends, distributions or other payments with respect to the Investment Property directly to Agent.

6.4. Proceeds to be Turned Over To Agent. In addition to the rights of Agent specified in Section 6.1 with respect to payments of Receivables pledged as Collateral, if an Event of Default shall occur and be continuing, all such Proceeds of Collateral received by or on behalf of any Grantor consisting of cash, checks and other cash equivalent items shall be held by such Grantor in trust for Agent and Lenders, and shall, at the written request of Agent, be segregated from other funds of such Grantor and forthwith upon receipt by such Grantor, be turned over to Agent in the exact form received by such Grantor (duly indorsed (but without any representation or warranty) by such Grantor to Agent, if required). All Proceeds received by Agent hereunder shall be applied to the Secured Obligations as provided in Section 6.5.

6.5. Application of Proceeds. If an Event of Default shall have occurred and be continuing, Agent shall apply all or any part of Proceeds of Collateral held in any collateral account established pursuant hereto or otherwise received by Agent to the payment of the Secured Obligations in the manner set forth in Section 2.9.2 of the Credit Agreement.

6.6. Code and Other Remedies. If an Event of Default shall occur and be continuing, Agent, on behalf of Agent and Lenders, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the Code, or any other applicable foreign or domestic law. Without limiting the generality of the foregoing, if an Event of Default shall occur or be continuing, Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of Agent or any Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery with assumption of any credit risk. Agent may disclaim any warranties that might arise in connection with any such lease, assignment, grant of option or other disposition of Collateral and have no obligation to provide any warranties at such time. Agent or any Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Such sales may be adjourned and continued from time to time with or without notice. Agent shall have the right to conduct such sales on any Grantor's premises or elsewhere and shall have the right to use any Grantor's premises without charge for such time or times as Agent deems necessary or advisable. Each Grantor further agrees after an Event of Default has occurred and is continuing, at Agent's request, to assemble the Collateral and make it available to Agent at places which Agent shall reasonably select, whether at such Grantor's premises or elsewhere. Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of Agent and Lenders hereunder, including reasonable attorneys' fees and disbursements, to the payment of the Secured Obligations in the manner set forth in Section 2.9.2 of the Credit Agreement. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against Agent or any Lender arising out of the exercise by them of any rights hereunder, except to the extent such claims, damages or demands arise from the gross negligence or willful misconduct of the Agent or Lenders as determined by a court of competent jurisdiction in a non-appealable order. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper so long as (a) it is given at least 15 days before such sale or other disposition, and (b) contains such information as may be prescribed by applicable law.

6.7. Pledged Equity. Each Grantor recognizes that Agent may be unable to effect a public sale of any or all the Pledged Equity, by reason of certain prohibitions contained in the Securities Act and other applicable securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Agent shall be under no obligation to delay a sale of any of the Pledged Equity for the period of time necessary to permit the Issuer thereof to register such securities or other interests for public sale under the Securities Act, or other applicable state securities laws, even if such Issuer would agree to do so.

6.8. Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient for the Secured Obligations to be Paid in Full and the fees and disbursements of any attorneys employed by Agent or any Lender to collect such deficiency.

6.9. Permitted Licenses. Agent hereby covenants and agrees that in connection with any foreclosure or other exercise of Agent's rights with respect to Permitted Licenses, Agent shall not terminate, limit, or otherwise adversely affect the rights of the licensees or sublicensees under such Permitted Licenses, so long as such licensee or sublicensee is not then otherwise in default under the applicable Permitted License in a way that would permit the applicable licensor to terminate such Permitted License.

6.10. Actions in Concert. Section 9.12 of the Credit Agreement shall be incorporated herein by reference.

7. Agent.

7.1. Agent's Appointment as Attorney-in-Fact, etc.

(a) Effective upon the occurrence of any Event of Default and for so long as such Event of Default is continuing, each Grantor hereby irrevocably constitutes and appoints Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact and proxy with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of strictly carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives Agent the power and right, on behalf of and at the expense of such Grantor, without notice to or assent by such Grantor, to do any or all of the following to the extent otherwise expressly permitted by the terms of this Agreement and the Credit Agreement (including the satisfaction of any requirement to give notice to such Grantor prior to doing any of the following):

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse (but without any representation or warranty) and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise reasonably deemed appropriate by Agent for the purpose of collecting any and all such moneys due under any Receivable pledged as Collateral or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property pledged as Collateral, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as Agent may reasonably request to evidence Agent's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) discharge Liens (other than Permitted Liens) levied or placed on or threatened against the Collateral, and effect any repairs or insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to Agent or as Agent shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse (but without any representation or warranty) any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as Agent may deem appropriate; (G) assign any Copyright, Patent or Trademark pledged as Collateral, throughout the world for such term or terms, on such conditions, and in such manner, as Agent shall in its sole discretion determine; (H) vote any right or interest with respect to any Investment Property pledged as Collateral; (I) order good standing certificates and conduct lien searches in respect of such jurisdictions or offices as Agent may deem appropriate; and (J) generally sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Agent were the absolute owner thereof for all purposes, and do, at Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which Agent deems necessary to protect, preserve or realize upon the Collateral and Agent's security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

(b) THE POWER-OF-ATTORNEY AND PROXY GRANTED HEREBY IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. SUCH PROXY SHALL BE EFFECTIVE AUTOMATICALLY UPON THE OCCURRENCE AND DURING THE CONTINUATION OF ANY EVENT OF DEFAULT AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY INVESTMENT PROPERTY ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE INVESTMENT PROPERTY OR ANY OFFICER OR AGENT THEREOF). Each Grantor acknowledges and agrees that in any event such power-of-attorney

and proxy is intended to and shall, to the fullest extent permitted by applicable law, be valid and irrevocable until (x) the Secured Obligations have been Paid in Full and (y) Lenders and Agent have no further obligations under the Loan Documents (excluding any obligations under the Residual Royalty Agreement). Such power-of-attorney and proxy shall be valid and irrevocable as provided herein notwithstanding any limitations to the contrary set forth in the charter, bylaws or other organizational documents of the relevant entities.

(c) Upon exercise of the proxy set forth herein, all prior proxies given by any Grantor with respect to any of the Investment Property pledged as Collateral (other than to Agent or otherwise pursuant to the Loan Documents) are hereby revoked, and until the Secured Obligations are Paid in Full, no subsequent proxies (other than to Agent or otherwise under the Loan Documents) will be given with respect to any of such Investment Property. To the extent permitted by this Agreement, Agent, as proxy, will be empowered and may exercise the irrevocable proxy to vote such Investment Property at any and all times, including but not limited to, at any meeting of shareholders, partners or members, as the case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by applicable law, Agent shall have no agency, fiduciary or other implied duties to any Grantor or any other party when acting in its capacity as such attorney-in-fact or proxy. Each Grantor hereby waives and releases any claims that it may otherwise have against Agent with respect to any breach or alleged breach of any such agency, fiduciary or other duty, other than claims resulting from the gross negligence or willful misconduct of Agent as determined by a court of competent jurisdiction in a non-appealable order. Notwithstanding the foregoing grant of a power of attorney and proxy, Agent shall have no duty to exercise any such right or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so.

(d) Anything in Section 7.1(a) to the contrary notwithstanding, Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1 unless an Event of Default shall have occurred and be continuing.

(e) If any Grantor fails to perform or comply with any of its agreements contained herein, Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement at such Grantor's sole cost and expense.

(f) Each Grantor hereby ratifies that such attorneys shall be authorized hereunder to lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2. Duty of Agent. Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Agent deals with similar property for its own account. Neither Agent or any Lender nor any of their respective officers, directors, employees or agents shall be liable for any failure to demand, collect or realize upon any of the Collateral or for any delay in doing so (except to the extent Agent, such Lender or such officers, directors, employees or agents acted with gross negligence or in willful misconduct as determined by a court of competent jurisdiction in a non-appealable order) or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on Agent and Lenders hereunder are solely to protect Agent's and Lenders' interests in the Collateral and shall not impose any duty upon Agent or any Lender to exercise any such powers. Agent and Lenders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except to the extent Agent or a Lender (or such officer, director, employee or agent) acted with gross negligence or in willful misconduct as determined by a court of competent jurisdiction in a non-appealable order.

7.3. Photocopy of this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

7.4. Authority of Agent. Each Grantor acknowledges that the rights and responsibilities of Agent under this Agreement with respect to any action taken by Agent or the exercise or non-exercise by Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between Agent and Lenders, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between Agent and the Grantors, Agent shall be conclusively presumed to be acting as agent for Lenders with full and valid authority to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

8. Miscellaneous.

8.1. [Reserved].

8.2. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

8.3. Notices. All notices, requests and demands to or upon Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement and each such notice, request or demand to or upon any Grantor shall be addressed to such Grantor in care of Borrower at Borrower's notice address set forth on Schedule 1.

8.4. Indemnification by Grantors. Each Grantor hereby agrees, on a joint and several basis, to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party" and collectively, the "Lender Parties") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs, but expressly excluding any consequential, special or lost profits damages (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any act or omission by Borrower or any of its officer, directors, agents, including without limitation (a) any tender offer, merger, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any hazardous substance at any property owned or leased by any Grantor or any Subsidiary, (c) any violation of any Environmental Laws with respect to conditions at any property owned or leased by any Grantor or any Subsidiary or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Grantor or any Subsidiary or their respective predecessors are alleged to have directly or indirectly disposed of hazardous substances, or (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except, in each case, to the extent any such Indemnified Liabilities result from the applicable Lender Party's own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a non-appealable order. If and to the extent that the foregoing undertaking may be unenforceable for any reason, each Grantor hereby agrees to make the maximum contribution to the

payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. The agreements in this Section 8.4 shall survive repayment of the Secured Obligations, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

8.5. Enforcement Expenses.

(a) Each Grantor agrees, on a joint and several basis, to pay or reimburse on demand each Lender and Agent for all reasonable out-of-pocket costs and expenses (including Legal Costs) incurred in collecting against any Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents in accordance with Section 10.4 of the Credit Agreement.

(b) Each Grantor agrees to pay, and to save Agent and Lenders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The agreements in this Section 8.5 shall survive repayment of the Secured Obligations, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

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

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

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

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

8.10. Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by any Grantor of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of Agent or Lenders.

8.11. Successors; Assigns. This Agreement shall be binding upon Grantors, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Grantors, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. No Grantor may assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent.

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

8.13. Forum Selection; Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED THAT* ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

8.14. Waiver of Jury Trial. EACH GRANTOR, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

8.15. Set-off. Each Grantor agrees that Agent and each Lender have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, each Grantor agrees that at any time any Event of Default has occurred and is continuing, Agent and each Lender may apply to the payment of any Secured Obligations, whether or not then due, any and all balances, credits, deposits, accounts or moneys of such Grantor then or thereafter with Agent or such Lender.

8.16. Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) it has received a fully executed copy of this Agreement;

(c) neither Agent nor any Lender has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and Agent and Lenders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among Lenders or among the Grantors and Lenders.

8.17. Additional Grantors. Each Loan Party that is required to become a party to this Agreement pursuant to Sections 6.8 and 7.14 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Loan Party of a joinder agreement in the form of Annex I hereto.

8.18. Releases.

(a) At such time as the Secured Obligations have been Paid in Full, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights in and to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, Agent shall deliver to the Grantors any Collateral held by Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the equity interests of such Guarantor shall be sold, transferred, liquidated, dissolved or otherwise disposed of in a transaction permitted by the Credit Agreement.

8.19. Obligations and Liens Absolute and Unconditional. Each Grantor understands and agrees that the obligations of each Grantor under this Agreement shall be construed as continuing, absolute and unconditional without regard to (a) the validity or enforceability of any Loan Document, any of the Secured Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by Agent or any Lender, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or

be asserted by any Grantor or any other Person against Agent or any Lender, or (c) any other circumstance whatsoever (with or without notice to or knowledge of any Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Grantor for the Secured Obligations, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any other Grantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from any other Grantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of any other Grantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Agent or any Lender against any Grantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

8.20. Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor or any Issuer for liquidation or reorganization, should any Grantor or any Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's or any Issuer's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.21. Conflicting Terms. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Credit Agreement, the terms of the Credit Agreement shall control.

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

Each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

GRANTORS:

ACER THERAPEUTICS INC.,
a Delaware corporation

By: /s/ Chris Schelling

Name: Chris Schelling

Title: Chief Executive Officer

AGENT:

SWK FUNDING LLC,
as Agent

By: SWK Holdings Corporation,
its sole Manager

By: /s/ Winston Black

Name: Winston Black

Title: Chief Executive Officer

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR THE SECURITIES OR BLUE SKY LAWS OF ANY STATE AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES (SUBJECT TO THE PROVISIONS OF ARTICLE 5 BELOW), SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Issuer: ACER THERAPEUTICS INC., a Delaware corporation (the “Company”)
Number of Shares: 150,000 (as may be adjusted pursuant to Article 2)
Warrant Price: \$2.46
Issue Date: March 4, 2022
Expiration Date: March 4, 2029

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, SWK Funding LLC, a Delaware limited liability company, or its assignees (“Holder”), is entitled to purchase the number of fully paid and non-assessable shares of the Company’s common stock, par value \$0.0001 per share (“Common Stock”), set forth above (the “Shares”), at the Warrant Price per Share set forth above, as the same may be adjusted from time to time pursuant to Article 2 of this Warrant (the “Warrant Price”), subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1.

EXERCISE

1.1 Method of Exercise. This Warrant is exercisable, in whole or in part, at any time and from time to time after the date on which the funding of the loans occurs under the Credit Agreement, dated as of the date hereof, among the Company, SWK, as Agent, Sole Lead Arranger and Sole Bookrunner, and the financial parties thereto from time to time as lenders (the “Credit Agreement”) and on or before the Expiration Date set forth above. Holder may exercise this Warrant by delivering the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the Company in accordance with Section 5.7 (or such other office or agency of the Company as it may designate by notice in writing to the Holder in accordance with Section 5.7). Unless Holder is exercising the cashless exercise right set forth in Section 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company in an amount equal to the aggregate Warrant Price for the Shares being purchased.

1.2 Cashless Exercise. In lieu of exercising this Warrant as specified in Section 1.1, Holder may from time to time exercise this Warrant, in whole or in part, by means of a “cashless exercise” in which the Holder shall be entitled to receive a certificate for the number of Shares determined in accordance with the following equation:

$$X = \frac{(A - B) \times C}{A}$$

where

- X = the number of Shares purchasable upon a “cashless exercise” of the Warrant pursuant to the provisions of this Section 1.2;
- A = the Fair Market Value (defined below) per share of Common Stock on the date of the “cashless exercise”;
- B = the Warrant Price for one Share under this Warrant; and
- C = the number of Shares as to which this Warrant is being exercised pursuant to the provisions of this Article 1.

If the foregoing calculation results in a negative number or zero, then no Shares shall be issued upon a “cashless exercise” pursuant to this Section 1.2. If the Holder does not agree with the Fair Market Value per share ultimately determined pursuant to Section 1.3(b) or Section 1.3(c), the Holder may, in its sole discretion (i) rescind the “cashless exercise”, (ii) pay the aggregate Warrant Price in the form of, at the Holder’s option, (1) a check payable to the Company or (2) a wire transfer of funds to an account designated by the Company, or (iii) proceed with the “cashless exercise” at the Fair Market Value per Share so determined. In the event that, upon the Expiration Date or other termination of this Warrant, the Fair Market Value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to this Section 1.2 as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

1.3 Fair Market Value. For purposes of this Warrant, the “Fair Market Value” of a Share as of a particular date (the “Determination Date”) shall mean:

(a) If the Common Stock is then publicly listed or quoted on one or more securities exchanges, inter-dealer quotation systems or over-the-counter markets, the fair market value of a Share shall be the closing price per share of Common Stock reported on the principal such exchange, system or market for the business day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company.

(b) If the Determination Date is the date of a liquidation, dissolution or winding up, or any event deemed to be a liquidation, dissolution or winding up pursuant to the Company’s charter, then the fair market value of a Share shall be equal to all amounts to be payable per share to holders of the Common Stock pursuant to the charter in the event of such liquidation, dissolution or winding up, assuming for the purposes of this clause (b) that all of the shares of Common Stock then issuable upon exercise of all in-the-money options, warrants and other exercisable or convertible rights or other securities outstanding at the Determination Date.

(c) If the Common Stock is not then publicly listed or quoted on one or more securities exchanges, inter-dealer quotation systems or over-the-counter markets, then the Board of Directors of the Company (the “Board”) shall determine the fair market value of a Share in its reasonable good faith judgment; provided, however, if Holder advises the Board in writing that Holder disagrees with such determination, then the Company and Holder shall promptly agree upon a reputable investment banking firm to undertake such valuation. If the valuation of such investment banking firm results in a fair market value per Share that is more than 15% greater than that determined by the Board, then all fees and expenses of such investment banking firm shall be paid by the Company. In all other circumstances, such fees and expenses of such investment banking firm shall be paid by Holder.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing a warrant to purchase the Shares not yet acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver a replacement Warrant.

1.6 Sale, Merger, or Consolidation of the Company. For the purpose of this Warrant, “Acquisition” means any sale or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, or merger of the Company where the holders of the Company’s securities before the transaction beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction. Upon the closing of any Acquisition, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing, and the Warrant Price shall be adjusted accordingly; provided, however, that (i) in the event of an Acquisition in which the consideration to be received by the Company’s stockholders consists solely of cash, solely of Marketable Securities (as defined below) or a combination of cash and Marketable Securities (a “Cash/Public Acquisition”), and the fair market value of one Share as determined in accordance with Section 1.3 above would be greater than the Warrant Price in effect on such date immediately prior to such Cash/Public Acquisition, and Holder has not exercised this Warrant pursuant to Section 1.1 above as to all Shares, then (A) this Warrant shall automatically be deemed to be cashless exercised pursuant to Section 1.2 above as to all Shares for which it has not been previously exercised effective immediately prior to and contingent upon the consummation of such Cash/Public Acquisition and (B) in connection with such cashless exercise, Holder shall be deemed to have restated each of the representations and warranties in Section 4 of the Warrant as the date thereof (which representations and warranties shall also pertain, as applicable, to the applicable

Marketable Securities as well as the issuer thereof) and the Company shall promptly notify the Holder of the number of Shares (or such other Marketable Securities) issued upon exercise, and (ii) in the event of a Cash/Public Acquisition where the fair market value of one Share as determined in accordance with Section 1.3 above would be less than the Warrant Price in effect immediately prior to such Cash/Public Acquisition, then this Warrant will expire immediately prior to the consummation of such Cash/Public Acquisition. “Marketable Securities” means securities meeting all of the following requirements: (1) the issuer thereof is then subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (2) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market, and (3) following the closing of such Acquisition, Holder would not be restricted from publicly re-selling all of the issuer’s shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six(6) months from the closing of such Acquisition.

ARTICLE 2.

ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company, at any time while this Warrant is outstanding: (a) pays a dividend on the Shares payable in Common Stock, (b) subdivides the outstanding Shares into a greater number of Shares, (c) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (d) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each such case (i) the Warrant Price will be adjusted by multiplying the Warrant Price then in effect by a fraction, the numerator of which equals the number of shares of Common Stock outstanding immediately prior to such event (excluding treasury shares, if any), and the denominator of which equals the number of shares of Common Stock outstanding immediately after such event (excluding treasury shares, if any), and (ii) the number of Shares issuable hereunder shall be concurrently adjusted by multiplying such number by the reciprocal of such fraction. Such adjustments will take effect on the effective date of such dividend, subdivision, combination or issuance by reclassification, as the case may be. The provisions of this Section 2.1 shall similarly apply to successive reclassifications, exchanges, combinations, substitutions, recapitalizations and reorganizations.

2.2 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder’s rights under this Article 2 against impairment. If the Company takes any action, a purpose of which is to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, the Warrant Price shall be adjusted downward and the number of Shares issuable upon the exercise of this Warrant shall be adjusted upward in such a manner that such action is offset and the aggregate Warrant Price of this Warrant is unchanged.

2.3 Fractional Shares. No fractional Shares shall be issuable upon exercise of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the Fair Market Value of a full Share.

2.4 Certificate as to Adjustments. Upon any adjustment pursuant to this Article 2, including any adjustments to the Warrant Price or number of Shares that are exercisable under this Warrant, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its officer setting forth such adjustment and the facts upon which such adjustment is based.

ARTICLE 3.

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY

3.1 Representations and Warranties. The Company represents and warrants to the Holder as follows:

(a) The Company is a corporation validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business as now conducted.

(b) This Warrant constitutes the Company's valid and legally binding obligation, enforceable in accordance with its terms, except as may be limited by (i) applicable bankruptcy, insolvency, reorganization, or similar laws relating to or affecting the enforcement of creditors' rights and (ii) laws relating to the availability of specific performance, injunctive relief or other equitable remedies. All corporate action has been taken on the part of the Company, its officers, directors, and stockholders necessary for the authorization, execution and delivery of this Warrant and the issuance of the Shares upon exercise of this Warrant.

(c) All Shares which may be issued upon the exercise of this Warrant shall at all times during the term hereof and prior to exercise in full hereof be duly reserved out of the Company's authorized and unissued capital stock for issuance upon exercise hereof and shall, upon issuance, be duly and validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

3.2 No Shareholder Rights; Preemptive Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant. The Shares for which this Warrant is exercisable shall at all times be free from preemptive rights and any other rights (or the Company shall have received a valid waiver from all such holders of any such rights) that would prevent the exercise of this Warrant in full by the Holder.

3.3 Valid Issuance. The Company shall take all steps necessary to ensure that all Shares which may be issued upon the exercise of this Warrant shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, free of any liens and encumbrances, and issued to the Holder without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange or similar quotation system upon which the Shares may be listed, except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

3.4 Notice of Certain Events. If Company proposes at any time (a) to declare any dividend or distribution upon its capital stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights; (c) to effect any reclassification or recapitalization of Common Stock; or (d) to consummate any Acquisition, or to liquidate, dissolve or wind up the Company, then, in connection with each such event, the Company shall give Holder (1) in the case of the matters referred to in clauses (a) and (b) above at least 20 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of Common Stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in clauses (c) and (d) above; and (2) in the case of the matters referred to in (c) and (d) above at least 20 days prior written notice of the date when the same will take place (and specifying the date on which the holders of Common Stock will be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event).

3.5 Information Rights. So long as Holder holds this Warrant and/or any of the Shares, the Company shall deliver to Holder (i) promptly, copies of all notices or other written communications to which Holder would be entitled if it held Shares as to which this Warrant was then exercisable, and (ii) within 45 days after the end of each of the first three quarters of each fiscal year, the Company's quarterly, unaudited financial statements and within 90 days after the end of each fiscal year, the Company's annual, audited financial statements; provided, however, that with regard to annual meeting proxy statements and clause (ii) of this Section 3.5, it is understood and agreed that there shall be no such delivery requirement with respect to any such proxy statements or financial statements if such documents are available on EDGAR.

ARTICLE 4.

REPRESENTATIONS AND WARRANTIES OF THE HOLDER.

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the Shares to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution in violation of applicable securities laws. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

ARTICLE 5.

MISCELLANEOUS.

5.1 Term. This Warrant is exercisable in whole or in part at any time and from time to time on and after the date on which the funding of the loans occurs under the Credit Agreement and on or before the Expiration Date. Notwithstanding anything to the contrary in this Warrant, if the funding of the loans under the Credit Agreement does not occur on or prior to March 14, 2022, then as of 11:59pm on such date, this Warrant shall automatically expire and be of no further force and effect.

5.2 Legends. This Warrant and the Shares shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE

5.3 Cash Dividends and Cash Distributions. Subject to the other provisions of this Section 5.3, this Warrant shall at all times represent the Holder's right to receive the same percentage of any cash dividends or cash distributions made by the Company that would have been received by the Holder if Holder had fully exercised this Warrant for the full amount of the unexercised Shares immediately prior to the close of business on the day immediately preceding the record date for such dividend. To that end, if the Company at any time or from time to time after the date hereof declares, orders, pays or makes a cash dividend or other cash distribution on or with respect to its shares of Common Stock, then, and in each such case, the Company shall reserve for, and hold for the benefit of, the Holder, a dollar amount equal to the amount (without interest) that the Holder would have received if it had fully exercised this Warrant for the full amount of the unexercised Shares immediately prior to the close of business on the day immediately preceding the record date for such dividend or other cash distribution, and the Holder shall be entitled to receive such amount in full upon the exercise of this Warrant. In lieu of receiving such cash payment, at its sole discretion, the Holder may choose to have the Warrant Price reduced by the amount of the cash, or value of the other securities or other property payable per share.

5.4 Compliance with Securities Laws on Transfer. This Warrant and/or the Shares issuable upon exercise of this Warrant may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee, and in connection with any proposed transfer of this Warrant or the Shares to any Person other than an Affiliate of the Holder, the transferor shall, if reasonably requested by the Company, deliver a legal opinion of counsel to the transferor (at the transferor's expense).

5.5 [Reserved.]

5.6 Transfer Procedure. Subject to the provisions of Section 5.4 and upon providing the Company with written notice, Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant to any transferee, provided, however, in connection with any such transfer, Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

5.7 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be in writing and shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail or by overnight courier, postage prepaid (or on the first business day after transmission by email), at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such holder from time to time.

All notices to Holder shall be addressed as follows until the Company receives notice of a change in address in accordance with this Section 5.7:

SWK Funding LLC
Attn: Chief Executive Officer
14755 Preston Road, Suite 105
Dallas, TX 75254
Telephone: 972-687-7250
Email: notifications@swkhold.com

With a copy (which shall not constitute notice) to:

Holland & Knight LLP
200 Crescent Ct., Suite 1600
Dallas, TX 75201
Telephone: 214-964-9500
Email: Ryan.Magee@hklaw.com
Attention: Ryan Magee

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address in accordance with this Section 5.7:

ACER Therapeutics Inc.
One Gateway Center, Suite 351
300 Washington Street
Newton, Massachusetts 02458,
Attention: Chief Executive Officer
Email: cshellling@acertx.com
Attention: General Counsel
Email: djoseph@acertx.com

With a copy (which shall not constitute notice) to:

Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA
Telephone: 858-509-4024
Email: mike.hird@pillsburylaw.com
Attention: Mike Hird

5.8 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.9 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

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

5.11 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles regarding conflicts of law.

5.12 Provisions for the Benefit of the Lenders. Notwithstanding anything herein to the contrary, nothing contained in this Warrant shall affect, limit or impair the rights and remedies of SWK in its capacity as a lender to the Company or any of the Company’s subsidiaries pursuant to the Credit Agreement, or any other agreements or instruments entered into in connection therewith. Without limiting the generality of the foregoing, SWK in exercising its rights as a lender will not have any duty to consider (a) its status as a direct or indirect stockholder of the Company and the Company’s subsidiaries, (b) the direct or indirect ownership of the Shares, or (c) any duty it may have to any other direct or indirect stockholder of the Company and the Company’s subsidiaries, except as may be required under the applicable loan documents.

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

IN WITNESS WHEREOF, the undersigned have executed this Warrant as of the day and year first above written.

COMPANY:

ACER THERAPEUTICS INC.,

By: /s/ Chris Schelling

Name: Chris Schelling

Title: Chief Executive Officer

[Signature Page to Warrant]

HOLDER:

SWK FUNDINGLLC

By: SWK Holdings Corporation, its sole Manager

By: /s/ Winston Black

Name: Winston Black

Title: Chief Executive Officer

[Signature Page to Warrant]

**ACER THERAPEUTICS INC.
SECURED CONVERTIBLE NOTE PURCHASE
AND SECURITY AGREEMENT**

This Secured Convertible Note Purchase and Security Agreement (this "Agreement") is made as of March 4, 2022, by and between **ACER THERAPEUTICS INC.**, a Delaware corporation (the "Company"), **MAMAARDVARK, LLC**, a Delaware limited liability company (the "Agent"), and those purchasers listed on the attached Exhibit A, as such exhibit may be amended from time to time (each a "Purchaser," and collectively, the "Purchasers").

RECITALS

A. The Company has authorized the sale and issuance of up to \$6,000,000 in principal of secured convertible notes substantially in the form attached here to as Exhibit B (individually, a "Note" and collectively, the "Notes"), which shall be convertible into shares of the common stock of the Company, par value \$0.0001 per share (the "Common Stock"), in a private placement.

B. Pursuant to Section 4(2) of the Securities Act of 1933 (the "Securities Act" or the "Act") and Rule 506 promulgated thereunder, the Company desires to sell to the Purchasers listed on the attached Exhibit A, as such exhibit may be amended from time to time, and such Purchasers, severally and not jointly, desire to purchase from the Company that aggregate principal amount of Notes set forth opposite such Purchaser's name on Exhibit A, on the terms and subject to the conditions set forth in this Agreement.

TERMS AND CONDITIONS

Now, therefore, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Purchase of the Securities.

1.1 Agreement to Sell and Purchase. At the Closing (as hereinafter defined), the Company will issue and sell to each of the Purchasers, and each Purchaser will, severally and not jointly, purchase from the Company, the Notes in the principal amount set forth opposite such Purchaser's name on Exhibit A for the aggregate purchase price set forth opposite such Purchaser's name on Exhibit A (the "Purchase Price"). The Notes shall be in the form set forth as Exhibit B.

1.2 Closing; Closing Date. The completion of the sale and purchase of the Notes (the "Closing") shall at the date and time mutually agreed upon by the Agent and the Company (the "Closing Date"), by electronic transfer of signature pages and other deliverables. In the event that the conditions to the obligations of the Purchasers to close cannot be satisfied on or before March 14, 2022, then the Agent may terminate this Agreement.

1.3 Delivery of the Securities. At the Closing, subject to the terms and conditions hereof, the Company will deliver to each Purchaser a Note, in such denominations and registered in such names as such Purchaser may designate by notice to the Company, dated as of the Closing Date (each a "Certificate"), against payment of the purchase price set forth on Exhibit A therefor by cash in the form of wire transfer, unless other means of payment shall have been agreed upon by the Purchasers and the Company.

2. Representations and Warranties of the Company. The Company hereby represents and warrants to each Purchaser as of the date hereof and as of the Closing Date:

2.1 Authorization; No Conflicts; Authority. This Agreement has been duly authorized, executed and delivered by the Company, and constitutes a valid, legal and binding obligation of the Company, enforceable in accordance with its terms, except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity. The Notes have been duly authorized and, on the Closing Date will be, duly executed and delivered by the Company, and, when issued and paid for in accordance with the terms hereof, will constitute valid, legal and binding obligations of the Company, enforceable in accordance with their terms, except as rights to indemnity thereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity. The execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated (which, in all cases hereunder, includes the issuance of the Common Stock issuable upon conversion of the Notes (the "Note Shares," and, together with the Notes, the "Securities") will not (i) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, (ii) result in any violation of the provisions of the Company's Certificate of Incorporation or Bylaws or (iii) result in the violation of any law or statute or any judgment, order, rule, regulation or decree of any court or arbitrator or federal, state, local or foreign governmental agency or regulatory authority having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets (each, a "Governmental Authority"), except in the case of clause (i) as would not result in a material adverse effect upon the business, prospects, management, properties, operations, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole (a "Material Adverse Effect"). Except for notices required or permitted to be filed with certain state and federal securities commissions, which notices will be filed on a timely basis, no consent, approval, authorization or order of, or registration or filing with any Governmental Authority is required for the execution, delivery and performance of this Agreement or for the consummation of the transactions contemplated hereby, including the issuance or sale of the Securities by the Company, except such as may be required under the Act or state securities or blue sky laws; and the Company has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, including the authorization, issuance and sale of the Securities as contemplated by this Agreement.

2.2 No Violations or Defaults. Neither the Company nor any of its subsidiaries is in violation of its respective Certificate of Incorporation, Bylaws or other organizational documents, or in breach of or otherwise in default, and no event has occurred which, with notice or lapse of time or both, would constitute such a default in the performance of any material obligation, agreement or condition contained in any bond, debenture, note, indenture, loan agreement or any other material contract, lease or other instrument to which it is subject or by which any of them may be bound, or to which any of the material property or assets of the Company or any of its subsidiaries is subject.

2.3 Organization, Good Standing and Qualification. Each of the Company and its subsidiaries has been duly organized and is validly existing as a corporation in good standing under the laws of its jurisdiction of incorporation. Each of the Company and its subsidiaries has full corporate power and authority to own its properties and conduct its business as currently being carried on and as described in the Company SEC Documents (as defined below), is duly qualified to do business as a foreign corporation in good standing in each jurisdiction in which it owns or leases real property or in which the conduct of its business makes such qualification necessary and in which the failure to so qualify would have a Material Adverse Effect.

2.4 Ownership of Assets. The Company and its subsidiaries have good and indefeasible title to all property (whether real or personal) described in the Company SEC Documents as being owned by them, in each case free and clear of all liens, claims, security interests, other encumbrances or defects except such as are described in the Company SEC Documents. The property held under lease by the Company and its subsidiaries is held by them under valid, subsisting and enforceable leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of the Company or its subsidiaries.

2.5 SEC Filings. Each report, registration statement and definitive proxy statement filed by the Company with the Securities and Exchange Commission (the “SEC,” and the documents, the “Company SEC Documents”) since January 1, 2022: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto and was timely filed; (ii) the information contained therein as of the respective dates thereof did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made not misleading; (iii) the consolidated financial statements contained therein were prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered, except as may be indicated in the notes to such financial statements and (in the case of unaudited statements) as permitted by Form 10-Q of the SEC, and except that unaudited financial statements may not contain footnotes and are subject to year-end audit adjustments; and (iv) the consolidated balance sheets contained therein fairly present the consolidated financial position of the Company and its subsidiaries as of the respective dates thereof and the consolidated results of operations cash flows and the changes in stockholders’ equity of the Company and its subsidiaries for the periods covered thereby. Except as set forth in the financial statements included in the Company SEC Documents and for a loan facility (the “SWK Debt”) with SWK Funding LLC (“SWK”) which is being established at approximately the date of this Agreement: (A) neither the Company nor its subsidiaries has any liabilities, contingent

or otherwise, other than liabilities incurred in the ordinary course of business subsequent to December 31, 2021, and liabilities of the type not required under generally accepted accounting principles to be reflected in such financial statements; and (B) such liabilities incurred subsequent to December 31, 2021, are not, in the aggregate, material to the financial condition or operating results of the Company and its subsidiaries, taken as a whole.

2.6 Capitalization. All of the issued and outstanding shares of capital stock of the Company, including the outstanding shares of Common Stock, are duly authorized and validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state and foreign securities laws, were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities that have not been waived in writing (a copy of which has been delivered to counsel to the Purchasers), and the holders thereof are not subject to personal liability by reason of being such holders; the Note Shares have been duly authorized and, when issued, delivered and paid for in accordance with the terms of this Agreement and the Notes, will have been validly issued and will be fully paid and nonassessable, and the holders thereof will not be subject to personal liability by reason of being such holders; and the capital stock of the Company, including the Note Shares, conforms to the description thereof in the Company SEC Documents. The Note Shares have been duly reserved for issuance upon conversion of the Notes. Except as otherwise stated in the Company SEC Documents, (i) there are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of, any shares of Common Stock pursuant to the Company's Certificate of Incorporation, Bylaws or any agreement or other instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound and (ii) the offering or sale of the Securities as contemplated by this Agreement does not give rise to any rights for or relating to the registration of any shares of Common Stock or other securities of the Company. All of the issued and outstanding shares of capital stock of each of the Company's subsidiaries have been duly and validly authorized and issued and are fully paid and nonassessable, and, except as otherwise described in the Company SEC Documents or disclosed in writing to the Purchasers, the Company owns of record and beneficially, free and clear of any security interests, claims, liens, proxies, equities or other encumbrances, all of the issued and outstanding shares of such stock.

2.7 Stock Options. Except as described in the Company SEC Documents, the rights described in Section 2.6 above, issuances under the Company Stock Plans (defined herein) and the issuance of the Warrant to purchase 150,000 shares of the Company's Common Stock pursuant to the SWK Debt (the "SWK Security"), there are no options, warrants, agreements, contracts or other rights in existence to purchase or acquire from the Company or any subsidiary of the Company any shares of the capital stock of the Company or any subsidiary of the Company. The description of the Company's stock option, stock bonus and other stock plans or arrangements (the "Company Stock Plans"), and the options (the "Options") or other rights granted thereunder, set forth in the Company SEC Documents accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights. Each grant of an Option (i) was duly authorized no later than the date on which the grant of such Option was by its terms to be effective by all necessary corporate action, including, as applicable, approval by the board of directors (the "Board") of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto and (ii) was made in accordance with the terms of the applicable Company Stock Plan, and all applicable laws and regulatory rules or requirements, including all applicable federal securities laws.

2.8 Subsidiaries. Other than (i) the subsidiaries of the Company, if any, listed in Exhibit 21 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and (ii) those other equity interests owned by the Company disclosed in such Form 10-K, the Company, directly or indirectly, owns no capital stock or other equity or ownership or proprietary interest in any corporation, partnership, association, trust or other entity.

2.9 Offering. Assuming the accuracy of the representations of the Purchasers in Section 3.3 of this Agreement on the date hereof, on the Closing Date and solely as this Section 2.9 relates to the issue and sale of the Note Shares on the date(s) of conversion of the Notes, the offer, issue and sale of the Securities and issuance of the Note Shares upon conversion of the Notes (assuming no change in applicable law prior to the date the Note Shares), are and will be exempt from the registration and prospectus delivery requirements of the Securities Act and have been or will be registered or qualified (or are or will be exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has directly or indirectly made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration under the Securities Act of the issuance of the Securities to the Purchasers or the issuance of the Note Shares. Other than the Company SEC Documents, the Company has not distributed and will not distribute prior to the Closing Date any offering material in connection with the offering and sale of the Securities. The Company has not taken any action to sell, offer for sale or solicit offers to buy any securities of the Company which would bring the offer, issuance or sale of the Securities or the issuance of the Note Shares upon conversion of the Notes, within the provisions of Section 5 of the Securities Act, unless such offer, issuance or sale was or shall be within the exemptions of Section 4 of the Securities Act.

2.10 Litigation. Except as set forth in the Company SEC Documents, there is not pending or, to the knowledge of the Company, threatened or contemplated, any action, suit or proceeding (a) to which the Company or any of its subsidiaries is a party or (b) which has as the subject thereof any officer or director of the Company or any subsidiary, any employee benefit plan sponsored by the Company or any subsidiary or any property or assets owned or leased by the Company or any subsidiary before or by any court or Governmental Authority, or any arbitrator, which, individually or in the aggregate, might result in any material adverse change in the general affairs, condition (financial or otherwise), business, prospects, management, properties, operations or results of operations of the Company and its subsidiaries, taken as a whole ("Material Adverse Change"), or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement or which are otherwise material in the context of the sale of the Securities. There are no current or, to the knowledge of the Company, pending, legal, governmental or regulatory actions, suits or proceedings (i) to which the Company or any of its subsidiaries is subject or (ii) which has as the subject thereof any officer or director of the Company or any subsidiary, any employee plan sponsored by the Company or any subsidiary or any property or assets owned or leased by the Company or any subsidiary, that are required to be described in the Company SEC Documents by the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the rules and regulations under the Exchange Act, the Act or by the rules and regulations under the Act and that have not been so described.

2.11 No Brokers. Except for a fee (and cost reimbursement) payable by the Company to Reedland Capital Partners, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by the Company.

2.12 Compliance; Permits.

(a) Except as disclosed in the Company SEC Documents, and except as would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect, (a) the Company is and has been in compliance with applicable health care laws, including, but not limited to, the FFDCA and the U.S. Anti-Kickback Statute (42 U.S.C. 1320a-7b(b)) (collectively, "Health Care Laws"), (b) the Company possesses all licenses, certificates, approvals, clearances, authorizations and permits and supplements or amendments thereto required by any such Health Care Laws and/or to carry on its businesses as now or proposed to be conducted ("Health Care Authorizations"), such Health Care Authorizations are valid and in full force and effect and the Company is not in violation of any term of any such Health Care Authorizations, (c) the Company has not received written notice of any ongoing claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any Governmental Authority alleging that any Product, operation or activity is in violation of any Health Care Laws or Health Care Authorizations or has any knowledge that any such Governmental Authority or third party is considering any such claim, action, suit, proceeding, hearing, enforcement, investigation, arbitration or other action, (d) to the knowledge of the Company, the Company has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Health Care Authorizations or has any knowledge that any such Governmental Authority is considering such action and (e) the Company has filed, maintained and submitted all reports, documents, forms, notices, applications, records, claims and submissions and supplements or amendments thereto as required by any Health Care Laws or Health Care Authorizations, and all such reports, documents, forms, notices, applications, records, claims, submissions, supplements and amendments were complete, correct and not misleading on the date filed (or were corrected or supplemented by a subsequent submission). The Company and each of its subsidiaries is in compliance in all material respects with all applicable federal, state, local and foreign laws, regulations, orders and decrees.

(b) Except as set forth on Schedule 2.12, the Company possesses all permits, licenses, approvals, consents and other authorizations (collectively, "Permits") issued by the appropriate Governmental Authorities necessary to conduct the business now operated by it, except where the failure to so possess would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company is in compliance with the terms and conditions of all such Permits and all such Permits are valid and in full force and effect, except, in each case, where the failure so to comply or where the invalidity of such Permits or the failure of such Permits to be in full force and effect, individually or in the aggregate, would not have a Material Adverse Effect. The Company has not received any notice of proceedings relating to the revocation or material modification of any such Permits. Except as disclosed in the Company SEC Documents, and except as would not, individually or in the aggregate, have or may reasonably be

expected to have a Material Adverse Effect, the Company has not received any notice of adverse filing, warning letter, untitled letter or other correspondence or written notice in respect of the Products from the United States Food and Drug Administration (the “FDA”) or any other relevant regulatory authority or other Governmental Authority alleging or asserting noncompliance with the U.S. Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) (the “FDCA”) or similar U.S. federal or state or non-U.S. law.

2.13 No Material Changes. Except as disclosed in the Company SEC Documents and for the SWK Debt and the SWK Security, since December 31, 2021, neither the Company nor any of its subsidiaries has incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock; and there has not been any change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to (i) the issuance of shares upon the exercise of outstanding options or warrants or conversion of convertible securities, and (ii) grants of stock awards under the Company Stock Plans), or any material change in the short term or long term debt (other than as a result of the conversion of convertible securities), or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock, of the Company or any of its subsidiaries (other than grants of stock awards under the Company Stock Plans), or any Material Adverse Change or any development which could reasonably be expected to result in any Material Adverse Change.

2.14 Intellectual Property.

(a) The Company and each of its subsidiaries owns or possesses all Intellectual Property necessary for the conduct of the Company’s and its subsidiaries’ business as now conducted or as described in the Company SEC Documents to be conducted, except as such failure to own or possess such rights would not result in a Material Adverse Effect. Furthermore, (i) to the knowledge of the Company, there is no infringement, misappropriation or violation by third parties of any such Intellectual Property, except as such infringement, misappropriation or violation would not result in a Material Adverse Effect; (ii) there is no pending or, to the knowledge of the Company, threatened, action, suit, proceeding or claim by others challenging the Company’s or any of its subsidiaries’ rights in or to any such Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (iii) the Intellectual Property owned by the Company and its subsidiaries, and to the knowledge of the Company, the Intellectual Property licensed to the Company and its subsidiaries, has not been adjudged invalid or unenforceable, in whole or in part, and there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others challenging the validity or scope of any such Intellectual Property, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (iv) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others that the Company or any of its subsidiaries infringes, misappropriates or otherwise violates any Intellectual Property or other proprietary rights of others, neither the Company or any of its subsidiaries has received any written notice of such claim and the Company is unaware of any other fact which would form a reasonable basis for any such claim; and (v) to the Company’s knowledge, no employee of the Company or any of its subsidiaries is in or has ever been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement,

nondisclosure agreement or any restrictive covenant to or with a former employer where the basis of such violation relates to such employee's employment with the Company nor any of its subsidiaries or actions undertaken by the employee while employed with the Company or any of its subsidiaries, except as such violation would not result in a Material Adverse Effect. "Intellectual Property" shall mean all patents, patent applications, trade and service marks, trade and service mark registrations, trade names, copyrights, licenses, inventions, trade secrets, domain names, technology, know-how and other intellectual property.

(b) Schedule 2.14 contains a complete list of all patents (the "Relevant Patents") that are owned by or licensed to the Company, in each case that are material or necessary to the commercialization of the Company's products as described in the Company SEC Documents (the "Products") and all patent licenses granting rights to the Company to such licensed patents. The Company holds all right, title and interest in and to the Relevant Patents, free and clear of any liens, claims, security interests, other encumbrances or defects except such as are described or disclosed in the Company SEC Documents. The Company has made all necessary recordings with the PTO and equivalent non-U.S. intellectual property offices in respect of the Relevant Patents owned by the Company to protect and maintain ownership of such Relevant Patents. The claims of each of the Relevant Patents that have issued are valid and enforceable. There are no litigation, interference or opposition proceedings pending or, to the knowledge of the Company, threatened relating to the Relevant Patents that would have a Material Adverse Effect on any of the Relevant Patents. To the knowledge of the Company, there is no third party infringing on any Intellectual Property or proprietary right in relation to the Relevant Patents. All patent applications owned by the Company that are material or necessary to the commercialization of the Product are being diligently prosecuted by the Company, and the Company duly maintains those Relevant Patents that have issued and are owned by it. The Company has not been notified in writing of any actions by any Governmental Authority challenging the validity or enforceability of any of the issued Relevant Patents.

(c) Except to the extent described or disclosed in the Company SEC Documents with respect to its Collaboration and Licensing Agreement with Relief Therapeutics Holding AG: (i) the Company is the owner or holder of each new drug application or investigational new drug application in respect of certain of the Products as set forth in Schedule 2.14; and (ii) the Company has not granted or assigned to any other person or entity, directly or indirectly, any rights to any other person or entity under any such new drug application or investigational new drug application.

2.15 Exchange Compliance. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and is included or approved for listing on The Nasdaq Stock Market LLC and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from The Nasdaq Stock Market LLC. Except as set forth in the Company's Current Report on Form 8-K dated December 29, 2021, since January 1, 2021: (i) the Company has not received any notification that the SEC or The Nasdaq Stock Market LLC is contemplating terminating such registration or listing; and (ii) the Company has complied in all material respects with the applicable requirements of The Nasdaq Stock Market LLC for maintenance of inclusion of the Common Stock thereon. The Company has filed an additional listing notice with The Nasdaq Stock Market LLC in respect of the Note Shares.

2.16 Form S-3 or Form S-1 Eligibility. The Company is eligible to register the Note Shares for resale by the Purchasers using Form S-3 or Form S-1 promulgated under the Securities Act.

2.17 Taxes. The Company and its subsidiaries have timely filed all federal, state, local and foreign income and franchise tax returns required to be filed and are not in default in the payment of any taxes which were payable pursuant to said returns or any assessments with respect thereto, other than any which the Company or any of its subsidiaries is contesting in good faith. There is no pending dispute with any taxing authority relating to any of such returns, and the Company has no knowledge of any proposed liability for any tax to be imposed upon the properties or assets of the Company for which there is not an adequate reserve reflected in the Company's financial statements included in the Company SEC Documents.

2.18 Insurance. The Company and each of its subsidiaries carries, or is covered by, insurance from reputable insurers in such amounts and covering such risks as is adequate for the conduct of its business and the value of its properties and the properties of its subsidiaries and as is customary for companies engaged in similar businesses in similar industries. All policies of insurance and any fidelity or surety bonds insuring the Company or any of its subsidiaries or its business, assets, employees, officers and directors are in full force and effect. The Company and its subsidiaries are in compliance with the terms of such policies and instruments in all material respects. There are no claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause. Neither the Company nor any of its subsidiaries has been refused any insurance coverage sought or applied for. Neither the Company nor any of its subsidiaries has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

2.19 Transfer Taxes. On the Closing Date, all stock transfer taxes that are required to be paid in connection with the sale and transfer of the Securities hereunder will be, or will have been, fully paid or provided for by the Company and the Company will have complied with all laws imposing such taxes.

2.20 Investment Company. The Company is not and, after giving effect to the offering and sale of the Securities, will not be an "investment company," as such term is defined in the Investment Company Act of 1940, as amended.

2.21 Internal Controls. The Company and its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Company SEC Documents, the Company's internal control over financial reporting is effective and none of the Company, its board of directors and audit committee is aware of any "material weaknesses"

(each as defined by the Public Company Accounting Oversight Board) in its internal control over financial reporting, or any fraud, whether or not material, that involves management or other employees of the Company and its subsidiaries who have a significant role in the Company's internal controls; and since the end of the latest audited fiscal year, there has been no change in the Company's internal control over financial reporting (whether or not remediated) that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting. The Company's board of directors has, subject to the exceptions, cure periods and the phase in periods specified in the applicable stock exchange rules ("Exchange Rules"), validly appointed an audit committee to oversee internal accounting controls whose composition satisfies the applicable requirements of the Exchange Rules and the Company's board of directors and/or the audit committee has adopted a charter that satisfies the requirements of the Exchange Rules.

2.22 No General Solicitation. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D promulgated under the Securities Act) in connection with the offer or sale of the Securities.

2.23 Application of Takeover Protections; Rights Agreement. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's Certificate of Incorporation or the laws of the jurisdiction of its formation which is or could become applicable to any Purchaser as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Purchaser's ownership of the Securities. The Company has not adopted a stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Company.

2.24 Anti-Bribery and Money Laundering Laws. Each of the Company, its subsidiaries, its affiliates and, to the knowledge of the Company, any of their respective officers, directors, supervisors, managers, agents, or employees, has not violated, its participation in the transactions described herein will not violate, and the Company and each of its subsidiaries has instituted and maintains policies and procedures designed to ensure continued compliance with, each of the following laws: anti-bribery laws, including but not limited to, any applicable law, rule, or regulation of any locality, including but not limited to any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any other law, rule or regulation of similar purposes and scope, or anti-money laundering laws, including but not limited to, applicable federal, state, international, foreign or other laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Title 18 U.S. Code Section 1956 and 1957, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any orders or licenses issued thereunder.

2.25 Sarbanes-Oxley Act. The Company is in compliance in all material respects with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations of the SEC thereunder.

2.26 Disclosure Controls. The Company has established and maintains disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Exchange Act) and such controls and procedures are effective in ensuring that material information relating to the Company, including its subsidiaries, is made known to the principal executive officer and the principal financial officer. The Company has utilized such controls and procedures in preparing and evaluating the disclosures in the Company SEC Documents.

2.27 OFAC.

(a) Neither the Company nor any of its subsidiaries, nor any of their directors, officers or employees, nor, to the Company's knowledge, any agent, affiliate or representative of the Company or its subsidiaries, is an individual or entity that is, or is owned or controlled by an individual or entity that is:

(i) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"), nor

(ii) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Cuba, Iran, Libya, North Korea, Sudan and Syria).

(b) Neither the Company nor any of its subsidiaries will, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other individual or entity:

(i) to fund or facilitate any activities or business of or with any individual or entity or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(ii) in any other manner that will result in a violation of Sanctions by any individual or entity (including any individual or entity participating in the offering, whether as underwriter, advisor, investor or otherwise).

(c) For the past five years, neither the Company nor any of its subsidiaries has knowingly engaged in, and is not now knowingly engaged in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

2.28 ERISA and Employee Benefits.

(a) To the knowledge of the Company, no “prohibited transaction” as defined under Section 406 of ERISA or Section 4975 of the Code and not exempt under ERISA Section 408 and the regulations and published interpretations thereunder has occurred with respect to any Employee Benefit Plan. At no time has the Company or any ERISA Affiliate maintained, sponsored, participated in, contributed to or has or had any liability or obligation in respect of any Employee Benefit Plan subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA, or Section 412 of the Code or any “multiemployer plan” as defined in Section 3(37) of ERISA or any multiple employer plan for which the Company or any ERISA Affiliate has incurred or could incur liability under Section 4063 or 4064 of ERISA. No Employee Benefit Plan provides or promises, or at any time provided or promised, retiree health, life insurance, or other retiree welfare benefits except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state law. Each Employee Benefit Plan is and has been operated in material compliance with its terms and all applicable laws, including but not limited to ERISA and the Code and, to the knowledge of the Company, no event has occurred (including a “reportable event” as such term is defined in Section 4043 of ERISA) and no condition exists that would subject the Company or any ERISA Affiliate to any material tax, fine, lien, penalty or liability imposed by ERISA, the Code or other applicable law. Each Employee Benefit Plan intended to be qualified under Code Section 401(a) is so qualified and has a favorable determination or opinion letter from the IRS upon which it can rely, and any such determination or opinion letter remains in effect and has not been revoked; to the knowledge of the Company, nothing has occurred since the date of any such determination or opinion letter that is reasonably likely to adversely affect such qualification.

(b) The Company does not have any Foreign Benefit Plans (as hereinafter defined).

(c) The Company does not have any obligations under any collective bargaining agreement with any union and no organization efforts are underway with respect to Company employees.

(d) As used in this Agreement, “Code” means the Internal Revenue Code of 1986, as amended. “Employee Benefit Plan” means any “employee benefit plan” within the meaning of Section 3(3) of ERISA, including, without limitation, all stock purchase, stock option, stock-based severance, employment, change-in-control, medical, disability, fringe benefit, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA, under which (1) any current or former employee, director or independent contractor of the Company or its subsidiaries has any present or future right to benefits and which are contributed to, sponsored by or maintained by the Company or any of its respective subsidiaries or (2) the Company or any of its subsidiaries has had or has any present or future obligation or liability. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended. “ERISA Affiliate” means any member of the company’s controlled group as defined in Code Section 414(b), (c), (m) or (o). “Foreign Benefit Plan” means any Employee Benefit Plan established, maintained or contributed to outside of the United States of America or which covers any employee working or residing outside of the United States.

2.29 Labor Matters. No labor problem or dispute with the employees of the Company or any of its subsidiaries exists or is threatened or imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or its subsidiaries' principal suppliers, contractors or customers, that could have a Material Adverse Effect.

2.30 Business Arrangements. Except as disclosed in the Company SEC Documents, neither the Company nor any of its subsidiaries has granted rights to develop, manufacture, produce, assemble, distribute, license, market or sell its Products to any other person and is not bound by any agreement that affects the exclusive right of the Company or such subsidiary to develop, manufacture, produce, assemble, distribute, license, market or sell its Products.

2.31 Occupational Laws. The Company and each of its subsidiaries (i) is in compliance, in all material respects, with any and all applicable foreign, federal, state and local laws, rules, regulations, treaties, statutes and codes promulgated by any and all Governmental Authorities (including pursuant to the Occupational Health and Safety Act) relating to the protection of human health and safety in the workplace ("Occupational Laws"); (ii) has received all material permits, licenses or other approvals required of it under applicable Occupational Laws to conduct its business as currently conducted; and (iii) is in compliance, in all material respects, with all terms and conditions of such permit, license or approval. No action, proceeding, revocation proceeding, writ, injunction or claim is pending or, to the Company's knowledge, threatened against the Company or any of its subsidiaries relating to Occupational Laws, and the Company does not have knowledge of any facts, circumstances or developments relating to its operations or cost accounting practices that could reasonably be expected to form the basis for or give rise to such actions, suits, investigations or proceedings.

2.32 Environmental Laws. Except as disclosed in the Company SEC Documents, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any Governmental Authority or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, "Environmental Laws"), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would individually or in the aggregate, have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim. Neither the Company nor any of its subsidiaries anticipates incurring any material capital expenditures relating to compliance with Environmental Laws.

2.33 Restrictions on Subsidiary Payments. No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in the Company SEC Documents.

2.34 Clinical Trials. To the knowledge of the Company, the pre-clinical and clinical studies and trials conducted by or on behalf of the Company in respect of the Products have been and, if still pending, are being conducted in all material respects with reasonable care and in accordance in all material respects with the protocols submitted to the FDA or comparable Governmental Authorities and all Health Care Laws and Health Care Authorizations. The Company has not received any written notice or correspondence from any Governmental Authority requiring the termination, suspension or material modification of any pre-clinical or clinical study or trial conducted by or on behalf of the Company in respect of any Product.

2.35 No Manipulation; Disclosure of Information. The Company has not taken and will not take any action designed to or that might reasonably be expected to cause or result in an unlawful manipulation of the price of the Common Stock to facilitate the sale or resale of the Securities. The Company confirms that, to its knowledge, with the exception of the proposed sale of Securities as contemplated herein (as to which the Company makes no representation), neither it nor any other person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchasers shall be relying on the foregoing representations in effecting transactions in securities of the Company. All disclosures provided to the Purchasers regarding the Company, its business and the transactions contemplated hereby, including the exhibits to this Agreement, furnished by the Company are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

2.36 No Undisclosed Liabilities or Events. Except for the SWK Debt and the SWK Security: (i) the Company has no liabilities or obligations other than those disclosed in this Agreement or the Company SEC Documents or those incurred in the ordinary course of the Company's business since December 31, 2021, or which individually or in the aggregate, do not or would not have a Material Adverse Effect; and (ii) no event or circumstance has occurred or exists with respect to the Company or its properties, business, operations, condition (financial or otherwise), or results of operations, which, under applicable laws, rules or regulations, requires public disclosure or announcement prior to the date hereof by the Company but which has not been so publicly announced or disclosed. There are no proposals currently under consideration or currently anticipated to be under consideration by the board of directors or the executive officers of the Company which proposal would (A) change the Certificate of Incorporation or bylaws of the Company, each as currently in effect, with or without stockholder approval, which change would reduce or otherwise adversely affect the rights and powers of the stockholders of the Common Stock or (B) materially or substantially change the business, assets or capital of the Company, including its interests in subsidiaries.

2.37 No Integrated Offering. Neither the Company nor any of its affiliates nor any person acting on its or their behalf has, directly or indirectly, made any offer or sale of any security of the Company or solicited any offer to buy any such security under circumstances that would eliminate the availability of the exemption from registration under Regulation D in connection with the offer and sale of the Securities as contemplated hereby. Except for the SWK Security issued in connection with the SWK Debt, there are no other securities issued or issuable by the Company that could reasonably be deemed integrated into the issuance of the Notes hereunder pursuant to the rules of The Nasdaq Stock Market LLC.

2.38 Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or, paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any person or entity any compensation for soliciting another to purchase any other securities of the Company.

3. Representations and Warranties of the Purchasers. Each Purchaser, severally and not jointly, hereby represents and warrants to the Company as follows:

3.1 Legal Power. The Purchaser has the requisite authority to enter into this Agreement and to carry out and perform its obligations under the terms of this Agreement. All action on the Purchaser's part required for the lawful execution and delivery of this Agreement have been or will be effectively taken prior to the Closing.

3.2 Due Execution. This Agreement has been duly authorized, executed and delivered by the Purchaser, and, upon due execution and delivery by the Company, this Agreement will be a valid and binding agreement of the Purchaser, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles.

3.3 Investment Representations. In connection with the sale and issuance of the Securities and the Note Shares, the Purchaser, for itself and no other Purchaser, makes the following representations:

(a) **Investment for Own Account.** The Purchaser is acquiring the Securities and the Note Shares for its own account, not as nominee or agent, and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act; provided, however, that by making the representations herein, the Purchaser does not agree to hold any of the Securities for any minimum or specific term and reserves the right to dispose of the securities at any time in accordance with or pursuant to a registration statement or an exemption from the registration requirements of the Securities Act.

(b) **Transfer Restrictions; Legends.** The Purchaser understands that (i) the Securities have not been registered under the Securities Act or applicable state securities laws; (ii) the Securities are being offered and sold pursuant to an exemption from registration, based in part upon the Company's reliance upon the statements and representations made by the Purchasers in this Agreement, and that the Securities must be held by the Purchaser indefinitely, and that the Purchaser must, therefore, bear the economic risk of such investment indefinitely, unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration; (iii) each Certificate representing the Note or the Note Shares will be endorsed with the following legend:

NEITHER THE SECURITIES REPRESENTED HEREBY NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THESE SECURITIES AND THE SECURITIES

INTO WHICH THESE SECURITIES ARE CONVERTIBLE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE SOLD, DISTRIBUTED, OFFERED, PLEDGED, ENCUMBERED, ASSIGNED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LA WS, PURSUANT TO REGISTRATION, AN AVAILABLE EXEMPTION THEREFROM, OR A TRANSACTION NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR UNDER THE SECURITIES LA WS OF ANY STATES. UNLESS SOLD PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LA WS.

(iv) the Company will instruct any transfer agent not to register the transfer of the Securities or Note Shares (or any portion thereof) unless the conditions specified in the foregoing legends are satisfied or, if the opinion of counsel referred to above is to the further effect that such legend is not required in order to establish compliance with any provisions of the Securities Act or this Agreement, or other satisfactory assurances of such nature are given to the Company.

The Company acknowledges and agrees that a Purchaser may from time to time pledge, and/or grant a security interest in some or all of the Securities pursuant to a bona fide margin agreement in connection with a bona fide margin account and, if required under the terms of such agreement or account, the Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer shall not be subject to approval or consent of the Company and no legal opinion of legal counsel to the pledgee, secured party or pledgor shall be required in connection with the pledge, but such legal opinion may be required in connection with a subsequent transfer following default by the Purchaser transferee of the pledge. No notice shall be required of such pledge. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities including the preparation and filing of any required prospectus supplement under Rule 424(b)(3) of the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of Selling Stockholders thereunder.

Certificates evidencing the Note Shares shall not contain any legend (including the legend set forth in this Section): (i) following a sale of such Note Shares pursuant to an effective registration statement (including the Registration Statement), or (ii) following a sale of such Note Shares pursuant to Rule 144 under the Securities Act or any successor rule ("Rule 144"), or (iii) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the Staff of the SEC). Following such time as restrictive legends are not required to be placed on certificates representing Note Shares, the Company will, no later than three trading days following the delivery by a Purchaser to the Company or the Company's transfer agent of a certificate representing Note Shares containing a restrictive legend, deliver or cause to be delivered to such Purchaser a certificate representing such Note Shares that is free from all restrictive and other legends.

Each Purchaser, severally and not jointly with the other Purchasers, agrees that the removal of the restrictive legend from Certificates representing Note Shares as set forth in this Section 3.3(b) is predicated upon the Company's reliance that the Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom.

(c) **Financial Sophistication; Due Diligence.** The Purchaser has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in connection with the transactions contemplated in this Agreement. Such Purchaser has, in connection with its decision to purchase the Securities, relied only upon the representations and warranties contained herein and the information contained in the Company SEC Documents. Further, the Purchaser has had such opportunity to obtain additional information and to ask questions of, and receive answers from, the Company, concerning the terms and conditions of the investment and the business and affairs of the Company, as the Purchaser considers necessary in order to form an investment decision.

(d) **Accredited Investor Status.** The Purchaser is an "accredited investor" as such term is defined in Rule 501(a) of the rules and regulations promulgated under the Securities Act.

(e) **Residency.** The Purchaser is organized under the laws of the state set forth beneath such Purchaser's name on the signature page attached hereto, and its principal place of operations is in the state set forth beneath such Purchaser's name on the signature page attached hereto.

(f) **General Solicitation.** The Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over the television or radio or presented at any seminar or any other general solicitation or general advertisement.

3.4 No Investment, Tax or Legal Advice. Each Purchaser understands that nothing in the Company SEC Documents, this Agreement, or any other materials presented to the Purchaser in connection with the purchase and sale of the Securities constitutes legal, tax or investment advice. Each Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of Securities.

3.5 Additional Acknowledgement. Each Purchaser acknowledges that it has independently evaluated the merits of the transactions contemplated by this Agreement, that it has independently determined to enter into the transactions contemplated hereby, that it is not relying on any advice from or evaluation by any other person.

4. Closing Deliverables and Conditions.

4.1 Company's Closing Deliverables. At or prior to the Closing, the Company shall deliver all of the following, any of which may be waived by the Purchasers:

(a) **Proceedings and Documents.** All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents and instruments incident to such transactions in form and substance reasonably satisfactory to counsel to the Purchaser, and counsel to the Purchaser shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request. The Company shall have delivered (or caused to have been delivered) to each Purchaser, the Notes required by this Agreement. The Note Shares shall have been duly authorized and reserved for issuance upon conversion of the Notes.

(b) **Qualifications, Legal Investment.** Evidence that all authorizations, approvals, or permits, if any, of any Governmental Authority or regulatory body of the United States or of any state that are required in connection with the lawful sale and issuance of the Securities and the Note Shares shall have been delivered to the Purchaser.

(c) **Execution of Agreements.** The Company shall have executed this Agreement and have delivered this Agreement to the Purchasers.

(d) **Secretary's Certificate.** The Company shall have delivered to the Purchasers a certificate of the Secretary of the Company certifying as to the truth and accuracy of the resolutions of the board of directors and any committee thereof relating to the transaction contemplated hereby (a copy of which shall be included with such certificate).

(e) **Market Listing.** The Company will provide evidence that it has complied with all of the requirements of the Financial Industry Regulatory Authority, Inc. ("FINRA") and The Nasdaq Stock Market LLC with respect to the issuance of the Securities and the Note Shares.

(f) **Blue Sky.** The Company shall have obtained all necessary "blue sky" law permits and qualifications, if any, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Securities and issuance of the Note Shares upon conversion of the Notes.

(g) **Opinion.** The Company shall have delivered to Purchasers the opinion of the Company's counsel, dated as of the date hereof in substantially the form attached hereto as Exhibit C.

(h) **Subordination Agreement.** SWK (or an affiliate) shall have executed and delivered to Purchasers a subordination agreement (the "Subordination Agreement"), in a form acceptable to the Purchasers, the Company and SWK.

4.2 Purchasers' Closing Deliverables. At or prior to the Closing, each Purchaser shall deliver all of the following, any of which may be waived by the Company:

(a) **Performance of Obligations.** The Purchasers shall have delivered their respective Purchase Price, by wire transfer, to the account designated by the Company for such purpose.

(b) **Execution of Agreements.** The Purchasers shall have executed this Agreement and delivered this Agreement to the Company.

4.3 Conditions to the Purchasers' Obligation to Close. The obligation of the Purchasers to proceed with the Closing is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respect to the Agent and any of which may be waived by the Agent:

(a) **Representations and Warranties.** All representations and warranties of Company set forth herein shall be true and correct in all respects as if made on and as of the Closing Date (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all respects as of such earlier date).

(b) **Receipt of Deliverables.** The Purchasers shall have received all of the deliverables described in Section 4.1 hereof.

5. Additional Covenants.

5.1 Listing. So long as a Purchaser owns any of the Securities or Note Shares, the Company will use its commercially reasonable efforts to maintain the automated quotation of its Common Stock, including the Note Shares, on The Nasdaq Stock Market LLC or an alternative listing on the New York Stock Exchange or the NYSE MKT and will comply in all material respects with the Company's reporting, filing and other obligations under the bylaws or rules of FINRA and such exchanges, if applicable.

5.2 Confidential Information. Each Purchaser covenants that it will maintain in confidence the receipt and content of any Suspension Notice (as defined herein) under Section 6.2(b) until such information (a) becomes generally publicly available other than through a violation of this provision by the Purchaser or its agents or (b) is required to be disclosed in legal proceedings (such as by deposition, interrogatory, request for documents, subpoena, civil investigation demand, filing with any governmental authority or similar process); *provided, however*, that before making any disclosure in reliance on this Section 5.2(b), the Purchaser will give the Company at least five (5) Business Days' prior written notice (or such shorter period as required by law) specifying the circumstances giving rise thereto and the Purchaser will furnish only that portion of the non-public information which is legally required and will exercise its commercially reasonable efforts to ensure that confidential treatment will be accorded any non-public information so furnished; provided, further, that notwithstanding each Purchaser's agreement to keep such information confidential, each Purchaser makes no such acknowledgement that any such information is material, non-public information.

5.3 Non-Public Information. Except pursuant to Section 5.6, the Company covenants and agrees that neither it nor any other person acting on its behalf will provide any Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information, unless prior thereto such Purchaser shall have executed a written agreement regarding the confidentiality and use of such information. The Company understands and confirms that each Purchaser shall be relying on the foregoing representations in effecting transactions in securities of the Company.

5.4 Adjustments in Share Numbers and Prices. In the event of any stock split, subdivision, dividend or distribution payable in shares of Common Stock (or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly shares of Common Stock), combination or other similar recapitalization or event occurring after the date hereof, each reference in this Agreement to a number of shares or price per share shall be amended appropriately to account for such event.

5.5 [Reserved].

5.6 Board Observation Rights.

(a) For so long as the Agent and its affiliates beneficially own at least 4.99% of the Common Stock, the Agent shall be entitled to designate one board representative (the “Marathon Board Observer”). The Marathon Board Observer shall be entitled to (i) receive prior written notice of all meetings (both regular and special) of the Board and each committee thereof (such notice to be delivered or mailed as specified in the Bylaws of the Company at the same time as notice is given to the directors and/or members of a board committee, as applicable); (ii) attend (or, at the option of the Marathon Board Observer, monitor by telephone or videoconference) all such meetings at the Company’s sole cost and expense, and the Company shall ensure that appropriate arrangements are made such that the Marathon Board Observer will be able to hear and see, as applicable, everyone during any meeting of the Board at which the Marathon Board Observers participate by telephone or videoconference; (iii) receive all notices, information and reports which are furnished or made available to the Board (solely in the capacity of the Board members as directors) at the same time and in the same manner as the same is furnished or made available to the Board or committee members, as applicable; (iv) participate in all discussions conducted at Board meetings; and (v) receive (to the extent and when so provided to the directors) copies of the minutes of all Board meetings. If the Board or any of its committees proposes to take an action by written consent in lieu of a meeting, the Company shall (A) provide a copy of such consent to the Marathon Board Observer (such notice shall be delivered or mailed as specified in the Bylaws of the Company at the same time as notice is given to the directors and/or committee members, as applicable); and (B) cause to be furnished to the Marathon Board Observer a copy of each such written consent promptly after it has become effective.

(b) The Agent shall cause any Marathon Board Observer, and any Marathon Board Observer shall agree, to hold in confidence and trust and to act in a fiduciary manner with respect to all information provided to the Marathon Board Observer pursuant to this Section 5.6. Notwithstanding anything in this Section 5.6 to the contrary, the Company reserves the right to withhold from the Marathon Board Observer any information to the extent the Board determines in good faith that such exclusion is necessary to (1) preserve the attorney-client privilege or (2) protect trade secrets or other confidential or sensitive information (including, without limitation, of a third party).

(c) For the avoidance of doubt, the Marathon Board Observer (x) shall not constitute a director and/or member of a Board committee; (y) shall not be entitled to vote or consent on any matters presented at meetings of the Board and/or Board committee or by actions taken in lieu of a meeting; and (z) shall not be entitled to any rights other than those provided by this Section 5.6. Except as provided in Section 5.6(b) and without limiting the duties and

responsibilities that apply under applicable federal securities laws, the parties hereto agree that the Marathon Board Observer does not have a fiduciary duty or any other duties or responsibilities to the Company or any of its affiliates as a result of the role of Marathon Board Observer. To the extent such right continues to be applicable under Section 5.6(a), the Agent has the right to designate a new individual to serve as the Marathon Board Observer at any time and at its sole discretion.

5.7 Limitation on Acquisition of Note Shares by Purchasers; Stockholder Approval.

(a) The Purchasers shall be subject to the ownership limitations set forth in Section 4(b)(iv) of the Notes, unless and until the Company obtains Stockholder Approval as defined below.

(b) If required (i.e., if limitations in Section 5.7(a) are applicable), the Company shall provide each of its stockholders entitled to vote at its next annual meeting of stockholders of the Company (the "Stockholder Meeting") with a proxy statement meeting the requirements of Section 14 of the Exchange Act, and the related rules and regulations promulgated thereunder (the "Proxy Statement") soliciting each such stockholder's affirmative vote at the Stockholder Meeting for approval of resolutions approving the Company's issuance of the Notes and the Note Shares without regard to the limitations referred to in Section 5.7(a) (the "Stockholder Approval") in accordance with applicable law, the rules and regulations of The Nasdaq Stock Market LLC (or any other applicable national securities exchange), the Company's Certificate of Incorporation or bylaws and the Delaware General Corporation Law, and the Company shall use its commercially reasonable efforts to solicit its stockholders' approval of such resolutions and to cause the board of directors of the Company to recommend to the stockholders that they approve such resolutions. The Proxy Statement shall be in a form reasonably acceptable to the Agent and accordingly, the Company shall provide the Agent's legal counsel with a reasonable opportunity to review and comment on the Proxy Statement. The Company shall keep the Agent apprised of the status of matters relating to the Proxy Statement and the Stockholder Meeting, including promptly furnishing to the Agent and its counsel copies of notices or other communications related to the Proxy Statement, the Stockholder Meeting or the transactions contemplated hereby received by the Company from the SEC or The Nasdaq Stock Market LLC.

5.8 Use of Proceeds. The Company shall use the net proceeds from the sale of the Notes for commercializing approved products, research and development costs and for general corporate purposes.

6. Registration Rights.

6.1 Registration Procedures and Expenses.

(a) Following Closing, the Company shall prepare and file with the SEC a registration statement on Form S-3 or Form S-1 (or any successor to Form S-3 or Form S-1) covering the resale of the Registrable Securities (as defined below) (the "Registration Statement") no later than forty-five (45) days after the Closing, and shall use its commercially reasonable efforts to cause the SEC to declare the Registration Statement effective no later than ninety (90)

days after the Closing. For purposes of this Agreement, the term “Registrable Securities” shall mean (i) the Note Shares, and (ii) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, any Note Shares. “Business Day” means any day except Saturday, Sunday and any day that is a federal legal holiday in the United States.

(b) If at any time prior to the expiration of the Purchasers’ registration rights pursuant to Section 6.4 (i) the Company has filed a Registration Statement (the “Initial Registration Statement”) with the SEC that covers the Note Shares (the “Initial Registrable Securities”), and (ii) pursuant to Rule 415(a)(5) under the Securities Act or any successor rule thereto, the Initial Registration Statement may no longer be used for offers and sales of any of the Initial Registrable Securities, the Company shall prepare and file with the SEC within the time limits required by Rule 415 under the Securities Act or any successor rule thereto a new Registration Statement covering any Initial Registrable Securities that have not ceased to be registered under the Initial Registration Statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 under the Securities Act or any successor rule thereto (a “New Registration Statement”) and shall use its commercially reasonable efforts to cause such New Registration Statement to be declared effective by the SEC as promptly as practicable thereafter. If a New Registration Statement is filed, then all references to Registration Statement throughout this Agreement shall also include the New Registration Statement.

(c) The Company shall, as soon as reasonably practicable:

(i) prepare and file with the SEC such amendments and supplements to the Registration Statement and the prospectus that forms a part thereof (the “Prospectus”) used in connection therewith as may be necessary or advisable to keep the Registration Statement current and effective for the Note Shares held by a Purchaser for a period ending on the earlier of (i) the date on which all Note Shares may be sold pursuant to Rule 144 in any three-month period or (ii) such time as all Note Shares have been sold pursuant to a registration statement or Rule 144. The Company shall notify each Purchaser promptly upon the Registration Statement and each post-effective amendment thereto, being declared effective by the SEC and advise each Purchaser that the form of Prospectus contained in the Registration Statement or post-effective amendment thereto, as the case may be, at the time of effectiveness meets the requirements of Section 10(a) of the Securities Act or that it intends to file a Prospectus pursuant to Rule 424(b) under the Securities Act that meets the requirements of Section 10(a) of the Securities Act;

(ii) at least 5 business days before filing such Registration Statement, Prospectus or amendments or supplements thereto with the SEC, furnish without charge to the Purchasers and any counsel requested by any Purchaser copies of such documents proposed to be filed, which documents shall be subject to the review, comment and approval of such Purchasers and counsel; provided, that the Company shall not have any obligation to modify any information if the Company reasonably expects that so doing would cause (i) the Registration Statement to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the Prospectus to contain an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(iii) furnish to the Purchaser with respect to the Note Shares registered under the Registration Statement such documents as the Purchaser may reasonably request in order to facilitate the public sale or other disposition of all or any of the Note Shares by the Purchaser; provided, however, the Company shall not have any obligation to provide any documents to any Purchaser under this Section 6.1(c)(iii) to the extent such document is available on the SEC's EDGAR system;

(iv) use its commercially reasonable efforts to cause all such Note Shares to be listed on each securities exchange or automated quotation system on which similar securities issued by the Company are then listed;

(v) provide a transfer agent and registrar (which may be the same entity) for all such Note Shares not later than the effective date of such registration;

(vi) make any necessary blue sky filings;

(vii) pay the expenses incurred by the Company and the Purchasers in complying with Section 6, including, all registration and filing fees, FINRA fees, exchange listing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding attorneys' fees of any Purchaser and any and all underwriting discounts and selling commissions applicable to the sale of Registrable Securities by the Purchasers);

(viii) advise the Purchasers, promptly after it shall receive notice or obtain knowledge of the issuance of any stop order by the SEC delaying or suspending the effectiveness of the Registration Statement or of the initiation of any proceeding for that purpose; and it will promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal at the earliest possible moment if such stop order should be issued;

(ix) with a view to making available to the Purchaser the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit the Purchaser to sell Note Shares to the public without registration, the Company covenants and agrees to: (i) use its best efforts to make and keep public information available, as those terms are understood and defined in Rule 144, until the earlier of (A) such date as all of the Note Shares qualify to be resold immediately pursuant to Rule 144 or any other rule of similar effect or (B) such date as all of the Note Shares shall have been resold pursuant to Rule 144 (and may be further resold without restriction); (ii) use its best efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and under the Exchange Act; and (iii) furnish to the Purchaser upon request, as long as the Purchaser owns any Note Shares, (A) a written statement by the Company as to whether it has complied with the reporting requirements of the Securities Act and the Exchange Act, (B) a copy of the Company's most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, and (C) such other information as may be reasonably requested in order to avail the Purchaser of any rule or regulation of the SEC that permits the selling of any such Note Shares without registration; and

(x) otherwise use its commercially reasonable efforts to take all other steps necessary to effect the registration of such Note Shares contemplated hereby.

The Company understands that the Purchasers disclaim being an underwriter, but acknowledges that a determination by the SEC that a Purchaser is deemed an underwriter shall not relieve the Company of any obligations it has hereunder.

6.2 Transfer of Shares After Registration; Suspension.

(a) Except in the event that Section 6.2(b) applies, the Company shall: (i) if deemed necessary or advisable by the Company, prepare and file from time to time with the SEC a post-effective amendment to the Registration Statement or a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that such Registration Statement will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and so that, as thereafter delivered to purchasers of the Note Shares being sold thereunder, such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (ii) provide the Purchasers copies of any documents filed pursuant to Section 6.2(a)(i); and (iii) upon request, inform each Purchaser who so requests that the Company has complied with its obligations in Section 6.2(b)(i) (or that, if the Company has filed a post-effective amendment to the Registration Statement which has not yet been declared effective, the Company will notify the Purchaser to that effect, will use its commercially reasonable efforts to secure the effectiveness of such post-effective amendment as promptly as possible and will promptly notify the Purchaser pursuant to Section 6.2(b)(i) when the amendment has become effective).

(b) Subject to Section 6.2(c), in the event: (i) of any request by the SEC or any other federal or state governmental authority during the period of effectiveness of the Registration Statement for amendments or supplements to the Registration Statement or related Prospectus or for additional information; (ii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Note Shares for sale in any jurisdiction or the initiation of any proceeding for such purpose; or (iv) of any event or circumstance which necessitates the making of any changes in the Registration Statement or Prospectus, or any document incorporated or deemed to be incorporated therein by reference, so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; then the Company shall promptly deliver a certificate in writing to the Purchasers (the "Suspension Notice") to the effect of the foregoing and, upon receipt of such Suspension Notice, the Purchasers will refrain from selling any Note Shares pursuant to the Registration Statement (a "Suspension") until the Purchasers are advised in writing by the Company that the current Prospectus may be used, and have received copies from the Company of any additional or supplemental filings that are incorporated or deemed incorporated by reference in any such Prospectus. In the event of any

Suspension, the Company will use its commercially reasonable efforts to cause the use of the Prospectus so suspended to be resumed as soon as reasonably practicable after delivery of a Suspension Notice to the Purchasers. In addition to and without limiting any other remedies (including, without limitation, at law or at equity) available to the Company and the Purchaser, the Company and the Purchasers shall be entitled to specific performance in the event that the other party fails to comply with the provisions of this Section 6.2(b).

(c) Notwithstanding the foregoing paragraphs of this Section 6.2, the Company shall use its commercially reasonable efforts to ensure that (i) a Suspension shall not exceed sixty (60) days individually, (ii) Suspensions covering no more than ninety (90) days, in the aggregate, shall occur during any twelve month period and (iii) each Suspension shall be separated by a period of at least thirty (30) days from a prior Suspension (each Suspension that satisfies the foregoing criteria being referred to herein as a “Qualifying Suspension”).

(d) If a Suspension is not then in effect, the Purchasers may sell Note Shares under the Registration Statement, provided that they comply with any applicable prospectus delivery requirements.

The Company shall cause its transfer agent to issue a Certificate without any restrictive legend to a purchaser of any Note Shares from the Purchasers, if no Suspension is in effect at the time of sale, and (a) the sale of such Note Shares is registered under the Registration Statement (including registration pursuant to Rule 415 under the Securities Act); (b) the holder has provided the Company with an opinion of counsel, in form, substance and scope customary for opinions of counsel in comparable transactions, to the effect that a public sale or transfer of such Note Shares may be made without registration under the Securities Act; or (c) such Note Shares are sold in compliance with Rule 144 under the Securities Act.

6.3 Indemnification. For the purpose of this Section 6.3:

(a) the term “Selling Stockholder” shall mean a Purchaser, its executive officers and directors and each person, if any, who controls that Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act;

(b) the term “Registration Statement” shall include any final Prospectus, exhibit, supplement or amendment included in or relating to, and any document incorporated by reference in, the Registration Statement (or deemed to be a part thereof) referred to in Section 6.1; and

(c) the term “untrue statement” shall mean any untrue statement or alleged untrue statement of a material fact, or any omission or alleged omission to state in the Registration Statement a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) The Company agrees to indemnify and hold harmless each Selling Stockholder from and against any losses, claims, damages or liabilities to which such Selling Stockholder may become subject (under the Securities Act or otherwise) insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are

based upon (i) any untrue statement of a material fact contained in the Registration Statement, (ii) any inaccuracy in the representations and warranties of the Company contained in this Agreement or the failure of the Company to perform its obligations hereunder (including in connection with the transactions contemplated by this Agreement) or (iii) any failure by the Company to fulfill any undertaking included in the Registration Statement, and the Company will reimburse such Selling Stockholder for any reasonable legal expense or other actual accountable out of pocket expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim, *provided, however*, that the Company shall not be liable in any such case to the extent that such loss, claim, damage, liability or action arises out of, or is based upon, an untrue statement made in such Registration Statement in reliance upon and in conformity with written information furnished to the Company by or on behalf of a Selling Stockholder specifically for use in preparation of the Registration Statement or the failure of a Selling Stockholder to comply with its covenants and agreements contained herein or any statement or omission in any Prospectus that is corrected in any subsequent Prospectus that was delivered to the Selling Stockholder prior to the pertinent sale or sales by the Selling Stockholder.

(e) Each Purchaser severally (as to itself), and not jointly, agrees to indemnify and hold harmless the Company (and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, each officer of the Company who signs the Registration Statement and each director of the Company) from and against any losses, claims, damages or liabilities to which the Company (or any such officer, director or controlling person) may become subject (under the Securities Act or otherwise), insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are based upon, (i) any failure by that Purchaser to comply with the covenants and agreements contained herein or (ii) any untrue statement of a material fact contained in the Registration Statement if, and only if, such untrue statement was made in reliance upon and in conformity with written information furnished by or on behalf of that Purchaser specifically for use in preparation of the Registration Statement, and that Purchaser will reimburse the Company (or such officer, director or controlling person, as the case may be), for any reasonable legal expense or other reasonable actual accountable out-of-pocket expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim. The obligation of a Purchaser to indemnify shall be limited to the net amount of the proceeds received by such Purchaser from the sale of the Note Shares pursuant to the Registration Statement.

(f) Promptly after receipt by any indemnified person of a notice of a claim or the beginning of any action in respect of which indemnity is to be sought against an indemnifying person pursuant to this Section 6.3, such indemnified person shall notify the indemnifying person in writing of such claim or of the commencement of such action, but the omission to so notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party under this Section 6.3 (except to the extent that such omission materially and adversely affects the indemnifying party's ability to defend such action) or from any liability otherwise than under this Section 6.3. Subject to the provisions hereinafter stated, in case any such action shall be brought against an indemnified person, the indemnifying person shall be entitled to participate therein, and, to the extent that it shall elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, shall be entitled to assume the defense thereof, with counsel reasonably satisfactory to such indemnified person. After notice from the

indemnifying person to such indemnified person of its election to assume the defense thereof (unless it has failed to assume the defense thereof and appoint counsel reasonably satisfactory to the indemnified party), such indemnifying person shall not be liable to such indemnified person for any legal expenses subsequently incurred by such indemnified person in connection with the defense thereof; provided, however, that if there exists or shall exist a conflict of interest that would make it inappropriate, in the reasonable opinion of counsel to the indemnified person, for the same counsel to represent both the indemnified person and such indemnifying person or any affiliate or associate thereof, the indemnified person shall be entitled to retain its own counsel (who shall not be the same as the opining counsel) at the expense of such indemnifying person; *provided, however*, that no indemnifying person shall be responsible for the fees and expenses of more than one separate counsel (together with appropriate local counsel) for all indemnified parties. In no event shall any indemnifying person be liable in respect of any amounts paid in settlement of any action unless the indemnifying person shall have approved the terms of such settlement; provided that such consent shall not be unreasonably withheld. No indemnifying person shall, without the prior written consent of the indemnified person, effect any settlement of any pending or threatened proceeding in respect of which any indemnified person is or could reasonably have been a party and indemnification could have been sought hereunder by such indemnified person, unless such settlement includes an unconditional release of such indemnified person from all liability on claims that are the subject matter of such proceeding.

(g) If the indemnification provided for in this Section 6.3 is unavailable to or insufficient to hold harmless an indemnified party under subsection (d) or (e) above in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Company on the one hand and the liable Purchaser on the other in connection with the statements or omissions or other matters which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, in the case of an untrue statement, whether the untrue statement relates to information supplied by the Company on the one hand or the liable Purchaser on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement. The Company and the Purchasers agree that it would not be just and equitable if contribution pursuant to this subsection (g) were determined by pro rata allocation (even if the Purchasers were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to above in this subsection (g). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (g) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (g), no Purchasers shall be required to contribute any amount in excess of the amount by which the net amount received by that Purchaser from the sale of the Note Shares to which such loss relates exceeds the amount of any damages which that Purchaser has otherwise been required to pay to the Company by reason of such untrue statement. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Purchasers' obligations in this subsection to contribute are several in proportion to their sales of Note Shares to which such loss relates and not joint.

(h) The parties to this Agreement hereby acknowledge that they are sophisticated business persons who were represented by counsel during the negotiations regarding the provisions hereof including, without limitation, the provisions of this Section 6.3, and are fully informed regarding said provisions. They further acknowledge that the provisions of this Section 6.3 fairly allocate the risks in light of the ability of the parties to investigate the Company and its business in order to assure that adequate disclosure is made in the Registration Statement as required by the Securities Act and the Exchange Act.

(i) The obligations of the Company and of the Purchasers under this Section 6.3 shall survive completion of any offering of Registrable Securities in such Registration Statement for a period of three (3) years from the effective date of the Registration Statement. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

6.4 Termination of Conditions and Obligations. The conditions precedent imposed by this Section 6 upon the transferability of the Note Shares, and any obligations of the Company with respect to the registration of the Note Shares, shall cease and terminate (i) as to any particular number of the Note Shares when such Note Shares shall have been effectively registered under the Securities Act and sold or otherwise disposed of in accordance with the intended method of disposition set forth in the Registration Statement covering such Note Shares or at such time as an opinion of counsel satisfactory to the Company shall have been rendered to the effect that such conditions are not necessary in order to comply with the Securities Act or (ii) until all Note Shares still issuable under the Notes (together with any other shares of Common Stock issued under the Notes and continuously held beneficially and of record by the Purchasers) are less than 5.0% of the Company's outstanding Common Stock. The Company shall request an opinion of counsel promptly upon receipt of a request therefor from a Purchaser.

6.5 Information Available. So long as the Registration Statement is effective covering the resale of Note Shares owned by a Purchaser, the Company will furnish (or, to the extent such information is available electronically through the Company's filings with the SEC, the Company will make available via the SEC's EDGAR system or any successor thereto) to each Purchaser:

(a) as soon as practicable after it is available, one copy of its Annual Report on Form 10-K (excluding exhibits);

(b) upon the request of the Purchaser, all exhibits excluded by the parenthetical to subparagraph (a) of this Section 6.5 as filed with the SEC and all other information that is made available to stockholders; and

(c) upon the reasonable request of a Purchaser, the Company will (i) make available for inspection by any Purchaser and any attorney, accountant or other agent retained by any such holder (collectively, the “Inspectors”), all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company’s officers, directors and employees to supply all information reasonably requested by any such Inspector in connection with such Registration Statement; and (ii) meet with each Purchaser or a representative thereof at the Company’s headquarters during the Company’s normal business hours to discuss all information relevant for disclosure in the Registration Statement covering the Note Shares and will otherwise reasonably cooperate with the Purchasers conducting an investigation for the purpose of reducing or eliminating the Purchasers’ exposure to liability under the Securities Act, including the reasonable production of information at the Company’s headquarters; provided, that the Company shall not be required to disclose (x) any confidential information to a Purchaser until and unless that Purchaser shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Company with the Company with respect thereto and (y) any information subject to an attorney-client privilege.

6.6 Public Statements; Limitation on Information. The Company agrees to disclose on a Current Report on Form 8-K the existence of the Notes offering and this Agreement and the material terms, thereof, including pricing, within one business day after the date hereof. Such Current Report on Form 8-K shall include a form of this Agreement (and all exhibits and schedules thereto) as an exhibit thereto. Except pursuant to such Current Report on Form 8-K, the Company will not issue any public statement, press release or any other public disclosure listing a Purchaser as one of the purchasers of the Note Shares without that Purchaser’s prior written consent, except as may be required by applicable law or rules of any exchange on which the Company’s securities are listed.

6.7 Limits on Additional Issuances. The Company will not, for a period of six (6) months following the Closing Date offer for sale or sell any securities unless, in the opinion of the Company’s counsel, such offer or sale does not jeopardize the availability of exemptions from the registration and qualification requirements under applicable securities laws with respect to the offering of the Notes and Note Shares pursuant to this Agreement. Except as disclosed in the Company SEC Documents and for the issuance of stock options under the Company’s stock option plans, the issuance of common stock upon exercise of outstanding options and warrants, the issuance of common stock purchase warrants, and the offering contemplated hereby, the Company has not engaged in any offering of equity securities during the six (6) months prior to the date of this Agreement. The foregoing provisions shall not prevent the Company from filing a “shelf” registration statement pursuant to Rule 415 under the Securities Act, but the foregoing provisions shall apply (if applicable) to any sale of securities thereunder.

6.8 Form D and State Securities Filings. To the extent required, the Company will file with the SEC a Notice of Sale of Securities on Form D with respect to the Securities, as required under Regulation D under the Securities Act, no later than 15 days after the Closing Date. The Company will promptly and timely file all documents and pay all filing fees required by any states’ securities laws in connection with the sale of Securities.

6.9 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 6 may be assigned by a Purchaser to a party that acquires, other than pursuant to the Registration Statement or Rule 144, any of the Note Shares originally issued or issuable to such Purchaser pursuant to this Agreement (or any Common Stock issued as a dividend or other distribution with respect to, or in exchange for or in replacement of,

any such Note Shares), or to any affiliate of a Purchaser that acquires any Registrable Securities. So long as any such permitted assignee assumes all of the obligations of such Purchaser hereunder with respect to the portion of the Notes or Note Shares assigned to such assignee, any such permitted assignee shall have all the rights of such Purchaser under this [Section 6](#) with respect to the Registrable Securities transferred.

6.10 Preservation of Rights. The Company shall not enter into any agreement, take any action, or permit any change to occur, with respect to its securities that violates or subordinates the rights expressly granted to the holders of Note Shares in this Agreement.

7. Defaults and Remedies.

7.1 Events of Default. An “Event of Default” is: (i) a default in payment of any amount due under the Notes; (ii) a default in the timely issuance of Conversion Shares upon and in accordance with terms of the Notes, which default continues for five (5) Business Days after the Company has received written notice informing the Company that it has failed to issue shares or deliver stock certificates within the fifth day following the Conversion Date; (iii) failure by the Company to comply with any material provision of any of the Transaction Documents as defined in the Notes (other than as described in subsections (i), (iv), (v), (vi) or (vii) of this [Section 7.1](#)), which failure continues for five (5) Business Days after the Company has received written notice informing the Company of such failure; (iv) a material breach by the Company of its representations or warranties in the Transaction Documents; (v) if at any time the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act; (vi) if at any time the Common Stock shall not be listed or quoted for trading on The Nasdaq Stock Market, the New York Stock Exchange or the NYSE MKT; or (vii) an “Event of Default” (as defined in the Term Loan Credit Agreement) shall have occurred and be continuing.

7.2 Remedies. If an Event of Default occurs and is continuing with respect to any of the Notes, the Agent may (a) declare all of the then outstanding Principal Amount of the Notes to be due and payable immediately, except that in the case of an Event of Default arising from a Bankruptcy Event, this Note shall become due and payable without further action or notice, (b) exercise the rights and remedies granted to Agent on behalf of the Purchasers pursuant to [Section 8.4](#), and (c) exercise any and all rights and remedies available to it under applicable law or the Transaction Documents. The remedies under the Notes, the Transaction Documents and applicable law shall be cumulative. Notwithstanding anything contained in the Transaction Documents to the contrary, upon the occurrence of an Event of Default under no circumstances shall the Company be obligated to pay the Purchasers a cash payment for the “deemed” value of the conversion right.

8. Security Interest.

8.1 Grant of Security Interest to Holder. As collateral security for the due and punctual payment in full when due (whether at stated maturity, by acceleration or otherwise) of the obligations hereunder (including, without limitation, all principal evidenced hereby, any interest thereon and all other amounts due and owing from time to time pursuant to Section 6(a) of the Notes), the Company hereby pledges and assigns to the Agent, on behalf of the Purchasers, and grants to the Agent a lien on and continuing security interest in, all of the Company’s right, title

and interest in and to the property listed on Exhibit B, whether now owned or existing or hereafter acquired or arising (all being collectively referred to herein as the “Collateral”). Notwithstanding anything to the contrary herein, the Collateral shall not include “Excluded Property” as such term is defined in the form of Guarantee and Collateral Agreement attached as Exhibit D to the Term Loan Credit Agreement (as defined in the Notes).

8.2 Description of Collateral as All Assets. The Company hereby irrevocably authorizes the Agent, on behalf of the Purchasers, at any time and from time to time to file in any applicable filing office prescribed under the Uniform Commercial Code as in effect in the State of New York from time to time (the “UCC”) a form UCC-1 financing statement (a) describing the Collateral as “all personal property of debtor” or “all assets of debtor” or words of similar effect, (b) describing the Collateral as being of equal or lesser scope or with greater detail, or (c) that contain any information required by part 5 of Article 9 of the UCC as adopted by any relevant jurisdiction for the sufficiency or filing office acceptance. The Company agrees to furnish any such information to the Agent promptly upon request.

8.3 Further Assurances. The Company further agrees, upon the request of Agent, to take any and all other actions as Agent may determine to be reasonably necessary for the attachment, perfection and priority of the Purchasers’ security interest in any and all of the Collateral, including without limitation, (a) executing and delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC to the extent, if any, that the Company’s signature thereon is required therefor and (b) complying with any provision of any statute, regulation or treaty as to any Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Agent or the Purchasers to enforce, their security interest in such Collateral.

8.4 Attorney in Fact. Upon the occurrence and during the continuance of an Event of Default, the Company hereby irrevocably constitutes and appoints Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of the Company or in the Company’s own name, for the purpose of carrying out the terms of this Note, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary to accomplish the purposes of this Note and, without limiting the generality of the foregoing, hereby gives said attorney the power and right, on behalf of the Company without notice to or assent by the Company, to, upon the occurrence and during the continuance of an Event of Default, (a) endorse the Company’s name on any checks, notes, drafts or other forms of payment or security that may come into the possession of the Agent or any Purchaser or any of their respective affiliates, to sign the Company’s name on invoices or bills-of-lading, drafts against customers, notices of assignment, verifications and schedules, (b) sell, transfer, pledge, make any arrangement with respect to or otherwise dispose of or deal with any of the Collateral consistent with the UCC and (c) do acts and things which Agent reasonably deems necessary to protect, preserve or realize upon the Collateral and the Purchasers’ security interest therein. The powers granted herein, being coupled with an interest, are irrevocable until the date this Note and the obligations evidenced hereby is repaid in full in accordance with its terms. The powers conferred on Holder hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Neither Agent nor any other attorney-in-fact shall be liable for any act or omission, error in judgment or mistake of law.

8.5 Subordination Agreements. Notwithstanding anything to the contrary herein, the Notes and the priority of the security interests granted therein are and may become subject to, and all obligations of the Company and rights of the Agent and the Purchasers hereunder and thereunder are and may be further qualified by, the terms of any applicable Subordination Agreement (as defined under the Notes), whether now existing or entered into after the date hereof.

9. Miscellaneous.

9.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the choice of law provisions thereof, and the federal laws of the United States.

9.2 Successors and Assigns. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto.

9.3 Entire Agreement. This Agreement and the exhibits hereto, and the other documents delivered pursuant hereto, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and no party shall be liable or bound to any other party in any manner by any representations, warranties, covenants, or agreements except as specifically set forth herein or therein. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided herein.

9.4 Severability. In the event any provision of this Agreement shall be invalid, illegal, or unenforceable, it shall to the extent practicable, be modified so as to make it valid, legal and enforceable and to retain as nearly as practicable the intent of the parties, and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9.5 Amendment and Waiver. Except as otherwise provided herein, any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance, either retroactively or prospectively, and either for a specified period of time or indefinitely), with the written consent of the Company and Purchasers acquiring a majority-in-interest of the Notes. Any amendment or waiver effected in accordance with this Section 9.5 shall be binding upon any holder of any Securities purchased under this Agreement (including securities into which such Securities have been converted), each future holder of all such securities, and the Company.

9.6 Fees and Expenses. The Company shall be obligated to pay all reasonable and documented attorney's fees and out-of-pocket costs and expenses of the Purchasers, including in connection with the collection of any fees, costs and expenses due to the Purchasers as a result of enforcement of any of its rights and remedies under the transaction documents. Each Purchaser shall be entitled to deduct from the Purchase Price payable by such Purchaser at the Closing such fees, costs and expenses incurred up to and including the Closing Date. Each party hereby agrees to indemnify and to hold harmless of and from any liability the other party for any commission or compensation in the nature of a finder's fee to any broker or other person or firm (and the costs and expenses of defending against such liability or asserted liability) for which such indemnifying party or any of its employees or representatives are responsible.

9.7 Notices. All notices, requests, consents and other communications hereunder shall be in writing, shall be delivered (A) if within the United States, by first-class registered or certified airmail, or nationally recognized overnight express courier, postage prepaid, or by facsimile, or (B) if from outside the United States, by International Federal Express (or comparable service) or facsimile, and shall be deemed given (i) if delivered by first-class registered or certified mail domestic, upon the business day received, (ii) if delivered by nationally recognized overnight carrier, one business day after timely delivery to such carrier, (iii) if delivered by International Federal Express (or comparable service), two business days after so mailed, (iv) if delivered by email, upon electronic confirmation of receipt and shall be addressed as follows, or to such other address or addresses as may have been furnished in writing by a party to another party pursuant to this paragraph:

if to the Company, to:

ACER Therapeutics Inc.
One Gateway Center, Suite 351
300 Washington Street
Newton, Massachusetts 02458,
Attention: Chief Executive Officer
Email: cschelling@acertx.com
Attention: General Counsel
Email: djoseph@acertx.com

if to a Purchaser, at its address on the signature page to this Agreement.

9.8 Survival of Representations, Warranties and Agreements. Notwithstanding any investigation made by any party to this Agreement, all covenants, agreements, representations and warranties made by the Company and the Purchasers herein shall survive the execution of this Agreement, the delivery to the Purchasers of the Securities being purchased and the payment therefor, and a party's reliance on such representations and warranties shall not be affected by any investigation made by such party or any information developed thereby.

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

9.10 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under this Agreement are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement. Nothing contained herein, and no action taken by any Purchaser pursuant hereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement. Each Purchaser confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

9.11 Appointment of Agent. Each Purchaser hereby irrevocably appoints, designates and authorizes the Agent as agent and collateral agent to take such action on its behalf under the provisions of this Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Purchaser, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Transaction Documents or otherwise exist against Agent. The remainder of Section 9 of the Term Loan Credit Agreement is hereby incorporated by reference to Section 9.2 through 9.12 thereof as if set forth herein as applicable to this Agreement.

[The Remainder of this Page is Blank]

In witness whereof, the foregoing Secured Convertible Note Purchase and Security Agreement is hereby executed as of the date first above written.

ACER THERAPEUTICS INC.

By: /s/ Chris Schelling

Name: Chris Schelling

Title: Chief Executive Officer

Signature Page to Secured Convertible Note Purchase and Security Agreement

In witness whereof, the foregoing Secured Convertible Note Purchase and Security Agreement is hereby executed as of the date first above written.

MAMAARDVARK, LLC
As Agent and Investor

By: /s/ Louis Hanover

Name: Louis Hanover

Title: Authorized Signatory

Investment Amount: \$1,895,567.00

Tax Identification No.: 88-0983546

State of Organization: Delaware

State of Principal Place of Operations: New York

Address for Notice:

c/o Marathon Asset Management, LP

One Bryant Park, 38th Floor

New York, New York 10036

Attn: Yuhe Cong

Email: ycong@marathonfund.com

Signature Page to Secured Convertible Note Purchase and Security Agreement

In witness whereof, the foregoing Secured Convertible Note Purchase and Security Agreement is hereby executed as of the date first above written.

MARATHON HEALTHCARE FINANCE FUND, L.P.
Name of Investor

By: /s/ Louis Hanover

Name: Louis Hanover

Title: Authorized Signatory

Investment Amount: \$4,104,433.00

Tax Identification No.: 86-1962326

State of Organization: Delaware

State of Principal Place of Operations: New York

Address for Notice:

c/o Marathon Asset Management, LP

One Bryant Park, 38th Floor

New York, New York 10036

Attn: Yuhe Cong

Email: ycong@marathonfund.com

Signature Page to Secured Convertible Note Purchase and Security Agreement

EXECUTION VERSION

NEITHER THE SECURITIES REPRESENTED HEREBY NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THESE SECURITIES AND THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE SOLD, DISTRIBUTED, OFFERED, PLEDGED, ENCUMBERED, ASSIGNED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION, AN AVAILABLE EXEMPTION THEREFROM, OR A TRANSACTION NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR UNDER THE SECURITIES LAWS OF ANY STATES. UNLESS SOLD PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

THIS NOTE DOES NOT REQUIRE PHYSICAL SURRENDER OF THE NOTE IN THE EVENT OF A PARTIAL REDEMPTION OR CONVERSION. AS A RESULT, FOLLOWING ANY REDEMPTION OR CONVERSION OF ANY PORTION OF THIS NOTE, THE OUTSTANDING PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE MAY BE LESS THAN THE PRINCIPAL AMOUNT AND ACCRUED INTEREST SET FORTH BELOW.

THIS NOTE IS SUBJECT TO THE TERMS OF (I) THAT CERTAIN SUBORDINATION AGREEMENT DATED ON OR ABOUT THE DATE HEREOF BY AND BETWEEN THE HOLDER HEREOF AND SWK FUNDING LLC AND (II) ANY INTERCREDITOR ARRANGEMENT OR SUBORDINATION AGREEMENT ENTERED INTO PURSUANT TO THE TERMS OF THAT CERTAIN CREDIT AGREEMENT, DATED ON OR ABOUT THE DATE HEREOF, BY AND AMONG THE COMPANY, HOLDER OR AN AFFILIATE OF HOLDER, AS AGENT AND LENDER.

ACER THERAPEUTICS INC.**SECURED CONVERTIBLE NOTE****Maturity Date:** March [___], 2025

[\$1,895,567/\$4,104,433]

Issuance Date: March [___], 2022

This Secured Convertible Note (this "Note") is issued by Acer Therapeutics Inc., a Delaware corporation (the "Company"), initially due March [___], 2025 (the "Maturity Date") in the principal amount as set forth below.

FOR VALUE RECEIVED, the Company hereby promises to pay to [MAMAARDVARK, LLC/MARATHON HEALTHCARE FINANCE FUND, L.P.] or its registered assigns or successors-in-interest ("Holder") the principal sum of [\$1,895,567/\$4,104,433], together with all accrued but unpaid interest thereon, if any, on the earlier of March [___], 2025 or the consummation of a Change in Control Transaction (the "Maturity Date"), to the extent such principal amount and interest has not been repaid or converted into the Company's Common Stock, par value \$0.0001 per share (the "Common Stock"), in accordance with the terms hereof.

Unless otherwise agreed or required by applicable law, payments or conversions hereunder will be applied first to any unpaid collection costs, then to unpaid interest and fees and any remaining amount to principal.

All payments of principal and interest on this Note shall be made in lawful money of the United States of America by wire transfer of immediately available funds to such account as the Holder may from time to time designate by written notice in accordance with the provisions of this Note. This Note may not be prepaid in whole or in part except as otherwise provided herein or with the Holder's prior written consent. If any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day (as defined below), the same shall instead be due on the next succeeding day which is a Business Day.

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Secured Convertible Note Purchase and Security Agreement dated March 4, 2022 pursuant to which the Notes originally were issued (the "Purchase Agreement"). For purposes hereof the following terms shall have the meanings ascribed to them below:

"Bankruptcy Event" means any of the following events: (a) the Company or any subsidiary commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any subsidiary thereof; (b) there is commenced against the Company or any subsidiary any such case or proceeding that is not dismissed within 60 days after commencement; (c) the Company or any subsidiary is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered; (d) the Company or any subsidiary suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 days; (e) the Company or any subsidiary makes a general assignment for the benefit of creditors; (f) the Company or any subsidiary consistently fails to pay, or publicly states that it is unable to pay or is unable to pay, its debts as they become due; (g) the Company or any subsidiary calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts; or (h) the Company or any subsidiary, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which commercial banks in the City of New York are authorized or required by law or executive order to remain closed.

"Cash Interest Payment Date" shall mean the first to occur of (i) the ACER-001 Approval Date (as defined in the SWK Loan), and (ii) the repayment in full of all Obligations under the SWK Loan and the termination of the SWK Loan other than provisions thereof that specifically survive such termination in accordance with the terms thereof.

“Change in Control Transaction” will be deemed to exist if (i) there occurs any consolidation, merger or other business combination of the Company with or into any other corporation or other entity or person (whether or not the Company is the surviving corporation), or any other corporate reorganization or transaction or series of related transactions in which in any of such events the voting stockholders of the Company prior to such event cease to own 50% or more of the voting power, or corresponding voting equity interests, of the surviving entity after such event, or (ii) in one or a series of related transactions, there is a sale or transfer of all or substantially all of the assets of the Company, determined on a consolidated basis.

“Conversion Price” shall equal \$2.50 (which Conversion Price shall be subject to adjustment as set forth herein).

“Conversion Shares” means the shares of Common Stock into which the Notes are convertible (including interest or principal payments in Common Stock as set forth herein) in accordance with the terms hereof and the Purchase Agreement.

“Indebtedness” of any person or entity means (a) all obligations evidenced by notes, bonds, debentures or similar instruments, including without limitation obligations so evidenced incurred in connection with the acquisition of property, assets or businesses and (b) all contingent obligations or guarantees in respect of the foregoing.

“Lien” means a lien, charge, security interest, mortgage, encumbrance, pledge or hypothecation.

“Marathon Subordination Agreement” means any intercreditor arrangement or subordination agreement entered into pursuant to or required in order for this Note to constitute Permitted Indebtedness under the terms of the Term Loan Credit Agreement between Holder and Agent (as defined in the Term Loan Credit Agreement), as the same may be modified, amended or restated from time to time.

“Notes” shall mean this Note or any Notes resulting from a transfer of all or any part of this Note.

“Permitted Indebtedness” means any Indebtedness of the Company that is otherwise permitted pursuant to Section 7.1 of the Term Loan Credit Agreement.

“Permitted Liens” has the meaning set forth in the Term Loan Credit Agreement.

“Principal Amount” shall refer to the sum of (i) the original principal amount of this Note and (ii) all accrued but unpaid interest hereunder.

“Principal Market” shall mean The Nasdaq Stock Market LLC or such other principal market or exchange on which the Common Stock is then listed for trading.

“Subordination Agreement” shall mean the SWK Subordination Agreement, the Marathon Subordination Agreement or both as the context may require.

“SWK” shall mean SWK Funding LLC.

“SWK Loan” shall mean that certain term loan made by SWK to the Company pursuant to that certain Credit Agreement, dated on or about the date hereof, as the same may be modified, amended or restated in accordance with the SWK Subordination Agreement (as defined below).

“SWK Subordination Agreement” shall mean that certain Subordination Agreement, dated on or about the date hereof, between SWK and the Holder, as the same may be modified, amended or restated from time to time.

“SWK Warrant” shall mean that certain Warrant to Purchase Stock with respect to up to 150,000 shares of the Company’s Common Stock, dated March 4, 2022, issued to SWK by the Company, as the same may be modified, amended or restated from time to time.

“Term Loan Credit Agreement” shall mean that certain Credit Agreement, dated on or about the date hereof, by and among the Company, Holder or an Affiliate of Holder, as agent and lender, and the other parties thereto from time to time, as the same may be modified, amended or restated from time to time.

“Trading Day” shall mean a day on which there is trading on the Principal Market.

“Transaction Documents” means the Purchase Agreement, the Notes and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith.

The following terms and conditions shall apply to this Note:

Section 1. Payments.

(a) Interest Payments. Interest on the unpaid principal balance hereof shall accrue at the rate of 6.5% per annum from the date of original issuance hereof (the “Issuance Date”) until the same becomes due and payable as set forth herein, or such earlier date upon acceleration or by conversion or redemption in accordance with the terms hereof or of the Purchase Agreement. Interest on this Note shall accrue daily commencing on the Issuance Date and shall be computed for the actual number of days elapsed during the period in question on the basis of a year consisting of three hundred sixty-five (365) days and shall be calculated by determining the daily principal balance outstanding for each day of such period in question, and shall be otherwise subject to the provisions of Section 1 hereof. Subject to the terms of any applicable Subordination Agreement, accrued interest shall be payable quarterly, in arrears, on the third (3rd) Business Day of the first calendar month of each calendar quarter beginning on April 5, 2022, and thereafter on the third (3rd) Business Day of the first calendar month of each successive calendar quarter (each, an “Interest Payment Date”); *provided, however*, that until the Cash Interest Payment Date, interest shall not be payable in cash, but shall accrue and be payable in cash within three (3) Business Days of the ACER-001 Approval Date. Notwithstanding anything contained herein, this Note shall bear interest on the due and unpaid Principal Amount from and after the occurrence and during the continuance of an Event of Default pursuant to Section 5(a) at the rate (the “Default Rate”) equal to the lower of 11.5% per annum or the highest rate permitted by law, until and unless such Event of Default has been cured.

(b) No Deduction, Withholding or Offset. Any payment by the Company to the Holder hereunder, whether for principal, interest or otherwise, shall not be subject to any deduction, withholding or offset for any reason whatsoever except to the extent required by law, and the Company represents that to its best knowledge no deduction, withholding or offset is so required for any tax or any other reason.

Section 2. Put Right.

(a) Put Right. Subject to any restrictions set forth in any applicable Subordination Agreement, during the 30-day period beginning on 12th, 18th and 24th monthly anniversary of the Closing Date, and upon notice provided by the Holders of a majority of the outstanding principal amount of the Notes during such period, the Company shall redeem the Notes in whole, and each Holder shall be obligated to surrender the Note in whole, at a redemption price equal to 100% of the outstanding principal amount of such Note being redeemed, together with any accrued but unpaid interest thereon to the redemption date (the "Redemption Price"). The Holders of a majority of the outstanding principal amount of the Notes shall effect such request for redemption under this Section 2 by giving notice (in accordance with the Purchase Agreement) to the Company of the intent to exercise the Holder's right to require redemption and the date fixed for redemption (the date such redemption is consummated pursuant to this Section 2 being referred to herein as the "Redemption Date," which shall be within 30-days of delivery of the redemption notice pursuant to this Section 2(a) subject to Section 2(b) below). On or after the Redemption Date, each Holder of Notes shall surrender its certificates evidencing all Notes to be redeemed (or affidavits of loss) to the Company at its principal executive offices and shall thereupon be entitled to receive payment of the Redemption Price for the Notes redeemed on the Redemption Date. In the event that, at the time of any redemption or repayment, there exists more than one (1) Note, the repayment or redemption of such Notes shall be on a pro rata basis, based upon the relative Principal Amount outstanding with respect to each Note as compared to the aggregate Principal Amount outstanding with respect to all Notes being redeemed.

(b) Subordination Agreement and Insufficient Liquidity. Notwithstanding anything to the contrary in this Section 2, in the event that the Company is prohibited from effectuating the redemption(s) described in Section 2(a) above and/or otherwise paying to the Holder the Redemption price pursuant to the terms of any applicable Subordination Agreement, the Company shall cause the Redemption Date to occur within five (5) Business Days of the payment in full of all senior indebtedness described in such Subordination Agreement. In addition to the forgoing, in the event that the Company does not have sufficient cash or cash equivalents on hand to fund the Redemption Price in a commercially-reasonable manner, as demonstrated via documentation provided by the Company to the Holder, the Company shall pay such Redemption Price to the Holder within six (6) months of the Redemption Date by making six (6) equal monthly payments to Holder beginning on the Redemption Date and on each monthly anniversary of the Redemption Date thereafter.

(c) Conversion Prior to Redemption. Notwithstanding anything to the contrary in this Section 2, any Notes included in a redemption notice pursuant to Section 2(a) shall continue to be convertible in accordance with Section 4 after the notice of redemption and prior to the Redemption Date.

Section 3. Senior Debt. So long as this Note remains outstanding, the Company shall not, and shall not permit any subsidiary (whether or not a subsidiary on the Closing Date) to, directly or indirectly:

(a) Other than Permitted Indebtedness, issue, enter into, create, incur or assume any Indebtedness; or

(b) Other than Permitted Liens, enter into, create, incur, assume or suffer or permit to exist any Liens on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom.

Section 4. Conversion.

(a) Conversion Right. Subject to the terms hereof, the Holder shall have the right, at such Holder's option, at any time and from time to time, to convert the outstanding Principal Amount under this Note in whole or in part by delivering to the Company a fully executed notice of conversion in the form of conversion notice attached hereto as Exhibit A (a "Conversion Notice"), which may be delivered in the manner for providing notices to the Company provided for in the Purchase Agreement.

(b) Common Stock Issuance upon Conversion.

(i) *Conversion Date Procedures.* Upon conversion of this Note pursuant to Section 4(a), the outstanding Principal Amount hereunder shall be converted into such number of shares of Common Stock as is determined by dividing (x) the Principal Amount elected to be converted, by (y) the then-applicable Conversion Price. The date of any Conversion Notice is referred to herein as the "Conversion Date". If the Holder is converting less than all of the outstanding Principal Amount hereunder pursuant to a Conversion Notice and has delivered this Note to the Company, the Company shall promptly deliver to the Holder (but no later than five (5) Trading Days after the Conversion Date) a Note for such outstanding Principal Amount as has not been converted if this Note has been tendered to the Company for partial conversion. The Holder shall not be required to physically surrender this Note to the Company upon any conversion or hereunder unless the full outstanding Principal Amount represented by this Note is being converted or repaid. The Company shall maintain accurate records showing the outstanding Principal Amount so converted and repaid and the dates of such conversions or repayments.

(ii) *Stock Certificates.* The Company will deliver to the Holder not later than three (3) Trading Days after the Conversion Date, a certificate or certificates representing the number of shares of Common Stock being acquired upon the conversion of this Note. If in the case of any conversion hereunder, such certificate or certificates are not delivered to or as directed by the Holder by the third Trading Day after the Conversion Date, the Holder, in addition to any other remedy the Holder may have at law or in equity, shall be entitled by written notice to the Company at any time on or before its receipt of such certificate or certificates thereafter, to rescind such conversion, in which event the Company shall immediately return this Note tendered for conversion.

(iii) *Restricted Shares*. The Holder understands that the shares of Common Stock issuable upon conversion of this Note will be “restricted securities” within the meaning of Rule 144 under the 1933 Act and may not be sold, pledged, assigned or transferred and must be held indefinitely in the absence of (i) an effective registration statement under the 1933 Act and applicable state securities laws with respect thereto or (ii) an available exemption from, or in a transaction not subject to, the registration requirements of the 1933 Act as evidenced by an opinion of counsel satisfactory to the Company that such registration is not required. The certificates for the Common Stock issuable upon conversion of this Note shall bear the following or similar legend (in addition to such other restrictive legends as are required or deemed advisable under any applicable law or any other agreement to which the Company is a party):

“THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR UNDER THE SECURITIES LAWS OF ANY STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE SOLD, DISTRIBUTED, OFFERED, PLEDGED, ENCUMBERED, ASSIGNED OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION, AN AVAILABLE EXEMPTION THEREFROM, OR A TRANSACTION NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OR UNDER THE SECURITIES LAWS OF ANY STATES. UNLESS SOLD PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.”

The Holder consents to the Company making a notation on its records or giving instructions to any transfer agent of the Securities in order to implement the restrictions on transfer set forth and described herein. Notwithstanding the foregoing, the legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Shares upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at DTC, if (i) such Shares are sold or transferred pursuant to a registration statement for resale under the Securities Act, (ii) such Shares are sold or transferred pursuant to Rule 144 (assuming the transferor is not an Affiliate of the Company), or (iii) if such legend is not required under applicable requirements of the Securities Act (including controlling judicial interpretations and pronouncements issued by the Commission).

(iv) *Limitation on Conversion*. Notwithstanding anything herein to the contrary, the Holder shall not attempt to convert any portion of this Note and the Company shall not issue to the Holder any shares of Common Stock upon attempted conversion of this Note, to the extent, after giving effect to such issuance, (A) the aggregate number of shares of Common Stock issued upon conversion of this Note (and any other Notes issued

under the Purchase Agreement) together with any shares of Common Stock issued or issuable pursuant to any other securities issued by the Company that are deemed integrated into the issuance of the Notes under the Purchase Agreement pursuant to applicable stock exchange listing rules, would be in excess of 19.99% of the shares of Common Stock outstanding immediately prior to the issuance of the Notes under the Purchase Agreement (or, if earlier, the issuance of any other security issued by the Company that is deemed integrated into the issuance of the Notes under the Purchase Agreement pursuant to applicable stock exchange listing rules), or (B) the Holder (together with the Holder's affiliates and associates), would (i) beneficially own in excess of 19.99% of the number of shares of Common Stock outstanding immediately after giving effect to such issuance (the "Maximum Aggregate Ownership Amount") or (ii) control in excess of 19.99% of the total voting power of the Company's securities outstanding immediately after giving effect to such issuance that are entitled to vote on a matter being voted on by holders of the Common Stock (the "Maximum Aggregate Voting Amount"), unless and until, in each of the above cases, the Company obtains stockholder approval permitting such issuance in accordance with applicable rules of the NASDAQ Capital Market (or any other applicable national securities exchange) ("Stockholder Approval"). For purposes of this paragraph, beneficial ownership shall be determined in accordance with Section 13(d) of the Exchange Act, and the rules and regulations promulgated thereunder. For purposes of this paragraph, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as the case may be, filed with the SEC, (y) a more recent public announcement by the Company, or (z) any other notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of the Holder, the Company shall within two business days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. If on any attempted conversion of this Note the resulting issuance of Shares would result in the Holder exceeding the Maximum Aggregate Ownership Amount or the Maximum Aggregate Voting Amount and the Company shall not have previously obtained Stockholder Approval at the time of conversion, then the Company shall only issue to the Holder such number of Shares as may be issued below the Maximum Aggregate Ownership Amount or Maximum Aggregate Voting Amount, as the case may be. Except for the shares underlying the SWK Warrant, there are no other securities issued or issuable by the Company that could reasonably be deemed integrated into the issuance of the Notes pursuant to applicable stock exchange listing rules.

(v) *Further Limitations on Conversions.* Notwithstanding anything to the contrary contained in this Note, this Note shall not be convertible by the Holder hereof, and the Company shall not affect any conversion of this Note or otherwise issue any shares of Common Stock pursuant hereto, to the extent (but only to the extent) that after giving effect to such conversion or other share issuance hereunder the Holder (together with its affiliates and any persons acting as a group together with the Holder or any of the Holder's affiliates) (such persons, "Attribution Parties") would beneficially own in excess of 4.99% (the "Maximum Percentage") of the Common Stock. To the extent the above limitation applies, the determination of whether this Note shall be convertible (vis-à-vis other

convertible, exercisable or exchangeable securities owned by the Holder or any of its affiliates and Attribution Parties) and of which such securities shall be convertible, exercisable or exchangeable (as among all such securities owned by the Holder and its affiliates and Attribution Parties) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to convert this Note, or to issue shares of Common Stock, pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. For purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the 1934 Act (as defined in the Purchase Agreement) and the rules and regulations promulgated thereunder. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the 1934 Act and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The limitations contained in this paragraph shall apply to a successor Holder of this Note. By written notice to the Company, at any time the Holder may increase or decrease the Maximum Percentage to any other percentage specified in such notice, subject to compliance with Section 4(b)(iv); provided that (i) any such increase will not be effective until the 61st day after such notice is delivered to the Company, and (ii) any such increase or decrease will apply only to the Holder sending such notice and not to any other holder of Notes.

(c) Conversion Price Adjustments.

(i) *Stock Splits and Dividends.* If at any time while this Note is outstanding, the number of outstanding shares of Common Stock is increased by means of a stock split or a stock dividend payable in shares of Common Stock, or other similar event, then, on the effective date of such event, the Conversion Price shall be decreased in proportion to such increase in the number of outstanding shares of Common Stock. By way of example, if there were to be a 2:1 stock split with respect to the Common Stock, the Conversion Price would be reduced from \$2.50 to \$1.25.

(ii) *Reverse Stock Splits and Share Combinations.* If at any time while this Note is outstanding, the number of outstanding shares of Common Stock is decreased by means of a reverse stock split or a stock combination, or other similar event, then, on the effective date of such event, the Conversion Price shall be increased in proportion to such decrease in the number of outstanding shares of Common Stock. By way of example, if there were to be a 2:1 reverse stock split with respect to the Common Stock, the Conversion Price would be increased from \$2.50 to \$5.00.

(iii) *Other Adjustments.* If any capital reorganization or reclassification of the capital stock of the Company, or consolidation or merger of the Company with another person, or the sale of all or substantially all of the Company's assets to another person shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision shall be made whereby the Holder shall thereafter have the right to purchase and receive, upon the basis and upon the terms and conditions, and subject to the limitations, as specified in this Note and in lieu of the shares of the Common Stock of the Company immediately theretofore receivable upon conversion hereof, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such stock immediately theretofore receivable upon conversion hereof had such reorganization, reclassification, consolidation, merger or sale not taken place.

(iv) *Rounding of Adjustments.* All calculations under this Section 4 or Section 1 shall be made to the nearest 4 decimal places or the nearest 1/100th of a share, as the case may be.

(v) *Notice of Adjustments.* Whenever the number or type of Conversion Shares and/or the Conversion Price is adjusted pursuant hereto, the Company shall promptly deliver to each holder of the Notes, a notice setting forth the number and type of Conversion Shares and the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment, provided that any failure to so provide such notice shall not affect the automatic adjustment hereunder.

(vi) *Notice of Certain Events.* If:

- A. the Company shall declare a dividend (or any other distribution) on its Common Stock;
- B. the Company shall declare a special nonrecurring cash dividend on or a redemption of its Common Stock;
- C. the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights;
- D. the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock of the Company, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, of any compulsory share of exchange whereby the Common Stock is converted into other securities, cash or property; or

E. the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company; then the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of this Note, and shall cause to be mailed to the Holder at its last address as it shall appear upon the books of the Company, on or prior to the date notice to the Company's stockholders generally is given, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange.

(vii) *Purchase Rights.* If at any time the Company grants, issues or sells any options, convertible securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of the Common Stock ("Purchase Rights"), then the Holder will be entitled to acquire, upon conversion of this Note in accordance with its terms, a portion of the aggregate Purchase Rights which the Holder would have acquired if the Holder had held all Conversion Shares immediately before the date on which a record is taken to determine holders of the Common Stock for the grant, issue or sale of such Purchase Rights. Such portion will be determined based on the Principal Amount converted on the applicable Conversion Date in accordance with the terms hereof relative to aggregate Principal Amount on the Conversion Date.

(d) Reservation and Issuance of Underlying Securities. The Company will at all times reserve and keep available out of its authorized and unissued Common Stock solely for the purpose of issuance upon conversion of this Note, free from preemptive rights or any other actual contingent purchase rights of persons other than the holders of the Notes, not less than such number of Conversion Shares (subject to any additional requirements of the Company as to reservation of such shares set forth in the Purchase Agreement) issuable upon the conversion of this Note hereunder in Common Stock (the "Required Reserve Amount"). The Company covenants that all Conversion Shares that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid, and nonassessable. If at any time while this Note remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of this Note at least a number of shares of Common Stock equal to the Required Reserve Amount, then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for the Notes then outstanding.

(e) No Fractions. Upon a conversion hereunder the Company shall not be required to issue fractions of shares of Common Stock, but may if otherwise permitted, make a cash payment in respect of any final fraction of a share based on the closing price of a share of Common Stock on the applicable Conversion Date; provided that, if at any time the Common Stock is not traded on a securities exchange or an automated quotation system or in the over-the-counter market, the

cash payment provided for by this Section 4(e) will be based on the fair market value of a share of Common Stock as determined in good faith by the Company's board of directors and the fractional share not required to be issued pursuant to the foregoing. If the Company elects not, or is unable, to make such a cash payment, the Holder shall be entitled to receive, in lieu of the final fraction of a share, one whole share of Common Stock.

(f) Charges, Taxes and Expenses. Issuance of certificates for Conversion Shares upon the conversion of this Note (including repayment in stock) shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event certificates for Conversion Shares are to be issued in a name other than the name of the Holder, this Note when surrendered for conversion shall be accompanied by an assignment form; and provided further, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any such transfer.

(g) Cancellation. After all of the Principal Amount have been paid in full or converted into Conversion Shares, this Note shall automatically be deemed canceled and the Holder shall promptly surrender the Note to the Company at the Company's principal executive offices.

(h) Notices Procedures. Any and all notices or other communications or deliveries to be provided by the Holder to the Company hereunder, including, without limitation, any Conversion Notice, shall be in writing and delivered in the manner provided for in the Purchase Agreement. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, or by a nationally recognized overnight courier service addressed to the Holder at the email or other address of the Holder appearing on the books of the Company, or if no such email or other address appears, at the principal place of business of the Holder. Any notice or other communication or deliveries hereunder shall be deemed delivered at the times provided for in the Purchase Agreement.

Section 5. Defaults and Remedies. The Agent's and the Holders' rights and remedies in any Event of Default (as defined in the Purchase Agreement) shall be as set forth in the Purchase Agreement.

Section 6. General.

(a) Payment of Expenses. The Company agrees to pay all reasonable charges and expenses, including attorneys' fees and expenses, which may be incurred by the Holder in successfully enforcing this Note and/or collecting any amount due under this Note.

(b) Savings Clause. In case any provision of this Note is held by a court of competent jurisdiction to be excessive in scope or otherwise invalid or unenforceable, such provision shall be adjusted rather than voided, if possible, so that it is enforceable to the maximum extent possible, and the validity and enforceability of the remaining provisions of this Note will not in any way be affected or impaired thereby. In no event shall the amount of interest paid hereunder exceed the maximum rate of interest on the unpaid principal balance hereof allowable by applicable law. If any sum is collected in excess of the applicable maximum rate, the excess collected shall be applied to reduce the principal debt. If the interest actually collected hereunder is still in excess of the applicable maximum rate, the interest rate shall be reduced so as not to exceed the maximum allowable under law.

(c) Amendment. Neither this Note nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument signed by the Company and the Holder.

(d) Assignment, Etc. Subject to compliance with applicable securities laws, the Holder may assign or transfer all or any part of this Note to any transferee with or without the consent of the Company. The Holder shall notify the Company of any such assignment or transfer promptly. The Company may not assign all or any part of its obligations under this Note without the prior written consent of the Holder. This Note shall be binding upon the Company and its successors and shall inure to the benefit of the Holder and its successors and assigns.

(e) No Waiver. No failure on the part of the Holder to exercise, and no delay in exercising any right, remedy or power hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise by the Holder of any right, remedy or power hereunder preclude any other or future exercise of any other right, remedy or power. Each and every right, remedy or power hereby granted to the Holder or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Holder from time to time.

(f) Governing Law. THIS NOTE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD OTHERWISE REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

(g) Replacement Notes. This Note may be exchanged by Holder at any time and from time to time for a Note or Notes with different denominations representing an equal aggregate outstanding Principal Amount, as reasonably requested by Holder, upon surrendering the same. No service charge will be made for such registration or exchange. In the event that Holder notifies the Company that this Note has been lost, stolen or destroyed, a replacement Note identical in all respects to the original Note (except for registration number and Principal Amount, if different than that shown on the original Note), shall be issued to the Holder, provided that the Holder executes and delivers to the Company an affidavit of loss reasonably satisfactory to the Company.

(h) Waivers of Demand, etc. The Company hereby waives demand, presentment, notice of dishonor or nonpayment, protest and notice of protest and acceptance of partial payments, whether before, at, or after the Maturity Date, all which may be made without notice to the Company and without affecting its liability to the Holder.

(i) Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note.

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

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed on the day and in the year first above written.

ACER THERAPEUTICS INC.

By: _____
Name:
Title:

Secured Convertible Note
Signature Page

CREDIT AGREEMENT

among

ACER THERAPEUTICS INC.,
as Borrower,

MAM AARDVARK, LLC,
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of March 4, 2022

Table of Contents

	Page
Section 1	1
1.1	1
1.2	14
Section 2	15
2.1	15
2.2	16
2.2.1	16
2.2.2	16
2.3	16
2.4	17
2.5	18
2.5.1	18
2.5.2	18
2.6	18
2.6.1	18
2.6.2	19
2.6.3	19
2.7	20
2.8	20
2.8.1	20
2.8.2	20
2.9	21
2.9.1	21
2.9.2	21
2.9.3	21
2.9.4	21
Section 3	22
3.1	22
3.2	24
3.3	24
Section 4	25
Section 5	27
5.1	27
5.2	27
5.3	27
5.4	28
5.5	28
5.6	28

5.7	Ownership of Properties; Liens	28
5.8	Capitalization	28
5.9	Pension Plans	29
5.10	Investment Company Act	29
5.11	No Default	29
5.12	Margin Stock	29
5.13	Taxes	29
5.14	Solvency	29
5.15	Environmental Matters	29
5.16	Insurance	30
5.17	Information	30
5.18	Intellectual Property; Products and Services	30
5.19	Restrictive Provisions	31
5.20	Labor Matters	31
5.21	Material Contracts	31
5.22	Compliance with Laws; Health Care Laws	32
5.23	Existing Indebtedness; Investments, Guarantees and Certain Contracts	33
5.24	Affiliated Agreements	33
5.25	Names; Locations of Offices, Records and Collateral; Deposit Accounts	33
5.26	Non-Subordination	34
5.27	Broker's or Finder's Commissions	34
5.28	Anti-Terrorism; OFAC	34
5.29	Security Interest	34
5.30	Survival	35
Section 6	Affirmative Covenants.	35
6.1	Information	35
6.1.1	Annual Report	35
6.1.2	Interim Reports	35
6.1.3	Quarterly Review Meeting	36
6.1.4	Compliance Certificate	36
6.1.5	Reports to Governmental Authorities, Board of Directors and Shareholders	36
6.1.6	Notice of Default; Litigation	37
6.1.7	Management Report	38
6.1.8	Projections	38
6.1.9	Updated Schedules to Guarantee and Collateral Agreement	38
6.1.10	Other Information	38
6.1.11	Reduction of Information.	39
6.2	Books; Records; Inspections	39
6.3	Conduct of Business; Maintenance of Property; Insurance	39
6.4	Compliance with Laws; Payment of Taxes and Liabilities	40
6.5	Maintenance of Existence	41
6.6	Employee Benefit Plans	41
6.7	Environmental Matters	41
6.8	Further Assurances	42
6.9	Compliance with Health Care Laws	42
6.10	Cure of Violations	43
6.11	Payment of Debt	43

Section 7	Negative Covenants	44
7.1	Debt	44
7.2	Liens	45
7.3	Dividends; Redemption of Equity Interests	46
7.4	Mergers; Consolidations; Asset Sales	47
7.5	Modification of Organizational Documents	48
7.6	Use of Proceeds	48
7.7	Transactions with Affiliates	48
7.8	Inconsistent Agreements	48
7.9	Business Activities	49
7.10	Investments	49
7.11	Restriction of Amendments to Certain Documents	50
7.12	Fiscal Year	50
7.14	Deposit Accounts	50
7.15	Subsidiaries	50
7.16	Regulatory Matters	51
7.17	Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names	51
7.18	Truth of Statements	51
Section 8	Events of Default; Remedies	52
8.1	Events of Default	52
8.1.1	Non-Payment of Credit	52
8.1.2	Default Under Other Debt	52
8.1.3	Bankruptcy; Insolvency	52
8.1.4	Non-Compliance with Loan Documents	52
8.1.5	Representations; Warranties	35
8.1.6	Pension Plans	53
8.1.7	Judgments	53
8.1.8	Invalidity of Loan Documents or Liens	53
8.1.9	Invalidity of Subordination Provisions	53
8.1.10	Change of Control	54
8.1.11	Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters	54
8.1.12	Material Adverse Effect	54
8.2	Remedies	54
Section 9	Agent	55
9.1	Appointment; Authorization	55
9.2	Delegation of Duties	55
9.3	Limited Liability	56
9.4	Reliance	56
9.5	Notice of Default	56
9.6	Credit Decision	57
9.7	Indemnification	57
9.8	Agent Individually	57
9.9	Successor Agent	58
9.10	Collateral and Guarantee Matters	58
9.11	Intercreditor and Subordination Agreements.	59
9.12	Actions in Concert	59

Section 10	Miscellaneous	59
10.1	Waiver; Amendments	59
10.2	Notices	60
10.3	Computations	60
10.4	Costs; Expenses	61
10.5	Indemnification by Borrower	61
10.6	Marshaling; Payments Set Aside	62
10.7	Non-liability of Lenders	62
10.8	Assignments	62
10.8.1	Assignments	62
10.9	Participations	63
10.10	Confidentiality	64
10.11	Captions	65
10.12	Nature of Remedies	65
10.13	Counterparts; Electronic Signatures	65
10.14	Severability	65
10.15	Entire Agreement	66
10.16	Successors; Assigns	66
10.17	Governing Law	66
10.18	Forum Selection; Consent to Jurisdiction	66
10.19	Waiver of Jury Trial	66
10.20	Patriot Act	67
10.21	Independent Nature of Relationship	67

Annexes

Annex I Commitments and Pro Rata Term Loan Shares
Annex II Addresses

Exhibits

Exhibit A Form of Assignment Agreement
Exhibit B Form of Compliance Certificate
Exhibit C Form of Note
Exhibit D Form of Guaranty and Collateral Agreement
Exhibit E Form of IP Security Agreement

Schedules

Schedule 1.1 Pending Acquisitions as of the Closing Date
Schedule 4.2 Prior Debt
Schedule 5.1 Jurisdictions of Qualification
Schedule 5.7 Ownership of Properties; Liens
Schedule 5.8 Capitalization
Schedule 5.16 Insurance
Schedule 5.18(a) Borrower's Registered Intellectual Property
Schedule 5.18(b) Products and Required Permits
Schedule 5.21 Material Contracts
Schedule 5.25A Names
Schedule 5.25B Offices
Schedule 5.25C Location of Foreign Tangible Collateral
Schedule 5.27 Broker's Commissions
Schedule 7.1 Closing Date Debt
Schedule 7.2 Closing Date Liens
Schedule 7.7 Transactions with Affiliates
Schedule 7.10 Closing Date Investments
Schedule 7.14 Deposit Accounts

CREDIT AGREEMENT

This CREDIT AGREEMENT (as may be amended, restated, supplemented, or otherwise modified from time to time, this “**Agreement**”) dated as of March 4, 2022 (the “**Closing Date**”), among ACER THERAPEUTICS INC., a Delaware corporation (“**Borrower**”), the financial institutions party hereto from time to time as lenders (each a “**Lender**” and collectively, the “**Lenders**”) and MAM AARDVARK, LLC, a Delaware limited liability company (in its individual capacity, “**Marathon**”), as Agent for all Lenders.

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

Section 1 Definitions; Interpretation.

1.1 Definitions.

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

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

Acer-001 means the Borrower’s Product known as ACER-001 (sodium phenylbutyrate) for the treatment of various inborn errors of metabolism, including urea cycle disorders and Maple Syrup Urine Disease.

Acer-001 Approval Condition means the receipt by Agent of evidence, acceptable to Agent, of the full FDA approval for marketing of Acer-001.

Acquisition means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) the acquisition of a product license or a product line (excluding, for purposes of Section 7.10 hereof, any pending Acquisitions as of the Closing Date as set forth on Schedule 1.1 hereto), or (d) a merger or consolidation or any other combination (other than a merger, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary); provided that, notwithstanding the foregoing and for the avoidance of doubt, an Acquisition shall not include any acquisition of assets, including Intellectual Property, in connection with the development of products in the ordinary course of business.

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any managing member, manager, executive officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. For purposes of the definition of the term “Affiliate”, a Person shall be deemed to be “controlled by” any other Person if such Person possesses, directly or indirectly, power to vote twenty-five percent (25%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers the power to direct or cause the direction of the management and policies of such Person whether by exercise of voting power, by contract or otherwise. Unless expressly stated otherwise herein, neither Agent nor any Lender shall be deemed an Affiliate of Borrower, any Loan Party or any Affiliate thereof.

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

Agreement shall have the meaning set forth in the Preamble.

Amortization Payment Date shall have the meaning set forth in Section 2.6.2.

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

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

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

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

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in New York, New York.

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

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

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

- (i) any Person acquires the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding total combined voting Equity Interests of Borrower;
- (ii) Borrower shall at any time fail to own, directly or indirectly, one hundred percent (100%) of the Equity Interests of each of its Subsidiaries, except to the extent permitted by Section 7.4; or
- (iii) a Key Person Event.

CLIA means (a) the Clinical Laboratory Improvement Act of 1967, as the same may be amended, modified or supplemented from time to time, including without limitation the Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a et seq. (“CLIA 88”), and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder, or (b) any equivalent state statute (and any and all rules or regulations promulgated from time to time thereunder) recognized by the relevant Governmental Authority as (x) having an “Equivalency” (as defined by CLIA) to CLIA, and (y) offering a compliance and regulatory framework that is applicable to a Person in such state in lieu of CLIA.

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

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

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

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

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

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

Competitor means a competitor of Borrower, as reasonably determined by the Agent in consultation with the Borrower.

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

Consolidated Net Income means, with respect to any Person and its Subsidiaries, for any period, the consolidated net income (or loss) of such Person and its respective Subsidiaries for such period, as determined under GAAP.

Consolidated Unencumbered Liquid Assets means as of any date of determination (i) any Cash Equivalent Investment owned by Loan Parties, on a consolidated basis, that are (A) after the Tranche 1 Funding Date, subject to an Account Control Agreement to the extent required by Section 7.14 or otherwise subject to an intercreditor arrangement acceptable to Agent in its commercially-reasonable discretion and (B) not otherwise the subject of any Lien or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Loan Parties (other than Permitted Liens), minus (ii) the aggregate amount of Borrower's accounts payable which are unpaid more than ninety (90) days beyond trade terms consistent with Borrower's past practice.

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

Contract Rate means a rate per annum equal to thirteen and one-half of one percent (13.5%).

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

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

Convertible Note has the meaning set forth in Section 7.1(d).

Copyrights means all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

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

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), other than royalty payments or cash milestone payments made or to be made by such Person

from time to time in connection with an Acquisition, (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the lesser of (x) the aggregate unpaid amount of such indebtedness and (y) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for Tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

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

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

Default Rate means a rate per annum equal to the lesser of (i)(A) three percent (3%) over the Contract Rate as it relates to any date of determination prior to the date that is thirty (30) days following the occurrence of the applicable Event of Default giving rise to such Default Rate, or (B) five percent (5%) over the Contract Rate as of each date of determination thereafter, or (ii) the maximum rate of interest permitted to be charged by applicable laws, directives or regulations governing this Agreement until paid.

Defaulting Lender has the meaning set forth in Section 2.3.

Deposit Account means, individually and collectively, any bank or other depository accounts of a Loan Party (including without limitation, any "deposit account" or "securities account" as defined in the Uniform Commercial Code).

Disposition means, as to any asset or right of any Loan Party, (a) any sale, lease, assignment or other transfer (other than to any other Loan Party), but specifically excluding any license or sublicense, (b) any loss, destruction or damage thereof or (c) any condemnation, expropriation, confiscation, requisition, seizure or taking thereof, in each case excluding (i) the sale of inventory or Product in the ordinary course of business, (ii) any issuance of Equity Interests by Borrower, (iii) any Disposition of obsolete or unused equipment or the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties and (iv) any other Disposition where the Net Cash Proceeds of any sale, lease, assignment, transfer, condemnation, expropriation, confiscation, requisition, seizure or taking do not in the aggregate exceed \$250,000 in any Fiscal Year.

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

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

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

EBITDA means, for any Person and its Subsidiaries for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income for such period (and without duplication), (i) Interest Expense, (ii) income tax expense (including tax accruals), (iii) depreciation and amortization, (iv) non-cash expenses relating to equity-based compensation or purchase accounting, and (v) other non-recurring and/or non-cash expenses or charges approved by the Agent in its reasonable discretion.

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

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

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, SAFE's or similar instruments, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing.

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

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

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

Fair Valuation means the determination of the value of the consolidated assets of a Person on the basis of the amount which may be realized by a willing seller within a reasonable time through collection or sale of such assets at market value on a going concern basis to an interested buyer who is willing to purchase under ordinary selling conditions in an arm's length transaction.

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

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

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

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

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

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

Fiscal Quarter means a calendar quarter of a Fiscal Year.

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

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

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

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

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

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement, dated on or about the Tranche I Funding Date, executed by each Loan Party signatory thereto in favor of Agent for the benefit of Lenders.

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

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

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

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

Intellectual Property means all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses (as defined in the Guarantee and Collateral Agreement), internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any Intellectual Property rights relating thereto) and Copyright Licenses (as defined in the Guarantee and Collateral Agreement) and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses (as defined in the Guarantee and Collateral Agreement); Mask Works (as defined in the Guarantee and Collateral Agreement); industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

Interest Expense means for any Person and its Subsidiaries for any period the consolidated interest expense of such Person and its Subsidiaries for such period (including all imputed interest on Capital Leases).

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

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

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

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

IRS means the United States Internal Revenue Service.

Key Person means Chris Schelling.

Key Person Event means, unless such actions are consented to in advance in writing by Agent, the Key Person shall no longer serve as Chief Executive Officer of Borrower, unless such Key Person is replaced within one hundred eighty (180) days with a person holding the necessary qualifications and experience to assume the responsibilities and capacity of the departing Key Person, and which has been approved in writing by Agent in its reasonable discretion (such consent not to be unreasonably withheld, conditioned or delayed).

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

Loan Document, all references in any Loan Document to counsel or attorneys' fees or charges and disbursements of counsel shall be limited to the reasonable and duly documented fees of one legal counsel for Agent and Lenders taken as a whole, and if necessary one local counsel in any relevant jurisdiction and in the case of an actual or reasonably perceived conflict of interest where the Agent or a Lender notifies Borrower of the existence of such conflict, of another firm or counsel for Agent or such Lender in each relevant jurisdiction.

Lenders has the meaning set forth in the Preamble.

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

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

Loan Documents means this Agreement, any Notes, any subordination agreements, the Collateral Documents, any intercreditor agreement entered into in connection with the Loan from time to time, and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each of its Subsidiaries, if any.

Marathon has the meaning set forth in the Preamble.

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

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

Material Contract has the meaning assigned in Section 5.21 hereof.

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

Net Cash Proceeds means, with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by any Loan Party pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (*provided* that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by the applicable Loan Party), (iii) Taxes and other governmental costs and expenses paid or reasonably estimated by a Loan Party to be payable as a result

thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by the Loan Parties in connection therewith established in accordance with GAAP (*provided* that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds) and (vi)(A) with respect to any Disposition described in clauses (a), (b) or (c) of the definition thereof, all money actually applied within one-hundred eighty (180) days to replace such assets to be used in the business of Loan Parties, and (B) with respect to any Disposition, all money actually applied within one-hundred eighty (180) days to repair or replace the assets in question or to repair or reconstruct damaged property or property affected by loss, destruction, damage, condemnation, expropriation, confiscation, requisition, seizure or taking.

Note means any promissory note issued pursuant to Section 2.5.2.

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

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

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

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

Patents means all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title and interest in and to: (i) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of any of the foregoing.

Payment Date means the third (3rd) Business Day of each calendar month, commencing on April 5, 2022.

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

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

Permit means, with respect to any Person, any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject, including without limitation all registrations with Governmental Authorities.

Permitted Liens means Liens permitted by Section 7.2.

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

Prior Debt means the Debt listed on Schedule 4.2.

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

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

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

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

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

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

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Loan Parties with respect to the sale of Products or the provision of services by independent licensees of Borrower and/or its Subsidiaries, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

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

Solvent means, as to any Person at any time, that (a) the fair value of the tangible and intangible property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the tangible and intangible property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

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

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

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

Term Loan has the meaning set forth in Section 2.1.

Term Loan Commitment means \$42,500,000.

Term Loan Maturity Date means the earlier of (i) the six (6) year anniversary of the Tranche 1 Funding Date or (ii) December 31, 2028.

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

Trademarks means all of each Loan Party's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to: (i) all of such Loan Party's (or if referring to another Person, such other Person's) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and all research and development and the goodwill of the business relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature.

Tranche 1 Funding Date means the date on which Lenders fund the initial advance of the Term Loan pursuant to Section 2.2.1.

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

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

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

1.2 Interpretation.

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

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

(b) For purposes of converting any amount reported or otherwise denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion via the applicable exchange rate identified and normally published by Bloomberg Professional Service as the applicable exchange rate as of the close of currency trading on each trading date during the applicable period of measurement, or, if such currency conversion deals exclusively with a particular date of determination, as of the close of currency trading on such date of determination (or the following trading date to the extent no currency trading took place on such date of determination). If Bloomberg Professional Service no longer reports such currency exchange rate, Agent shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

(c) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision in any Loan document, the definitions set forth in this Agreement and any financial calculations required by the Loan Documents shall be computed to exclude any change to lease accounting rules as a result of Financial Accounting Standards Board Accounting Standards Codification 842 (Leases) from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance.

Section 2 Credit Facility.

2.1 Term Loan Commitments.

Subject to the terms and conditions of this Agreement, each Lender, severally and for itself alone, agrees to make a term loan to Borrower (the "**Term Loan**") pursuant to Section 2.2.1 in an amount equal to such Lender's applicable Pro Rata Term Loan Share of the Term Loan Commitment. The Commitments of Lenders to make any portion of the Term Loan shall terminate concurrently with the making of such Term Loan. The Term Loan is not a revolving credit facility, and therefore any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

2.2 Loan Procedures.

2.2.1 Initial Advance.

So long as no Material Adverse Effect, Default or Event of Default has occurred and is continuing or would be caused thereby and the Acer-001 Approval Condition has been satisfied, upon Agent's receipt of a written request from Borrower, on or before December 31, 2022, each Lender shall make an advance (within twelve (12) Business Days of receipt by Agent of such written request for advance) to Borrower in the amount equal to, but not less than, such lender's Pro Rata Share of the Term Loan Commitment.

2.2.2 Additional Term Loans.

Borrower, Agent and Lenders will be permitted, at any time and from time to time prior to the earlier of (i) the three (3) year anniversary of the Tranche 1 Funding Date or (ii) the four (4) year anniversary of the Closing Date, by request of Borrower, to increase the Term Loan Commitments and make one or more additional advances of the Term Loan in connection with one or more acquisitions, mergers or similar transactions whether via current Lenders or new Term Loan Commitments from financial institutions acceptable to Agent and Borrower, provided, that: (i) at the time of any such increase, no Material Adverse Change, Default or Event of Default has occurred and is continuing; (ii) Agent shall have approved the terms and conditions of the transaction(s) to be funded via such additional Term Loan Commitments; (iii) the aggregate Term Loan Commitments shall not exceed \$92,500,000 following any such increase unless otherwise agreed to by Agent; (iv) Lenders providing such additional Term Loan Commitments shall have received payment of a non-refundable commitment fee in an amount to be agreed to by Borrower and such Lender(s) in connection with such increase; and (v) all documents reasonably required by Agent to evidence any such increase shall be executed and delivered to Agent on or before the effective date of such increase.

2.3 Commitments Several.

The failure of any Lender to fund its Pro Rata Share of any Term Loan Commitment shall not relieve any other Lender of its obligation (if any) to fund its Pro Rata Portion of the Term Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender. Any Lender who (i) fails to fund its Pro Rata Share of any Term Loan Commitment within two (2) Business Days after the date such Term Loans were required to be funded hereunder or (ii) notifies Borrower and Agent in writing, or makes a public statement to the effect, that it does not intend to comply with its funding obligations hereunder, unless, in each case, such Lender gives written notice to Agent and Lender stating that, and specifically identifying which, one or more conditions to funding has not or cannot be satisfied, shall be a "**Defaulting Lender**" hereunder. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be suspended, such Defaulting Lender shall not be entitled to receive any commitment or other fees hereunder and Borrower may, by written notice to Agent, terminate the unused amount of the Term Loan Commitment of such Defaulting Lender.

2.4 Indebtedness Absolute; No Offset; Waiver.

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

2.5 Loan Accounting.

2.5.1 Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Term Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.5.2 Notes.

(a) Borrower agrees that upon written notice by Agent to Borrower that a promissory note or other evidence of indebtedness is requested by Lenders to evidence the Loan and other Obligations owing or payable to, or to be made by, Lenders, Borrower shall promptly (and in any event within ten (10) Business Days of any such request) execute and deliver to Agent a promissory note in favor of Agent, for the benefit of Lenders, in the form attached hereto as Exhibit C.

(b) Upon Agent's written request, and in any event within ten (10) Business Days of any such request, Borrower shall execute and deliver to Agent new Notes (on substantially the same terms and in substantially the same form) and/or divide the Notes in exchange for then existing Notes in such smaller amounts or denominations as Agent shall specify in its sole discretion; provided that the aggregate principal amount of such new Notes shall not exceed the aggregate principal amount of the Notes outstanding at the time such request is made; and provided, further, that such Notes that are to be replaced shall then be deemed no longer outstanding hereunder and replaced by such new Notes and returned to Borrower within ten (10) days after Agent's receipt of the replacement Notes; and

(c) upon receipt of evidence reasonably satisfactory to Borrower of the mutilation, destruction, loss or theft of any Notes and the ownership thereof, Borrower shall, upon the written request of the holder of such Notes, execute and deliver in replacement thereof new Notes in the same form, in the same original principal amount and dated the same date as the Notes so mutilated, destroyed, lost or stolen; and such Notes so mutilated, destroyed, lost or stolen shall then be deemed no longer outstanding hereunder. If the Notes being replaced have been mutilated, they shall be surrendered to Borrower after Agent's receipt of the replacement Notes; and if such replaced Notes have been destroyed, lost or stolen, such holder shall furnish Borrower with an indemnity in writing reasonably acceptable to Borrower to save them harmless in respect of such replaced Note.

2.6 Payment of Interest and Principal.

2.6.1 Interest Rate Calculation.

(a) The outstanding principal balance under the Loan shall bear interest at a per annum rate of interest equal to the Contract Rate. The interest due on the principal balance of the Loan outstanding as of any Payment Date shall be computed for the actual number of days elapsed during the period in question on the basis of a year consisting of three hundred sixty-five (365) days and shall be calculated by determining the daily principal balance outstanding for each day of such period in question.

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

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

2.6.2 Payments of Interest.

Borrower shall pay to Agent, for the benefit of Lenders, all accrued interest on the Loan in arrears on the last Payment Date of each Fiscal Quarter (beginning on the Payment Date following the Tranche 1 Funding Date), upon a prepayment of such Loan in accordance with Section 2.8 and at maturity in cash. Notwithstanding the forgoing, so long as no Event of Default has occurred and is continuing, Borrower may elect in writing (which may include electronic email) to Agent on or before any such Payment Date occurring prior to the three (3) year anniversary of the Tranche 1 Funding Date (the "**Amortization Payment Date**") to capitalize an amount up to four percent (4.0%) of the interest otherwise due on any such Payment Date (each a "**PIK Amount**") into the unpaid principal balance of the Term Loan. For the avoidance of doubt, to the extent Borrower exercises its rights pursuant to the prior sentence, all such PIK Amounts will accrue interest in accordance with this Agreement from the related Payment Date until paid in full and shall be subject to the general payment provisions of this Agreement as are applicable to rest of the Term Loan.

2.6.3 Payments of Principal.

On the Amortization Payment Date and on each Payment Date thereafter, Borrower shall pay to Agent, for the benefit of Lenders, an amount equal to 2.78% of the aggregate, outstanding principal balance of all Term Loans that have been funded as of the Amortization Payment Date, with such amount to be applied to the Term Loan pro rata based on each Lender's Pro Rata Term Loan Share. Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations then due and owing shall be Paid in Full on the Termination Date.

2.7 Commitment Fee

(a) Closing Date Fee. Borrower shall pay to Agent, for the benefit of Lenders, a commitment fee (the “**Closing Date Commitment Fee**”) in an amount equal to one-half of one percent (0.50%) multiplied by the aggregate Term Loan Commitments as of the Closing Date, which Closing Date Commitment Fee shall be deemed fully earned and non-refundable on the Closing Date.

(b) Acer-001 Approval Fee. Borrower shall pay to Agent, for the benefit of Lenders, a commitment fee (the “**Subsequent Commitment Fee**”) in an amount equal to one and one-half of one percent (1.50%) multiplied by the aggregate Term Loan Commitments as of such date of determination within twelve (12) Business Days of the earlier of (i) the satisfaction of the Acer-001 Approval Condition or (ii) any Change of Control or similar acquisition of Borrower or sale or transfer of Acer-001 (such earlier date being the “**Subsequent Commitment Fee Trigger Date**”), which Subsequent Commitment Fee shall be deemed fully earned and non-refundable on the Subsequent Commitment Fee Trigger Date.

2.8 Prepayment.

2.8.1 Mandatory Prepayment.

(a) Borrower shall prepay the Obligations, or any portion thereof, as applicable, (which shall include the amounts due and payable under Section 2.7(b) hereof) until paid in full within two (2) Business Days after the receipt by a Loan Party of any Net Cash Proceeds from any Disposition, in an amount equal to such Net Cash Proceeds.

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

2.8.2 Voluntary Prepayment.

(a) Subject to clause (b) below, Borrower may, on at least five (5) Business Days’ written notice or telephonic notice (followed on the same Business Day by written confirmation thereof) to Agent (which shall promptly advise each Lender thereof) not later than 3:00 p.m. New York City time on such day, prepay the Term Loan and all related Obligations in whole or in part at any time prior to the Termination Date. Such notice to Agent shall specify the amount and proposed date of such prepayment.

(b) If Borrower makes a prepayment of the Term Loan under Section 2.8.2(a), it shall pay to Agent, for the benefit of Lenders, the following amounts (in addition to any such prepayment of the Term Loan and related Obligations) on the date of such prepayment: (i) if such prepayment is made prior to the third anniversary of the Closing Date, an amount equal to the greater of (A) an amount equal to the aggregate interest that would have accrued pursuant to this Agreement in relation to the aggregate amount of the Term Loan so prepaid from the date of such prepayment through the third anniversary of the Closing Date or (B) five percent (5.0%) of the aggregate amount of the Term Loan so prepaid, (ii) if such prepayment is made on or after the third anniversary of the Closing Date but prior to the fourth anniversary of the Closing Date, three percent (3.0%) of the aggregate amount of the Term Loan so prepaid, (iii) if such prepayment is made on or after the fourth anniversary of the Closing Date, two percent (2.0%) of the aggregate amount of the Term Loan so prepaid, and (iv) if such prepayment is made on or after the fifth anniversary of the Closing Date, one percent (1.0%) of the aggregate amount of the Term Loan so prepaid. Notwithstanding the foregoing, if any such prepayment occurs in connection with any refinancing of the Term Loans with a new facility provided by Agent or any of its affiliates, then such prepayment fee shall not apply.

2.9 Payment Mechanics.

2.9.1 Making of Payments.

Except as set forth in the last sentence of this Section 2.9.1, all payments of principal, interest, fees and other amounts, shall be made in immediately-available funds, via wire transfer as directed by Agent in writing, not later than 3:00 p.m. New York City time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a statement with the amounts payable by Borrower to Agent on such Payment Date, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

2.9.2 Application of Payments and Proceeds Following an Event of Default.

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

2.9.3 Set-off.

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists, Agent and each Lender may, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent.

2.9.4 Proration of Payments.

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

Section 3 Yield Protection.

3.1 Taxes.

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

(b) Borrower shall indemnify Agent and each Lender for any Indemnified Taxes paid by Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of Borrower hereunder, and any additions to Tax, penalties and interest paid by Agent or such Lender with respect to such Indemnified Taxes; *provided* that Borrower shall not have any obligation to indemnify any party hereunder for any Indemnified Taxes or additions to Tax, penalties or interest with respect thereto that result from or are attributable to such party’s own fraud, gross negligence or willful misconduct.

Payment under this Section 3.1(b) shall be made within thirty (30) days after the date Agent or the Lender, as applicable, makes written demand therefor; *provided, however*, that if such written demand is made more than one-hundred eighty (180) days after the earlier of (i) the date on which Agent or the Lender, as applicable, pays such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto and (ii) the date on which the applicable Governmental Authority makes written demand on Agent or such Lender, as applicable, for payment of such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto, then Borrower shall not be obligated to indemnify Agent or such Lender for such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto.

(c) Each Foreign Lender that is a party hereto on the Closing Date or becomes an assignee of an interest under this Agreement under Section 10.8.1 after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

(i) Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;

(ii) two duly completed and executed originals of IRS Form W-8ECI;

(iii) a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that such Foreign Lender is not (w) a conduit entity participating in a conduit financing arrangement as defined in Treasury Regulation 1.881-3, (x) a “bank” within the meaning of Section 881(c)(3)(A) of the IRC, (y) a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (z) a “controlled foreign corporation” described in Sections 881(c)(3)(C) and 864(d)(4) of the IRC, together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or

(iv) if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BENE), IRS Form W-9 or a portfolio interest certificate described in clause (iii) above from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

Each Foreign Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent. Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c), or (B) if such Lender shall fail to comply with the certification requirements of this clause (c). For the avoidance of doubt, all references to IRS Forms in this clause (c) shall include, in each case, any successor form.

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

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

3.2 Manner of Funding: Alternate Funding Offices.

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

3.3 Conclusiveness of Statements: Survival.

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

Section 4 Conditions Precedent.

4.1 Conditions Precedent to Closing. The effectiveness of this Agreement and the obligation of each Lender to make its Loans hereunder is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to Agent.

(a) General. Borrower shall have delivered the following documents in form and substance acceptable to Agent in its reasonable discretion (and, as applicable, duly executed and dated the Closing Date or an earlier date satisfactory to Agent):

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

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

(iii) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified by the appropriate Governmental Authority, (ii) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction set forth on Schedule 5.1 to the extent reasonably requested by Agent, (iii) bylaws (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) signature and incumbency certificates of its officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

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

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

(b) Fees. The Lenders and Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including Legal Costs), required to be paid under the Loan Documents on or before the Closing Date; provided, that any such expenses shall be first deducted from the Seventy Five Thousand Dollar (\$75,000) expense deposit paid by Borrower to Agent prior to the Closing Date, and in no event shall Borrower be liable for any expenses in excess of Three-Hundred and Fifty Thousand Dollars (\$350,000.00) in connection with the closing of the transactions contemplated in this Agreement; provided, further, that, any documented fees and expenses incurred by Agent in connection with the Convertible Note shall not otherwise be included within such \$350,000 limit on fees and expenses, rather, such amounts shall be invoiced separately.

(c) Representations, Warranties, Defaults. As of the Closing (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all respects as if made on and as of the Closing Date (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all respects as of such earlier date) and (b) no Default or Event of Default shall exist.

(d) Diligence. Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be satisfactory in form and substance to Lenders.

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

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

(a) Prior Debt. The Prior Debt, if any, (i) has been (or concurrently with the initial borrowing will be) paid in full and all related Liens, if any, have been (or concurrently with the initial borrowing will be) released or (ii) otherwise subject to an intercreditor arrangement or subordination agreement acceptable to Agent in its commercially-reasonable discretion.

(b) General. Agent shall have received the following in form and substance acceptable to Agent in its sole discretion:

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

(ii) Payoff: Release. Subject to Section 4.2(a)(ii) above, payoff letters with respect to the repayment in full of all Prior Debt, termination of all agreements relating thereto and the release of all Liens granted in connection therewith, with Uniform Commercial Code or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(iii) Insurance. Certificates or other evidence of insurance in effect as required by Section 6.3(c) and (d), with endorsements naming Agent as lenders' loss payee and/or additional insured, as applicable.

(iv) Other Documents. Agent shall have received fully-executed copies of (A) the Guaranty and Collateral Agreement substantially in the form attached hereto as Exhibit D, or in such other forms mutually agreed to by Agent and Borrower, and (B) the IP Security Agreement, substantially in the form attached hereto as Exhibit E, or in such other forms mutually agreed to by Agent and Borrower.

(c) Representations, Warranties, Defaults. After giving effect to the making of each advance of the Term Loan hereunder all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all material respects as if made on and as of the date of funding such advance of the Term Loan (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all respects as of such earlier date).

Section 5 Representations and Warranties.

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

5.1 Organization.

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

5.2 Authorization: No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guaranty monies thereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any applicable Health Care Law), (ii) the charter, by-laws or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the Tranche 1 Funding Date) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents).

5.3 Validity: Binding Nature.

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

5.4 Financial Condition.

(a) The financial statements and/or similar information delivered pursuant hereto, were prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition of Borrower and its Subsidiaries as at such dates and the results of its operations for the periods then ended.

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

5.5 No Material Adverse Effect.

Since December 31, 2021, there has been no material adverse change in the financial condition, operations, assets, business or properties of Loan Parties.

5.6 Litigation.

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

5.7 Ownership of Properties; Liens.

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

5.8 Capitalization.

All issued and outstanding Equity Interests of Loan Parties are duly authorized, validly issued, fully paid, non-assessable, and such securities were issued in compliance in all material respects with all applicable state and federal laws concerning the issuance of securities. Schedule 5.8 sets forth the authorized Equity Interests and ownership the Equity Interests of each Wholly-Owned Subsidiary of Borrower.

5.9 Pension Plans.

No Loan Party has, nor to Borrower's knowledge has any Loan Party ever had, a Pension Plan.

5.10 Investment Company Act.

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

5.11 No Default.

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

5.12 Margin Stock.

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

5.13 Taxes.

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

5.14 Solvency.

On the Closing Date, and immediately prior to and after giving effect to each advance of the Term Loan hereunder and the use of the proceeds hereof, Borrower is, and will be, Solvent.

5.15 Environmental Matters.

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

5.16 Insurance.

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

5.17 Information.

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

5.18 Intellectual Property; Products and Services.

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

(b) Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2 hereof) accurately and completely lists all material Products and Services of the Loan Parties.

(c) With respect to any Product or Service being tested, manufactured, marketed, sold, and/or delivered by Loan Parties, the applicable Loan Party has received (or the applicable, authorized third parties have received), and such Product or Service is the subject of, all Required Permits needed in connection with the testing, manufacture, marketing, sale, and/or delivery of such Product or Service by or on behalf of Loan Parties as currently conducted. No Loan Party has received any notice from any applicable Governmental Authority, specifically including the FDA and/or CMS, that such Governmental Authority is conducting an investigation or review (other than a normal routine scheduled inspection) of any Loan Party's (x) manufacturing facilities, laboratory facilities, the processes for such Product, or any related sales or marketing activities and/or the Required Permits related to such Product, and (y) laboratory facilities, the processes for such Services, or any related sales or marketing activities and/or the Required Permits related to such Services. There are no material deficiencies or violations of applicable laws in relation to the manufacturing, processes, sales, marketing, or delivery of such Product or Services and/or

the Required Permits related to such Product or Services, no Required Permit has been revoked or withdrawn, nor, to the best of Borrower's knowledge, has any such Governmental Authority issued any order or recommendation stating that the development, testing, manufacturing, sales and/or marketing of such Product or Services by or on behalf of Loan Parties should cease or be withdrawn from the marketplace, as applicable.

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

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

5.19 Restrictive Provisions.

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

5.20 Labor Matters.

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

5.21 Material Contracts.

Except for the agreements set forth as exhibits or incorporated by reference into Borrower's Annual Report on Form 10-K for the Fiscal Year ended December 31, 2021, as filed with the Securities and Exchange Commission (the "Form 10-K"), or Quarterly Reports on Form 10-Q for the Fiscal Quarters ended March 31, 2020, June 30, 2021 and September 30, 2021, as filed with the Securities and Exchange Commission (each a "Form 10-Q") and those agreements not included on the Form 10-K or any Form 10-Q but included herein on Schedule 5.21 (collectively, the "Material Contracts"), as of the Closing Date there are no (i) employment agreements covering the management of any Loan Party, (ii) collective bargaining agreements or other labor agreements covering any employees of any Loan Party, (iii) agreements for managerial, consulting or similar services to which any Loan Party is a party or by which it is bound, (iv) agreements regarding any Loan Party, its assets or operations or any investment therein to which such Loan Party and any of its equity holders are a party, (v) patent licenses, trademark licenses, copyright licenses or other lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee (other than widely-available software subject to "shrink-wrap" or "click-through" software licenses), (vi) distribution, marketing or supply agreements to which any Loan Party is a party, (vii) customer agreements to which any Loan Party is a party (in each case with respect to any agreement of the type described in the preceding clauses (i), (iii), (iv), (v), (vi) and (vii) requiring payments in the aggregate of more than \$250,000 in any year), (viii) partnership agreements pursuant to which any Loan Party is a partner, limited liability company agreements pursuant to which any Loan Party is a member

or manager, or joint venture agreements to which any Loan Party is a party (in each case other than the applicable Loan Parties' organizational documents), (ix) real estate leases, or (x) any other agreements or instruments to which any Loan Party is a party, in each case the breach, nonperformance or cancellation of which, would reasonably be expected to have a Material Adverse Effect. Schedule 5.21 sets forth, with respect to each real estate lease agreement to which any Loan Party is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.22 Compliance with Laws: Health Care Laws.

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

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

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

(ii) Each Loan Party (either directly or through one or more authorized third parties) has (i) all licenses, consents, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all applicable declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an "Authorization") necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to obtain would not reasonably be expected to have a Material Adverse Effect, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with the rules, guidance documents, directives and regulations of the applicable regulatory authorities having jurisdiction with respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

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

(iv) Except where any of the following would not reasonably be expected to have a Material Adverse Effect, no Loan Party has been, or has been threatened to be, (i) excluded from U.S. health care programs pursuant to 42 U.S.C. § 1320(a)7 or any related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant

to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws, directives or regulations, or (iii) made a party to any other action by any Governmental Authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any federal, state, local or foreign laws, directives or regulations.

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

5.23 Existing Indebtedness; Investments, Guarantees and Certain Contracts.

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

5.24 Affiliated Agreements.

Except as set forth on Schedule 7.7 and employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, (i) there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers, directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand, and (ii) to Borrower's knowledge, no manager, officer or director of any Loan Party is directly or indirectly, indebted to or has any direct or indirect ownership or voting interest in any Person with which any Loan Party has a business relationship or which competes with any Loan Party (except that any such Persons may own equity interests in (but not exceeding five percent (5%) of the outstanding equity interests of) any publicly traded company that may compete with Loan Parties).

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

No Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) other than such names set forth on Schedule 5.25A. Each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A, and any and all business conducted and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains, and during the last five (5) years has maintained, respective places of business only at the locations set forth on Schedule 5.25B, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations (other than (i) Deposit Accounts, (ii) Collateral in the possession of Agent, for the benefit of Agent and Lenders, and (iii) other locations disclosed to Agent from time to time in writing). Schedule 7.14 lists all of Loan Parties' Deposit Accounts as of the Closing Date. Except as set forth on Schedule 5.25C hereto, all of the tangible Collateral is located exclusively within the United States.

5.26 Non-Subordination.

As of the Tranche 1 Funding Date, the payment and performance of the Obligations by Loan Parties are not subordinated in any way to any other obligations of such Loan Parties or to the rights of any other Person.

5.27 Broker's or Finder's Commissions.

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

5.28 Anti-Terrorism; OFAC.

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

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

5.29 Security Interest.

As of the Tranche 1 Funding Date, each Loan Party has full right and power to grant to Agent, for the benefit of itself and the other Lenders, a perfected, first priority (subject to Permitted Liens) security interest and Lien on the Collateral pursuant to the Collateral Documents, subject to the following sentence. Upon the execution and delivery of this Agreement and the other Loan Documents, and upon the filing of the necessary financing statements and/or appropriate filings and/or delivery of the necessary certificates evidencing any equity interest, control and/or possession, as applicable, without any further action, on the Tranche 1 Funding Date Agent will have a good, valid and first priority (subject to Permitted Liens) perfected Lien and security interest in the Collateral, for the benefit of Lenders. As of the Tranche 1 Funding Date, Borrower is not party to any agreement, document or instrument that conflicts with this Section 5.29.

5.30 Survival.

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

Section 6 Affirmative Covenants.

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

6.1 Information.

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

6.1.1 Annual Report.

Promptly when available and in any event within ninety (90) days after the close of each Fiscal Year (unless Borrower files a Notice of Late Filing (12b-25 Notice) in which case such report shall be due within one hundred five (105) days of the end of the relevant Fiscal Year): (a) a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (i) a consolidated and consolidating balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants) by independent auditors of recognized standing selected by Borrower and reasonably acceptable to Agent, and (ii) a comparison with the previous Fiscal Year; and (b) upon Agent's reasonable request, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated statements of earnings and cash flows for Borrower and its Subsidiaries for such Fiscal Year, together with a comparison of actual results for such Fiscal Year with the budget for such Fiscal Year, each certified by the chief financial officer or another executive officer of Borrower; provided, that, for as long as Borrower's Equity Interests are listed on the NASDAQ exchange, Borrower's prompt filing of such annual report described in this Section 6.1 with the U.S. Securities and Exchange Commission shall satisfy Borrower's obligations under this Section 6.1.1.

6.1.2 Interim Reports.

(a) Promptly when available and in any event within forty-five (45) days after the end of each Fiscal Quarter (unless Borrower files a Notice of Late Filing (12b-25 Notice) in which case such report shall be due within fifty (50) days of the end of the relevant Fiscal Quarter), unaudited consolidated balance sheets of Loan Parties as of the end of such Fiscal Quarter, together with consolidated statements of earnings and cash flows for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form), certified by the chief financial officer or other executive officer of Borrower; provided, that, for as long as Borrower's Equity Interests are listed on the NASDAQ exchange, Borrower's prompt filing of such annual report described in this Section 6.1.2(a) with the U.S. Securities and Exchange Commission shall satisfy Borrower's obligations under this Section 6.1.2(a).

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

(c) Promptly when available and in any event within five (5) days after the end of each calendar month, a statement of prior month-end Consolidated Unencumbered Liquid Assets of Loan Parties in form and substance reasonably acceptable to Agent.

6.1.3 Quarterly Review Meeting.

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

6.1.4 Compliance Certificate.

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

6.1.5 Reports to Governmental Authorities, Board of Directors and Shareholders.

Upon the request of Agent, copies of (a) solely to the extent not otherwise filed with the U.S. Securities and Exchange Commission, all regular, periodic or special reports of each Loan Party filed with any Governmental Authority (excluding all regular and periodic filings related to Taxes (other than annual income tax filings)), and (b) copies of all registration statements (or such equivalent documents) and annual, quarterly, monthly or other regular reports of each Loan Party filed with the U.S. Securities and Exchange Commission provided, that, for long as Borrower's Equity Interests are listed on the NASDAQ exchange, Borrower's prompt filing of such annual report described in this Section 6.1.5 with the U.S. Securities and Exchange Commission shall satisfy Borrower's obligations under this Section 6.1.5. In addition to the forgoing, Borrower shall promptly (and in any event within fourteen (14) days following such each such meeting) provide copies to Agent of (x) all proxy statements or other communications made to the holders of Borrower's Equity Interests generally and (y) all information delivered to the Board in connection with Board meetings as and when such information is delivered to the Board, provided that Borrower reserves the right to withhold or redact from such materials any such information (a) that the Board believes that such exclusion is reasonably necessary to preserve the attorney-client privilege, confidential information or trade secrets or other sensitive information or material non-public technical information and (b) relating to Borrower's strategy, negotiating position or similar matters with respect to the Term Loan, any refinancing or replacement thereof or any related matters.

6.1.6 Notice of Default: Litigation.

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

(a) the occurrence of an Event of Default;

(b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in each case would reasonably be expected to have a Material Adverse Effect;

(c) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise Tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent;

(d) any cancellation or material adverse change in any insurance maintained by Borrower or any other Loan Party;

(e) any other event (including (i) any violation of any law, including any Environmental Law, or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule or regulation) which would reasonably be expected to have a Material Adverse Effect or otherwise lead to an Event of Default; or

(f) to the extent that it would reasonably be expected to result in a Material Adverse Effect (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for Borrower or any other Loan Party, is threatened or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law and Regulation, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non-compliance with CLIA or any other applicable Health Care Law, (iv) the occurrence of any violation of any applicable Health Care Law by

Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that would reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) any officer, employee or agent of Borrower or any of the other Loan Parties is convicted of any crime or has engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) any officer, employee or agent of Borrower or any of the other Loan Parties has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

6.1.7 Management Report.

Promptly upon receipt thereof, copies of all detailed financial and management reports submitted to Borrower or any other Loan Party by independent auditors in connection with each annual or interim audit made by such auditors of the books of Borrower or any other Loan Party.

6.1.8 Projections.

As soon as practicable, and in any event not later than ninety (90) days after the commencement of each Fiscal Year, financial projections on a quarterly basis of revenues and EBITDA for Loan Parties for such Fiscal Year prepared in a manner consistent with the projections delivered by Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a chief financial officer (or other executive officer) of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections, (c) such projections have been prepared in accordance with such assumptions and (d) such projections have been approved in writing by the Board as the operating plan for the subsequent Fiscal Year.

6.1.9 Updated Schedules to Guarantee and Collateral Agreement.

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

6.1.10 Other Information.

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

(a) Subject to any applicable confidentiality restrictions binding on Borrower or its Affiliates, copies of any reports, statements or written materials (other than routine communications (electronic or otherwise) between Borrower or its Affiliates and such entities that are not material in nature) in relation to any Material Contract;

(b) such other information concerning the financial condition of the Borrower and any other Loan Party or its compliance with the terms of the Loan Documents as Agent may reasonably request;

(c) to the extent not prohibited by applicable law and subject to any applicable confidentiality restrictions binding on Borrower or its Affiliates, copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority (other than routine communications (electronic or otherwise) between Borrower or its Affiliates and such Governmental Authorities that are not material in nature); and

(d) copies of (x) any notices or other communications relating to any breach, default, or event of default with respect to any Subordinated Debt and (y) any other modifications or amendments entered into in relation to any Subordinated Debt; other than, in either case, as it relates to any such Subordinated Debt held by Agent or any Affiliate of Agent.

6.1.11 Reduction of Information.

Notwithstanding the forgoing, Agent may, upon written notice to Borrower, elect to stop receiving any or all of the information and/or reports described in this Section 6.1, and, upon receipt of such written notice, Borrower shall promptly discontinue delivering such designated information and/or reports without the need to amend this Agreement or any further action by Agent or Lenders.

6.2 Books; Records; Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause each other Loan Party to permit (at any reasonable time and with reasonable notice), Agent or any representative thereof to, no more often than once on an annual basis prior to the occurrence and during the continuation of an Event of Default, inspect the properties and operations of Borrower or any other Loan Party; and permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable prior written notice (or at any time without notice if an Event of Default exists), Agent (accompanied by any Lender) or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with any Lender or Agent or any representative thereof), and to examine (and photocopy extracts from) any of its books or other records related to the financial condition of the Loan Parties or their compliance with the provision of the Loan Documents; and permit, and cause each other Loan Party to permit, (at any reasonable time and with reasonable notice) Agent and its representatives to inspect the Collateral and other tangible assets of Borrower or Loan Party, to perform appraisals of the equipment of Borrower or Loan Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral.

6.3 Conduct of Business; Maintenance of Property; Insurance.

(a) Borrower shall, and shall cause each other Loan Party to, (i) conduct its business substantially in accordance with its current business practices, (ii) engage principally in the same or similar lines of business substantially as heretofore conducted and lines of business ancillary or related thereto or a reasonable extension thereof, (iii) collect the Royalties in the ordinary course of business, (iv) maintain all of its Collateral used or useful in its business in good repair, working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of the Loan Documents), (v) from time to time to make all necessary repairs, renewals and replacements to the Collateral; (vi) maintain and keep in full force and effect all material Permits and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction

in which the ownership or lease of property or the nature of its business makes such Permits or qualification necessary and in which failure to maintain such Permits or qualification could reasonably be expected to be, have or result in a Material Adverse Effect; (vii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (viii) maintain, comply with and keep in full force and effect all Intellectual Property and Permits necessary to conduct its business, except in each case where the failure to maintain, comply with or keep in full force and effect could not reasonably be expected to be, have or result in a Material Adverse Effect.

(b) Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is (i) customarily maintained by Persons operating in the same geographical region as Borrower that are (A) subject to CLIA and other applicable Health Care Laws, or (B) otherwise delivering to customers products or services similar to the Services (in each case, as determined by Agent in its reasonable discretion), and (ii) otherwise in form, substance, and amounts acceptable to Agent in its reasonable discretion; *provided* that in any event, such insurance shall, unless the Agent otherwise agrees, insure against all risks and liabilities of the type insured against as of the Closing Date and shall have insured amounts no less than, and deductibles no higher than, those amounts provided for as of the Closing Date. Upon request of Agent or any Lender, Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each other Loan Party. Borrower shall cause each issuer of an insurance policy to provide Agent with an endorsement (x) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of liability insurance promptly upon request by Agent, (y) providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice in the event of any non-payment of premiums) before the termination or cancellation of the policy prior to the expiration thereof and (z) reasonably acceptable in all other respects to Agent.

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

6.4 Compliance with Laws; Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation

or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations, (d) file, or cause to be filed, all federal and material state and foreign Tax returns and reports required by law to be filed by any Loan Party, and (e) pay, and cause each other Loan Party to pay, prior to delinquency, all federal and material state and foreign Taxes and other material governmental charges against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property; *provided* that the foregoing shall not require Borrower or any other Loan Party to pay any such tax, charge or claim so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP. For purposes of this Section 6.4, "Control" shall mean, when used with respect to any Person, (x) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (y) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

6.5 Maintenance of Existence.

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

6.6 Employee Benefit Plans.

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of \$100,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law and regulations.

6.7 Environmental Matters.

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

6.8 Further Assurances.

(a) Subject, in each case, to the limitations set forth in the Guaranty and Collateral Agreement, take, and cause each other Loan Party to take, such actions as are reasonably necessary or as Agent may reasonably request from time to time after the Tranche 1 Funding Date to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower and each Subsidiary of Borrower (as well as all equity interests of each Subsidiary of Borrower) and guaranteed by all of the Subsidiaries of Borrower (including, promptly (and in any event within thirty (30) days following the acquisition or creation thereof, any Subsidiary of Borrower acquired or created after the Tranche 1 Funding Date), in each case including (a) the execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession but excluding (i) the requirement for the Loan Parties to execute and deliver leasehold mortgages, and (ii) any other Excluded Collateral as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time.

(b) In the event that Agent and Borrower agree, in their mutual and reasonable discretion, that being a party to the Guarantee and Collateral Agreement, granting of Liens thereunder and the related transactions contemplated herein or therein in relation to any Subsidiary that is organized outside of the United States (each an "Immaterial Foreign Subsidiary") may cause such Immaterial Foreign Subsidiary or Borrower to suffer a material, negative tax consequence (or any other undue burden in light of the operations and/or assets of such Immaterial Foreign Subsidiary) to Borrower and/or one of its Subsidiaries, then Agent and Borrower shall work together in good faith, as may be necessary to limit the obligations hereunder and under any other Loan Documents. Except as otherwise agreed to by Agent in its commercially-reasonable discretion, no Immaterial Foreign Subsidiary shall own any material assets or engage in any material business operations. As of the Closing Date, Borrower does not have any Immaterial Foreign Subsidiaries.

6.9 Compliance with Health Care Laws.

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

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

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

(ii) Promptly furnish or cause to be furnished to the Agent, with respect to matters that would reasonably be expected to have a Material Adverse Effect, (w) copies of all material reports of investigational/inspectional observations issued to and received by the Loan Parties or any of their Subsidiaries, and issued by any Governmental Authority relating to such Person's business, (x) copies of all material establishment investigation/inspection reports (including, but not limited to, FDA Form 483's) issued to and received by Loan Parties or any of their Subsidiaries and issued by any Governmental Authority, (y) copies of all material warnings

and material untitled letters as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority relating to or arising out of the conduct applicable to the business of the Loan Parties or any of their Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law, directive or regulation of similar import and (z) notice of any material investigation or material audit or similar proceeding by the FDA, DEA, CMS, or any other Governmental Authority.

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

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

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

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

6.10 Cure of Violations.

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

6.11 Payment of Debt.

Except as otherwise prescribed in the Loan Documents, Borrower shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of payment practices) all of its material obligations and liabilities, except when the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied.

Section 7 Negative Covenants.

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

7.1 Debt.

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

(a) Obligations under this Agreement and the other Loan Documents;

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

(c) Debt owing to SWK Funding LLC in an aggregate principal amount not to exceed \$6,500,000.00;

(d) Debt incurred under the convertible notes issued to MAM Aardvark, LLC and Marathon Healthcare Finance Fund, L.P. on or prior to March 14, 2022 (collectively, the "Convertible Note") and any Subordinated Debt;

(e) Debt secured by Liens permitted by Section 7.2(b), Section 7.2(d) or Section 7.2(n) and extensions, renewals and re-financings thereof; *provided* that the aggregate amount of all such Debt permitted under Section 7.2(d) at any time outstanding shall not exceed \$100,000;

(f) Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;

(g) Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business, assets or Subsidiary of Borrower otherwise permitted hereunder, (ii) representing deferred compensation to employees of any Loan Party, or in respect of worker's compensation claims, payment obligations in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations, in each case incurred in the ordinary course of business, or (iii) representing trade payables incurred with suppliers in the ordinary course of business and customer deposits and advance payments received in the ordinary course of business from customers for goods purchased or services rendered in the ordinary course of business;

(h) Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, in each case incurred in the ordinary course of business;

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

(j) Debt or guarantees incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(k) guarantees by any Loan Party of any outstanding Debt of any other Loan Party that is permitted to be incurred under this Section 7.1;

(l) Debt in connection with corporate credit cards to the extent it is paid on or prior to the date which is 30 days after the invoice therefore;

(m) unsecured Debt (which for further clarity shall exclude accounts payable and other current liabilities incurred by Loan Parties in the ordinary course of business), in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding \$100,000;

(n) unsecured Debt among the Loan Parties; and

(o) extensions, refinancings, modifications, amendments and restatements of any Debt described in clauses (a) through (n) above, provided that the principal amount thereof is not increased.

7.2 Liens.

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

(a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement has occurred;

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

(c) Liens (i) existing on the Closing Date and set forth on Schedule 7.2 or (ii) Liens securing Debt permitted by Section 7.1(c) and (iii) the replacement, extension or renewal of a Lien permitted by one of the foregoing clauses (i) or (ii) in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof);;

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

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

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

(g) Liens arising under the Loan Documents;

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

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

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

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

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

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

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

(o) Liens securing the Convertible Note.

7.3 Dividends; Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests or other securities or ownership interests, other than dividends or distributions declared, paid or made to a Loan Party or in the form of Equity Interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or other securities or interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof; provided that notwithstanding the foregoing, (i) any Subsidiary may declare and pay dividends or make distributions to Borrower, (ii) the Borrower may purchase, redeem, retire or otherwise acquire its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Equity Interests, (iii) a Loan Party may repurchase or redeem any class of stock or other Equity Interest pursuant to employee, director or consultant repurchase plans or other similar agreements, provided the repurchase or redemption price does not exceed the original

consideration therefore, (iv) a Loan Party may repurchase any Equity Interest upon the exercise of stock options or warrants if such repurchased Equity Interests represent a portion of the exercise price of such options or warrants pursuant to a "cashless exercise" or similar feature, (v) the Borrower may make cash payments in lieu of issuance of fractional shares made (x) to redeem, purchase, repurchase, or retire its obligations under any warrants issued by it in accordance with the terms thereof and (y) upon the conversion of the Convertible Note; provided further that, notwithstanding anything to the contrary in any Loan Document, neither the issuance of nor the performance of obligations under the Convertible Note shall be prohibited by this Section 7.3 or any other provision of any Loan Document.

7.4 Mergers; Consolidations; Asset Sales.

(a) Not be a party to any amalgamation or any other form of Division, merger or consolidation, unless agreed to by Agent in its sole discretion, nor permit any other Loan Party to be a party to any Division, amalgamation or any other form of merger or consolidation, unless either (i) a Loan Party merges into another Loan Party or such Loan Party or Borrower is the surviving entity of such merger or consolidation or (ii) as agreed to by Agent in its reasonable discretion.

(b) Not, and not permit any other Loan Party to, sell, transfer, dispose of, convey, lease or license any of its real or personal property assets or Equity Interests, except for (i) sales of Inventory in the ordinary course of business for at least fair market value, (ii) transfers, destruction or other disposition of obsolete or worn-out assets in the ordinary course of business and (iii) any other sales and dispositions of assets (excluding (A) any Equity Interests of Borrower or any Subsidiary or (B) sales of Inventory described in clause (i) above) for at least fair market value (as determined by the Board) so long as the net book value of all assets sold or otherwise disposed of in any Fiscal Year does not exceed \$250,000 with respect to sales and dispositions made pursuant to this clause (iii), (iv) sales and dispositions to Loan Parties, (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) issuances of Equity Interests by any Loan Party to any other Loan Party, (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of the Loan Parties, (xi) a cancellation of any intercompany Debt among the Loan Parties, (xii) a disposition which constitutes an insured event or pursuant to a condemnation, expropriation, "eminent domain" or similar proceeding, (xiii) sales and dispositions among Loan Parties, and (xiv) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged. Notwithstanding anything set forth in any Loan Document to the contrary, Borrower shall not consummate any Disposition in relation to Acer-001 or the Product of Borrower commonly known as Osanetant without the prior written consent of Agent in its sole discretion.

(c) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with the licensing or sublicensing of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of a Loan Party's business, (ii) on an arms-length basis and (iii) prior to the occurrence of an Event of Default.

7.5 Modification of Organizational Documents.

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

7.6 Use of Proceeds.

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

7.7 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties and (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7.

7.8 Inconsistent Agreements.

Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by Borrower hereunder or by the performance by Borrower or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit Borrower or any other Loan Party from granting to Agent and Lenders a Lien on any of its assets or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any other Loan Party to (i) pay dividends or make other distributions to Borrower or any other Loan Party, or pay any Debt owed to Borrower or any other Loan Party, (ii) make loans or advances to Borrower or any other Loan Party or (iii) transfer any of its assets or properties to Borrower or any other Loan Party, other than, in the cases of clauses (b) and (c), (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt or the property leased or licensed, (B) customary provisions in leases and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, (D) those arising under any Loan Document or any loan documents governing any Subordinated Debt or the Debt permitted to be incurred pursuant to Section 7.1(c) and (E) customary provisions in contracts for the disposition of any assets; *provided* that the restrictions in any such contract shall apply only to the assets or Subsidiary that is to be disposed of and such disposition is permitted hereunder.

7.9 Business Activities.

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

7.10 Investments.

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

(a) Investments existing on the Closing Date and described in Schedule 7.10 and, after the Closing Date, the creation of any Wholly-Owned Subsidiary and contributions by Borrower to the capital of any Wholly-Owned Subsidiary of Borrower, so long as the recipient of any such contribution has guaranteed the Obligations and such guaranty is secured by a pledge of all of its equity interests and substantially all of its real and personal property, in each case in accordance with Section 6.8;

(b) Cash Equivalent Investments;

(c) bank deposits in the ordinary course of business;

(d) any purchase or other acquisition by Borrower or any Wholly-Owned Subsidiary of Borrower of the assets or equity interests of any Subsidiary of Borrower;

(e) transactions among Loan Parties permitted by Section 7.4;

(f) Investments that also constitute Debt, including Hedging Obligations, permitted under Section 7.1;

(g) prepaid expenses, negotiable instruments held for collection or workers compensation, lease, utility and other similar deposits made in the ordinary course of business and notes receivable of, or prepaid royalties, of customers and other trade credit extended in the ordinary course of business;

(h) Investments consisting of the non-cash portion of the consideration received in respect of dispositions permitted hereunder;

(i) Investments permitted by Borrower or any Loan Party as a result of the receipt of insurance and/or condemnation or expropriation proceeds in accordance with the Loan Documents;

(j) extension of trade credit in the ordinary course of business (including notes receivable or prepaid royalties) to customers and suppliers who are not Affiliates and Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof;

(k) Investments consisting of non-cash loans to employees, officers or directors relating to the purchase of capital stock of Borrower pursuant to employee stock purchase plans or other similar arrangements approved by Borrower's board of directors;

(l) Investments consisting of employee loans and travel advances in the ordinary course of business in accordance with past business practices of Loan Parties;

(m) Investments consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support to joint ventures and other strategic or collaborative arrangements; and

(n) other Investments that do not exceed Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in any fiscal year.

7.11 Restriction of Amendments to Certain Documents.

Not, nor permit any Loan Party to, amend or otherwise modify in any material manner, or waive any material rights under, any provisions of any of (i) any loan documents governing any Subordinated Debt or the Debt permitted to be incurred pursuant to Section 7.1(c) (except that the terms of any document governing any such Debt may be amended, modified or otherwise waived to the extent permitted under the applicable subordination agreement or intercreditor agreement that Agent is a party to in connection therewith), or (ii) any Material Contracts (or any replacements thereof) following the occurrence and continuance of an Event of Default; in either case without the written approval of Agent.

7.12 Fiscal Year.

Not change its Fiscal Year.

7.13 Minimum Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets, at any time following the Tranche 1 Funding Date, to be less than \$4,000,000.

7.14 Deposit Accounts.

Not, and not permit any other Loan Party, to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by the Loan Parties as of the Closing Date) without prior written notice to Agent. Upon the request of Agent following the Tranche 1 Funding Date, Borrower or such other applicable Loan Party, shall use commercially-reasonable efforts to promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, in relation to the Deposit Account(s) selected by Agent.

7.15 Subsidiaries.

Not, and not permit any other Loan Party to, in each case without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary unless (i) no Default or Event of Default has occurred and is continuing or would result therefrom, (ii) such Subsidiary shall have assumed and joined each Loan Document as a Loan Party as contemplated by Section 6.8 and (iii) all other Loan Parties shall have reaffirmed all Obligations as well as all representations and warranties under the Loan Documents (except to the extent such representations and warranties specifically relate to a prior date only).

7.16 Regulatory Matters.

To the extent that any of the following would reasonably be expected to result in a Material Adverse Effect, not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of CLIA or that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake action against such Loan Party, (ii) commence any clinical studies in the United States or sponsor the conduct of any clinical research in the United States, (iii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, (iv) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of the FD&C Act or that could otherwise reasonably be expected to provide the basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or (v) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17 Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names.

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

7.18 Truth of Statements.

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

Section 8 Events of Default; Remedies.

8.1 Events of Default.

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

8.1.1 Non-Payment of Credit.

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

8.1.2 Default Under Other Debt.

Any "Event of Default" (or such similar defined term) shall occur under the terms applicable to any Debt of any Loan Party (excluding the Obligations) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding \$250,000.

8.1.3 Bankruptcy; Insolvency.

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

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

8.1.4 Non-Compliance with Loan Documents.

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

8.1.5 Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6 Pension Plans.

(a) Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$250,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of \$250,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$250,000.

8.1.7 Judgments.

Final judgments which exceed an aggregate of \$250,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty (30) calendar days after entry or filing of such judgments.

8.1.8 Invalidity of Loan Documents or Liens.

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

8.1.9 Invalidity of Subordination Provisions .

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

8.1.10 Change of Control.

A Change of Control shall occur.

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

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

8.1.12 Material Adverse Effect.

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

8.2 Remedies.

(a) If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Agent may, and upon the written request of Required Lenders shall, declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Loans and other Obligations (including without limitation any amounts due pursuant to Section 2.8.2 hereof) shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Agent shall use commercially reasonable efforts to promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b) In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of any other Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to

reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Lenders, or Required Lenders at any place reasonably designated by Required Lenders in their sole discretion and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon.

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

(d) Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice, to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "**Protective Advance**"). Agent shall be reimbursed for all Protective Advances pursuant to Section 10.4, and any Protective Advances shall bear interest at the Default Rate from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1 Appointment; Authorization.

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

9.2 Delegation of Duties.

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

9.3 Limited Liability.

None of Agent or any of its Affiliates, directors, officers, employees or agents shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance.

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

9.5 Notice of Default.

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

9.6 Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

9.7 Indemnification.

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

9.8 Agent Individually.

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

9.9 Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders (other than a Defaulting Lender) a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of Default exists) Borrower, a successor agent. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent for the benefit of Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

9.10 Collateral and Guarantee Matters.

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

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

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

9.11 Intercreditor and Subordination Agreements.

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

9.12 Actions in Concert.

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

Section 10 Miscellaneous.

10.1 Waiver; Amendments.

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

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Required Lenders and Borrower, do any of the following: (A) increase any of the Commitments (*provided* that only the Lenders participating in any such increase of the Commitments shall be considered directly

affected by such increase), (B) extend the date scheduled for payment of any principal of (except as otherwise expressly set forth below in clause (C)), or interest on, the Loans or any fees or other amounts payable hereunder or under the other Loan Documents, or (C) reduce the principal amount of any Loan, the amount or rate of interest thereon, or any fees or other amounts payable hereunder or under the other Loan Documents; and

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

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

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

10.2 Notices.

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

10.3 Computations.

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

10.4 Costs; Expenses.

Borrower agrees to pay on demand the reasonable, out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution, syndication and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

10.5 Indemnification by Borrower.

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

10.6 Marshaling; Payments Set Aside.

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

10.7 Non-liability of Lenders.

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

10.8 Assignments.

10.8.1 Assignments.

(a) Any Lender may at any time assign to one or more Persons (other than a Loan Party and their respective Affiliates) (any such Person, an "**Assignee**") all or any portion of such Lender's Loans and Commitments, with (x) the prior written consent of Agent and (y) solely to the extent (i) any such Assignee is a Competitor or vulture hedge fund and (ii) no Event of Default has occurred and is continuing, the prior written consent of Borrower; provided, however, that no such consent(s) shall be required:

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

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

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

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

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

10.9 Participations.

Any Lender may at any time sell to one or more Persons participating interests in its Loans, Commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; provided that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower

also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements, and provided, further, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, and interest, principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

10.10 Confidentiality.

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

Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information, promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such disclosure provided, that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower. Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

10.11 Captions.

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

10.12 Nature of Remedies.

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

10.13 Counterparts; Electronic Signatures.

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

10.14 Severability.

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

10.15 Entire Agreement.

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

10.16 Successors; Assigns.

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

10.17 Governing Law.

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

10.18 Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.19 Waiver of Jury Trial.

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

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

10.20 Patriot Act.

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

10.21 Independent Nature of Relationship.

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

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

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

BORROWER:

ACER THERAPEUTICS INC.,
a Delaware corporation

By: /s/ Chris Schelling

Name: Chris Schelling

Title: Chief Executive Officer

GUARANTEE AND COLLATERAL AGREEMENT

dated as of [____], 2022

among

ACER THERAPEUTICS INC.,

and each other Person that becomes a party hereto as a grantor,
each as a Grantor,

and

MAM AARDVARK, LLC,
as Agent

GUARANTEE AND COLLATERAL AGREEMENT

GUARANTEE AND COLLATERAL AGREEMENT, dated as of [____], 2022 (as may be amended, restated, amended and restated, waived, supplemented, or otherwise modified from time to time, this “Agreement”), made by each signatory hereto (together with any other Person that becomes a party hereto as provided herein, each individually a “Grantor” and collectively, the “Grantors”), in favor of MAM AARDVARK, LLC, a Delaware limited liability company, as administrative and collateral agent (in such capacity, together with its successors and assigns, the “Agent”) for the benefit of all Lenders party to the Credit Agreement (as hereafter defined).

Lenders have severally agreed to extend credit to ACER THERAPEUTICS INC., a Delaware corporation (the “Borrower”), pursuant to the Credit Agreement (as defined herein). Borrower is affiliated with each other Grantor. Borrower and the other Grantors are engaged in interrelated businesses, and each Grantor will derive substantial direct and indirect benefit from extensions of credit under the Credit Agreement. It is a condition precedent to each Lender’s obligation to extend credit under the Credit Agreement that Grantors shall have executed and delivered this Agreement to Agent for the benefit of Agent and all Lenders.

In consideration of the premises and to induce Agent and Lenders to enter into the Credit Agreement and to induce Lenders to extend credit thereunder, each Grantor hereby agrees with Agent, for the benefit of Agent and all Lenders, as follows:

1. Definitions.

1.1. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and the following terms are used herein as defined in the Code (whether capitalized or lower case, plural or singular, as applicable): Accounts, Money, Certificated Security, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Farm Products, Goods, Health-Care-Insurance Receivables, Instruments, Inventory, Letter-of-Credit Rights, Software and Supporting Obligations.

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

“Agent” has the meaning set forth in the preamble hereto.

“Agreement” has the meaning set forth in the preamble hereto.

“Borrower Obligations” means all Obligations of Borrower under and as defined in the Credit Agreement.

“Code” means the Uniform Commercial Code as in effect from time to time 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, “Code” means the Uniform Commercial Code (hereinafter defined), as applicable if the context requires, as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“Collateral” has the meaning set forth in Section 3 hereof. Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor’s Collateral or the relevant part thereof.

“Copyright Licenses” means all written agreements naming any Grantor as licensor or licensee, including those listed on Schedule 4, granting any right under any Copyright, including the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright (other than agreements relating to widely-available software subject to “shrink-wrap” or “click-through” software licenses).

“Credit Agreement” means that certain Credit Agreement, dated as of March 4, 2022, among Borrower, the financial institutions from time to time party thereto (collectively, the “Lenders”) and Agent, as amended, supplemented, restated or otherwise modified from time to time.

“Excluded Property” means, with respect to a Grantor: (i) any item of General Intangibles or other property (including, without limitation, any Material Contract) that is now or hereafter held by such Grantor but only to the extent that such item of General Intangibles or property, including, for the avoidance of doubt, Intellectual Property (or any agreement evidencing such item of General Intangibles or property) contains a term or is subject to a rule of law, statute or regulation that restricts, prohibits, or requires a consent (that has not been obtained) of a Person (other than such Grantor) to, the creation, attachment or perfection of the security interest granted herein, and any such restriction, prohibition and/or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law (including, without limitation, pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Code); provided, however, that (x) Excluded Property shall not include any Proceeds of any item of General Intangibles or other property described in this definition, and (y) any item of General Intangibles or such other property described in this definition that at any time ceases to satisfy the criteria for Excluded Property (whether as a result of obtaining any necessary consent, any change in any rule of law, statute or regulation, or otherwise) shall no longer be Excluded Property; (ii) Trademark applications filed in the United States Patent and Trademark Office on the basis of such Grantor’s “intent to use” such Trademark, unless and until acceptable evidence of use of the Trademark has been filed with the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.); (iii) any asset subject to a Permitted Lien (other than Liens in favor of Agent) securing obligations permitted under the Credit Agreement to the extent that the grant of other Liens on such asset (A) would result in a breach or violation of, or constitute a default under, the agreement or instrument governing such Permitted Lien, (B) would result in the loss of use of such asset or (C) would permit the holder of such Permitted Lien to terminate such Grantor’s use of such asset; (iv) Exempt Accounts; (v) such voting Equity Interests in any Immaterial Foreign Subsidiary as agreed to by Agent in its reasonable discretion from time to time including pursuant to Section 6.8(b) of the Credit Agreement; and (vi) leasehold and fee interests in real property.

“Fixtures” means all of the following, whether now owned or hereafter acquired by a Grantor: plant fixtures; business fixtures; other fixtures and storage facilities, wherever located; and all additions and accessories thereto and replacements therefor.

“General Intangibles” means all “general intangibles” as such term is defined in Section 9-102(a)(42) of the Code and, in any event, including with respect to any Grantor, all contracts, agreements, instruments and indentures in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same from time to time may be amended, supplemented or otherwise modified, including, without limitation, (a) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (b) all rights of such Grantor to damages arising thereunder and (c) all rights of such Grantor to perform and to exercise all remedies thereunder.

“Guarantor Obligations” means, collectively, with respect to each Guarantor, all payment and performance obligations of such Guarantor hereunder or under any other Loan Document to which such Guarantor is party.

“Guarantors” means the collective reference to each Grantor other than Borrower.

“Identified Claims” means the Commercial Tort Claims described on Schedule 6 as such schedule may be supplemented from time to time.

“Intercompany Note” means any promissory note evidencing loans made by any Grantor to any other Grantor or its Affiliate.

“Investment Property” means the collective reference to (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the Code, (b) all “financial assets” as such term is defined in Section 8-102(a)(9) of the Code, and (c) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Equity, in each case, other than Excluded Property.

“Issuers” means the collective reference to each issuer of any Investment Property.

“Mask Works” means all of any Grantor’s (or if referring to another Person, such other Person’s) now existing or hereafter acquired right, title, and interest in and to mask works or similar rights available for the protection of semiconductor chips.

“Patent Licenses” means all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including any of the foregoing referred to in Schedule 4.

“Permitted Liens” has the meaning ascribed such term in the Credit Agreement.

“Pledged Equity” means the equity interests listed on Schedule 1, as amended from time to time, together with any other equity interests, certificates, options or rights of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, Grantor while this Agreement is in effect, in each case, other than Excluded Property.

“Pledged Notes” means all promissory notes listed on Schedule 1, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor (other than promissory notes issued in connection with extensions of trade credit by any Grantor in the ordinary course of business), in each case, other than Excluded Property.

“Proceeds” means all “proceeds” as such term is defined in Section 9-102(a)(64) of the Code and, in any event, shall include all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

“Receivable” means any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Accounts).

“Secured Obligations” means, collectively, all Borrower Obligations and Guarantor Obligations.

“Securities Act” means the Securities Act of 1933, as amended.

“Trademark Licenses” means, collectively, each agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including any of the foregoing referred to in Schedule 4.

2. Guarantee.

2.1. Guarantee.

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to Agent, for the benefit of Agent and Lenders and their respective successors, indorsees, transfers and assigns to the extent permitted by and in accordance with the Credit Agreement, the prompt and complete payment and performance by Borrower when due (whether at the stated maturity, by acceleration or otherwise) of Borrower Obligations.

(b) The guarantee contained in this Section 2 shall remain in full force and effect and shall serve as a continuing security, until all of the Secured Obligations have been Paid in Full.

(c) No payment made by Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by Agent or any Lender from Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations), remain liable for the Secured Obligations up to the maximum liability of such Guarantor hereunder until the Secured Obligations are Paid in Full.

2.2. Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to Agent and Lenders, and each Guarantor shall remain liable to Agent and Lenders for the full amount guaranteed by such Guarantor hereunder.

2.3. No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by Agent or any Lender, no Guarantor shall be entitled to be subrogated to any of the rights of Agent or any Lender against Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by Agent or any Lender for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all of the Secured Obligations are Paid in Full; provided, however, that each Guarantor agrees that such right of subrogation shall be automatically (without any further action) and irrevocably waived and released in its entirety if any Collateral is acquired by a Person as a result of the exercise of remedies under the Loan Documents, a court order or a plan of reorganization or similar dispositive plan. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Secured Obligations shall not have been Paid in Full (or when such right of subrogation shall have been waived), such amount shall be held by such Guarantor in trust for Agent and Lenders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be promptly turned over to Agent in the exact form received by such Guarantor (duly indorsed (but without any representation or warranty) by such Guarantor to Agent, if required), to be applied against the Secured Obligations, whether matured or unmatured, in a manner that is consistent with the provisions of Section 2.10.2 of the Credit Agreement.

2.4. Amendments, etc. with Respect to the Secured Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by Agent or any Lender may be rescinded by Agent or such Lender and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Agent or any Lender, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Agent (or the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time (provided that any such amendment, modification, supplement or termination complies with the relevant provisions of the Credit Agreement, this Agreement and/or such other Loan Document), and any collateral security, guarantee or right of offset at any time held by Agent or any Lender for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released to the extent permitted by the Credit Agreement, this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.5. Guarantee Absolute and Unconditional: Waivers.

(a) Each Guarantor agrees that this Agreement is a guarantee of payment and performance when due and not of collectability. The liability of Guarantors under this Agreement shall be absolute, irrevocable and unconditional irrespective of:

- (i) any lack of validity, regularity or enforceability of any Loan Document;
- (ii) any lack of validity, regularity or enforceability of this Agreement;
- (iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document;
- (iv) any exchange, release or non-perfection of any security interest in any Collateral, or any release or amendment or waiver of or consent to departure from any other guarantee, for all or any of the Secured Obligations;
- (v) any failure on the part of Agent or any other Person to exercise, or any delay in exercising, any right under any Loan Document; and
- (vi) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, any Guarantor or any other guarantor with respect to the Secured Obligations (including, without limitation, all defenses based on suretyship or impairment of collateral, and all defenses that Borrower may assert to the repayment of the Secured Obligations, including, without limitation, failure of consideration, breach of warranty, payment, statute of frauds, bankruptcy, lack of legal capacity, lender liability, accord and satisfaction, and usury), this Agreement and the obligations of Guarantors under this Agreement, other than Payment in Full of the Guarantor Obligations.

(b) Each Guarantor hereby agrees that if Borrower or any other guarantor of all or a portion of the Secured Obligations is the subject of a bankruptcy or insolvency case under applicable law, it will not assert the pendency of such case or any order entered therein as a defense to the timely payment of the Secured Obligations. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by Agent or any Lender upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2, and all dealings between Borrower and any of the Guarantors, on the one hand, and Agent and Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives (i) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon Borrower or any of the Guarantors with respect to the Secured Obligations; (ii) notice of the existence or creation or renewal or non-payment of all or any of the Secured Obligations; (iii) all diligence in collection or protection of or realization upon any Secured Obligations or any security for or guarantee of any Secured Obligations; (iv) any right to require Agent or any Lender, as a condition of payment or performance by Guarantor, to (A) proceed against Borrower, any other guarantor of the Guarantor Obligations or any other Person, (B) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (C) proceed against or have resort to any balance of any deposit account or credit on the books of Agent or any Lender in favor of Borrower or any other Person or (D) pursue any other remedy in the power of Agent or any Lender whatsoever; (v) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guarantor Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than payment in full of the Guarantor Obligations; (vi) any defense based upon Agent or any Lender's errors or omissions in the administration of the Guarantor Obligations, except errors and omissions resulting from Agent or any Lender's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a non-appealable order and (vii) (A) any legal or equitable discharge of Guarantor's obligations hereunder and (B) any rights to set-offs, recoupments and counterclaims.

(c) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Agent or any Lender against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings. Each Guarantor agrees that it is not a surety for purposes of any state statutes providing defenses for sureties, and each Guarantor waives any right that it may have under such statutes to assert the applicability thereof to the provisions of this Agreement to require that Agent commence action against Borrower or any other Person or against any of the Collateral.

(d) Agent or any Lender may, from time to time, at its sole discretion and without notice to any Guarantor, take any or all of the following actions: (i) retain or obtain a security interest in any property to secure any of the Secured Obligations or any obligation hereunder, (ii) retain or obtain the primary or secondary obligation of any obligor or obligors with respect to any of the Secured Obligations,

(iii) extend or renew any of the Secured Obligations for one or more periods (whether or not longer than the original period), alter or exchange any of the Secured Obligations, or release or compromise any obligation of any Guarantor or any obligation of any nature of any other obligor with respect to any of the Secured Obligations, (iv) release any guarantee or right of offset or its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Secured Obligations or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property, and (v) resort to any Guarantor for payment of any of the Secured Obligations when due, whether or not Agent or such Lender shall have resorted to any property securing any of the Secured Obligations or any obligation hereunder or shall have proceeded against any other Guarantor or any other obligor primarily or secondarily obligated with respect to any of the Secured Obligations.

2.6. Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to Agent without set-off or counterclaim in Dollars at the office of Agent specified in the Credit Agreement.

2.7. Joint and Several Liability of Guarantors

(a) Each Guarantor is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under the Credit Agreement, for the mutual benefit, directly and indirectly, of each Guarantor and in consideration of the undertakings of the other Guarantors to accept joint and several liability for the Obligations.

(b) Each Guarantor, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Guarantors, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 2.7), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Guarantor without preferences or distinction among them.

(c) If and to the extent that any Guarantor shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Guarantors will make such payment with respect to, or perform, such Obligation until such time as all of the Obligations are Paid in Full.

(d) The Obligations of each Guarantor under the provisions of this Section 2.7 constitute the absolute and unconditional, full recourse Obligations of each Guarantor enforceable against each Guarantor to the full extent of its property and assets charged hereunder, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(e) Except as otherwise expressly provided in this Agreement, each Guarantor hereby waives, to the fullest extent permitted by applicable law, notice of acceptance of its joint and several liability, notice of any borrowing or any disbursement from any escrow account, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement or any other Loan Document, notice of any action at any time taken or omitted by the Agent of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the fullest extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement

(except as otherwise provided in this Agreement). Each Guarantor hereby assents to, and waives, to the extent permitted by law, notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Agent or the Lenders at any time or times in respect of any default by any Guarantor or any other Loan Party in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by the Agent or the Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Guarantor or any other Loan Party. Without limiting the generality of the foregoing, each Guarantor assents to any other action or delay in acting or failure to act on the part of the Agent or any Lender with respect to the failure by any Guarantor or any other Loan Party to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.7 afford grounds for terminating, discharging or relieving any Guarantor, in whole or in part, from any of its Obligations under this Section 2.7, it being the intention of each Guarantor that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Guarantor under this Section 2.7 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Guarantor under this Section 2.7 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to Loan Party or the Agent or any Lender.

(f) Each Guarantor is obligated to repay the Obligations as a joint and several obligor under this Agreement and the other Loan Documents. To the extent that any Guarantor shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Grantor hereunder or other Obligations incurred directly and primarily by any other Guarantor (an "Accommodation Payment"), then the Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount, for each of such other Guarantors, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors. As of any date of determination, the "Allocable Amount" of each Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder without (i) rendering such Guarantor "insolvent" within the meaning of Section 101(31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act or Section 2 of the Uniform Fraudulent Conveyance Act, (ii) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the Uniform Fraudulent Transfer Act or Section 5 of the Uniform Fraudulent Conveyance Act, or (iii) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the Uniform Fraudulent Transfer Act or Section 5 of the Uniform Fraudulent Conveyance Act. All rights and claims of contribution, indemnification, and reimbursement under this Section 2.7(f) shall be subordinate in right of payment to the prior indefeasible Payment in Full of the Obligations. The provisions of this Section 2.7(f) shall, to the extent inconsistent with any provision in any Loan Document, supersede such inconsistent provision.

(g) Each Guarantor represents and warrants to the Agent and the Lenders that as of the date hereof such Guarantor is currently informed of the financial condition of each Loan Party and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Guarantor further represents and warrants to the Agent and the Lenders that such Guarantor has read and understands the terms and conditions of the Loan Documents. Each Guarantor hereby covenants that such Guarantor will continue to keep informed of Guarantors' financial condition, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(h) The provisions of this Section 2.7 are made for the benefit of the Agent, the Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Guarantors as often as occasion therefor may arise and without requirement on the part of the Agent, such Lender, successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against any Guarantor or to exhaust any remedies available to it or them against any Guarantor or any other Loan Party or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.7 shall remain in effect until all of the Obligations shall have been Paid in Full. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Guarantor, or otherwise, the provisions of this Section 2.7 will forthwith be reinstated in effect, as though such payment had not been made.

(i) Each Guarantor hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Guarantor with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agent or the Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been Paid in Full. Any claim which any Guarantor may have against any other Guarantor with respect to any payments to the Agent or any Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the Obligations having been Paid in Full and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Guarantor, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be Paid in Full before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Guarantor therefor.

(j) Each Guarantor hereby agrees that, after the occurrence and during the continuance of any Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Guarantor to any other Guarantor is hereby subordinated to the Obligations having been Paid in Full. Each Guarantor hereby agrees that after the occurrence and during the continuance of any Event of Default and notice by Agent, such Guarantor will not demand, sue for or otherwise attempt to collect any indebtedness of any other Guarantor owing to such Guarantor until the Obligations shall have been Paid in Full. If, notwithstanding the foregoing sentence, such Guarantor shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Guarantor in trust for the Agent and Lenders, and such Guarantor shall deliver any such amounts to the Agent for application to the Obligations in accordance with Section 2.10.2 of the Credit Agreement.

3. Grant of Security Interest.

(a) Each Grantor hereby assigns and transfers to Agent, and hereby grants to Agent, for the benefit of Agent and Lenders, a security interest in all of the following (if applicable):

(i) all of Grantor's right, title and interest in and to all of such Grantor's personal property assets, including any and all Accounts, Chattel Paper (including Electronic Chattel Paper), Deposit Accounts, Documents, Equipment, Farm Products, Fixtures, General Intangibles, Goods, Health-Care-Insurance Receivables, Instruments, Intellectual Property, Inventory, Investment Property, Letter-of-Credit Rights, Software, Money, Supporting Obligations, and Identified Claims, in each case whether now owned or at any time hereafter acquired or arising,

- (ii) all books and records pertaining to any of the foregoing,
- (iii) all Proceeds and products of any of the foregoing, and
- (iv) all collateral security and guarantees given by any Person with respect to any of the foregoing,

(all of the foregoing, collectively, the “Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations; provided, that the Collateral shall not include the Excluded Property.

(b) Each Grantor has full right and power to grant to Agent, for the benefit of Agent and Lenders, a perfected, first-priority security interest (subject to Permitted Liens) and Lien on the Collateral pursuant to this Agreement, subject to no Liens of any kind in favor of any other Person (subject to any Permitted Liens). No Grantor is party to any agreement, document or instruction that conflicts with this Section 3.

(c) Subject to Section 6.8 of the Credit Agreement, each Grantor hereby authorizes Agent to prepare and file financing statements provided for by the Code, or any similar law in any other jurisdiction, and to take such other action as may be required, in Agent’s sole discretion, to perfect and to continue the perfection of Agent’s security interest in the Collateral.

(d) Irrespective of any provision in this Agreement, the prior consent of Agent shall not be required in connection with the licensing or sublicensing of Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties (“Permitted Licenses”) permitted by the Credit Agreement. Notwithstanding anything herein to the contrary, the Collateral grant provided in this Section 3 shall not be construed as an assignment of any Intellectual Property.

4. Representations and Warranties.

To induce Agent and Lenders to enter into the Credit Agreement and to induce Lenders to make their respective extensions of credit to Borrower thereunder, each Grantor jointly and severally hereby represents and warrants to Agent and each Lender that:

4.1. Title; No Other Liens. Except for Permitted Liens, the Grantors own each item of the Collateral, tangible and intangible, of any nature whatsoever that they purport to own free and clear of any and all Liens. As of the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor), no financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except filings evidencing Permitted Liens and filings which could not reasonably be expected to result in a Material Adverse Effect.

4.2. Perfected First Priority Liens. Each Grantor has full right and power to grant to Agent the security interests contemplated herein, and the security interests granted pursuant to this Agreement are prior and senior to all other Liens on the Collateral in existence on the date hereof except for Permitted Liens expressly permitted by the Credit Agreement.

4.3. Grantor Information. Schedule 2 sets forth, as of the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor), (a) each Grantor's jurisdiction of organization, (b) the location of each Grantor's chief executive office, (c) each Grantor's exact legal name as it appears on its organizational documents, (d) each Grantor's federal business or tax identification number, and (e) each Grantor's organizational identification number.

4.4. Collateral Locations. Schedule 3 sets forth, as of the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor), (a) all locations where Inventory and the Equipment with a fair market value greater than \$200,000 at any single location, owned by each Grantor is kept, and (b) whether each such Collateral location is owned or leased (and if leased, specifies the complete name and notice address of each lessor as set forth in the relevant lease). No Collateral with a fair market value greater than \$200,000 is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as indicated on Schedule 3.

4.5. Certain Property. Except as set forth on Schedule 8, none of the Collateral as of the Tranche 1 Funding Date constitutes (a) Farm Products, (b) Health-Care-Insurance Receivables or (c) vessels, aircraft or any other property subject to any certificate of title or other registration statute of the United States, any state or other jurisdiction, except for personal vehicles owned by the Grantors and used by employees of the Grantors in the ordinary course of business.

4.6. Investment Property.

(a) Except as otherwise agreed to by Agent in its reasonable discretion, the shares of Pledged Equity pledged by each Grantor hereunder constitute all the issued and outstanding equity interests of each Issuer owned by such Grantor. Each Grantor hereby agrees that it shall take no action to classify any Pledged Equity issued by a limited liability company, general partnership or limited partnership as certificated securities under the terms of Article 8 of the Code.

(b) All of the Pledged Equity issued by a Subsidiary of each Grantor has been duly and validly issued and is fully paid and nonassessable.

(c) Each of the Pledged Notes (if any) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing).

(d) Schedule 1 lists all Investment Property owned by each Grantor as of the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor). Each Grantor is the record and beneficial owner of the Investment Property pledged by it hereunder that it purports to own, free of any and all Liens or options in favor of, or claims of, any other Person, except the security interest created by this Agreement and for Permitted Liens.

4.7. Receivables.

(a) No amount payable to such Grantor under or in connection with any Receivable with a fair market value greater than \$200,000 is evidenced by any Instrument or Chattel Paper which has not been delivered to Agent.

(b) The amounts represented by such Grantor to Lenders from time to time as owing to such Grantor in respect of the Receivables (to the extent such representations are required by any of the Loan Documents) will at all such times be accurate in all material respects, subject to the inability to collect Receivables in the ordinary course of business.

4.8. Intellectual Property.

(a) Schedule 4 lists all Registered Intellectual Property and, other than agreements relating to widely-available software subject to “shrink-wrap” or “click-through” software licenses, all material Copyright Licenses, Patent Licenses, and Trademark Licenses owned or leased by each Grantor in its own name (or a former name) on the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor).

(b) On the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor), all Intellectual Property pledged as Collateral is valid, subsisting, unexpired and enforceable, has not been abandoned and, to Grantor’s knowledge, does not infringe on the intellectual property rights of any other Person, in each case, except as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

(c) Except as set forth in Schedule 4, as of the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor), none of the Intellectual Property pledged as Collateral is the subject of any licensing or franchise agreement pursuant to which any Grantor is the licensor or franchisor.

(d) Except as set forth in Schedule 4, no holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or any Grantor’s rights in, any Intellectual Property pledged as Collateral, except as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

(e) Except as set forth in Schedule 4, no action or proceeding is pending, or, to the knowledge of any Grantor, is threatened in writing, as of the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor) (i) seeking to limit, cancel or question the validity of any Intellectual Property pledged as Collateral or any Grantor’s interest therein, or (ii) which, if adversely determined, would materially and adversely affect the value of any Intellectual Property pledged as Collateral, in each case, except as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

(f) Each Grantor owns and possesses or has a license or other right to use all Intellectual Property pledged as Collateral as is necessary for the conduct of the businesses of such Grantor as currently conducted, without any infringement, to such Grantor’s knowledge, upon rights of others, except such infringement as could not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect.

4.9. Deposit Accounts and Other Accounts. All Deposit Accounts and all other bank accounts, securities accounts and other accounts maintained by each Grantor as of the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor), are described on Schedule 5 hereto, which description includes for each such account the name of such Grantor maintaining such account, the name and address of the financial institution at which such account is maintained, and the account number of such account.

4.10. Excluded Property. Except as set forth in Schedule 7, each Grantor represents, warrants and covenants that it does not, as of the Tranche 1 Funding Date (or the date such Grantor joins this Agreement as it relates to such Grantor), own any Excluded Property, which by itself is, and/or when aggregated, are material to the business of Borrower and its Subsidiaries, taken as a whole.

5. Covenants.

Each Grantor covenants and agrees with Agent and Lenders that, from and after the date of this Agreement until the Secured Obligations shall have been Paid in Full:

5.1. Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument (other than, for greater certainty, a license agreement), Certificated Security or tangible Chattel Paper, in each case with a fair market value greater than \$200,000 individually or \$500,000 in the aggregate, Grantor shall notify Agent, and upon request by Agent, such Instrument, Certificated Security or tangible Chattel Paper shall be promptly delivered to Agent, duly indorsed in a manner reasonably satisfactory to Agent, to be held as Collateral pursuant to this Agreement. In the event that a Default or an Event of Default shall have occurred and be continuing, upon the request of Agent, any Instrument, Certificated Security or Chattel Paper not theretofore delivered to Agent and at such time being held by any Grantor shall be immediately delivered to Agent, duly indorsed in a manner satisfactory to Agent, to be held as Collateral pursuant to this Agreement and in the case of Electronic Chattel Paper, the applicable Grantor shall cause Agent to have control thereof within the meaning set forth in Section 9-105 of the Code.

5.2. Maintenance of Perfected Security Interest; Further Documentation.

(a) Subject to Section 6.8 of the Credit Agreement and except as expressly permitted by this Agreement, the Credit Agreement, or the other Loan Documents, such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall use commercially reasonable efforts to defend such security interest against the claims and demands of all Persons whomsoever.

(b) Upon the reasonable written request of Agent, such Grantor will furnish to Agent and Lenders from time to time reasonably detailed statements and schedules further identifying and describing the assets and property of such Grantor.

(c) Subject to Section 6.8 of the Credit Agreement, at any time and from time to time, upon the reasonable written request of Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any financing or continuation statements under the Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby, and (ii) in the case of Investment Property, Deposit Accounts, Electronic Chattel Paper and Letter of Credit Rights and any other relevant Collateral, taking any actions necessary to enable Agent to obtain "control" (within the meaning of Code) with respect thereto, in each case pursuant to documents in form and substance reasonably satisfactory to Agent, provided that so long as no Event of Default has occurred and is continuing, no Grantor shall be required to cause the Agent to have control over such Investment Property, Electronic Chattel Paper, Letter of Credit Rights or other relevant Collateral (other than any Deposit Account) having a value less than \$200,000 individually or \$500,000 in the aggregate.

(d) Such Grantor authorizes Agent to, at any time and from time to time, at such Grantor's expense, file financing statements, continuation statements, and amendments thereto that describe the Collateral (including describing the Collateral as "all assets" of each Grantor, or words of similar effect), and which contain any other information required pursuant to the Code for the sufficiency of the applicable filing office acceptance of any financing statement, continuation statement, or amendment, and each Grantor agrees to furnish any such information to Agent promptly upon request. While an Event of Default is continuing, any such financing statement, continuation statement, or amendment may be signed (to the extent signature of a Grantor is required under applicable law) by Agent on behalf of any Grantor and may be filed in any applicable jurisdiction.

(e) Subject to Section 6.8 of the Credit Agreement, such Grantor shall, at any time and from time to time, upon reasonable request of Agent use commercially reasonable efforts (i) to obtain an acknowledgement, in form and substance reasonably satisfactory to Agent, of any bailee having possession of any of the Collateral (provided that such Grantor shall not be required to obtain any such acknowledgement as it relates to Collateral having a value less than \$200,000 individually or \$500,000 in the aggregate unless otherwise required by Agent in writing at any time following the occurrence and continuance of an Event of Default), stating that the bailee holds such Collateral for Agent, and (ii) otherwise to ensure the continued perfection and priority of Agent's security interest in any of the Collateral and of the preservation of its rights therein to the extent required by this Agreement and the Credit Agreement.

5.3. Changes in Locations, Name, etc. Except as permitted by the Credit Agreement, each Grantor shall not, except upon 5 days' prior written notice to Agent and delivery to Agent of (a) all additional financing statements and other documents reasonably requested by Agent as to the validity, perfection and priority of the security interests provided for herein and (b) if applicable and requested by Agent, a written supplement to Schedule 3 showing any additional location at which Inventory or Equipment having a fair market value greater than \$200,000 at any single location shall be kept:

(i) permit any of the Inventory or Equipment to be kept at a location other than those listed on Schedule 3; provided, that up to \$200,000 in fair market value of any such Inventory and Equipment may be kept at any other single location with an aggregate limit of up to \$500,000 in fair market value of any such Inventory and Equipment at all such other locations;

(ii) change the location of its chief executive office from that specified on Schedule 2 or in any subsequent notice delivered pursuant to this Section 5.3; or

(iii) change its name, identity, corporate structure (including without limitation, the merger into or with any other Person) or its jurisdiction of organization in a manner which might make any financing statement filed hereunder incorrect or misleading.

5.4. Investment Property.

(a) If such Grantor shall become entitled to receive or shall receive any certificate, option or rights in respect of the equity interests of any Issuer which constitutes Collateral, whether in addition to, in substitution of, as a conversion of, or in exchange for, any of the Pledged Equity, or otherwise in respect thereof, such Grantor shall accept the same as the agent of Agent and Lenders, hold the same in trust for the benefit of the Agent and Lenders, notify Agent in writing of such receipt or entitlement, and, if requested by Agent, deliver the same forthwith to Agent in the exact form received, duly indorsed (but without any representation or warranty) by such Grantor to Agent, if required, together with an undated instrument of transfer covering such certificate duly executed in blank by such Grantor and with, if Agent so reasonably

requests, signature guaranteed, to be held by Agent, subject to the terms hereof, as additional Collateral for the Secured Obligations. Upon the occurrence and during the continuance of an Event of Default and after Borrower's receipt of notice from the Agent, (i) any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to Agent to be held, at Agent's option, either by it hereunder as additional Collateral for the Secured Obligations or applied to the Secured Obligations as provided in Section 6.5, and (ii) in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected Lien in favor of Agent, be delivered to Agent to be held, at Agent's option, either by it hereunder as additional Collateral for the Secured Obligations or applied to the Secured Obligations as provided in Section 6.5. Upon the occurrence and during the continuance of an Event of Default, if any sums of money or property so paid or distributed in respect of the Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to Agent, hold such money or property in trust for Agent and Lenders, segregated from other funds of such Grantor, as additional Collateral for the Secured Obligations.

(b) Without the prior written consent of Agent, such Grantor will not, so long as an Event of Default has occurred and is continuing and to the extent permitted by the Credit Agreement, (i) vote to enable, or take any other action to permit, any Issuer of Investment Property to issue any equity interests of any nature or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any equity interests of any nature of any Issuer, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Credit Agreement), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for Permitted Liens, or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof, except, with respect to such Investment Property, shareholders' agreements entered into by such Grantor with respect to Persons in which such Grantor maintains an ownership interest of 50% or less.

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify Agent promptly in writing of the occurrence of any of the events described in Section 5.4(a) with respect to the Investment Property issued by it and (iii) the terms of Section 6.3(c) shall apply to such Grantor with respect to all actions that may be required of it pursuant to Section 6.3(c) regarding the Investment Property issued by it.

5.5. Receivables.

(a) Other than in the ordinary course of business or in such Grantor's reasonable business judgment, without the prior written consent of Agent, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could materially adversely affect the value thereof, to the extent that any action in clauses (i)—(iv) above could reasonably be expected to have a Material Adverse Effect.

(b) Such Grantor will deliver to Agent a copy of each material demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than \$200,000 of the aggregate amount of the then outstanding Receivables for all Grantors.

5.6. Intellectual Property.

(a) Except as permitted pursuant to the Credit Agreement, such Grantor will not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark pledged as Collateral may become invalidated or impaired in any way, to the extent that any such action could reasonably be expected to have a Material Adverse Effect.

(b) Except as permitted pursuant to the Credit Agreement, such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any Patent pledged as Collateral may become forfeited, abandoned or dedicated to the public, to the extent such act or omission could reasonably be expected to have a Material Adverse Effect.

(c) Except as permitted pursuant to the Credit Agreement, such Grantor will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of such Copyrights pledged as Collateral may become invalidated or otherwise impaired and which could reasonably be expected to have a Material Adverse Effect. Such Grantor will not (either itself or through licensees) do any act whereby any material portion of such Copyrights may fall into the public domain and which could reasonably be expected to have a Material Adverse Effect.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any Intellectual Property to infringe the intellectual property rights of any other Person except as could not reasonably be expected to have a Material Adverse Effect.

(e) Such Grantor will notify Agent and Lenders promptly if it knows, or has reason to know, that any application or registration relating to any Intellectual Property pledged as Collateral may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office, or any court or tribunal in any country) regarding, such Grantor's ownership of, or the validity of, any such Intellectual Property or such Grantor's right to register the same or to own and maintain the same, except to the extent that such forfeiture, abandonment or dedication, or adverse determination or development would not reasonably be expected to have a Material Adverse Effect.

(f) Whenever any Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to Agent concurrently with the next delivery of financial statements of Borrower and its Subsidiaries pursuant to Section 6.1.1 of the Credit Agreement. Upon the request of Agent and subject to Section 6.8 of the Credit Agreement, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as Agent may reasonably request to evidence Agent's and Lenders' security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Except to the extent permitted pursuant to the Credit Agreement, such Grantor will take all reasonable and necessary steps to maintain and pursue each application referred to in Section 5.6(f), (and to obtain the relevant registration), except to the extent the failure to maintain and pursue such application would not reasonably be expected to have a Material Adverse Effect, and to maintain each registration of all Intellectual Property owned by it, except to the extent that the failure to maintain registration of all Intellectual Property owned by it would not reasonably be expected to have a Material Adverse Effect.

(h) In the event that any Intellectual Property pledged as Collateral is infringed upon or misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, to the extent, in its reasonable judgment, such Grantor determines it appropriate under the circumstances, sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution and such Grantor shall promptly notify the Agent thereof.

5.7. Deposit Accounts and Other Accounts. Each Grantor hereby authorizes the financial institutions at which such Grantor maintains a Deposit Account, other bank account, securities account or other account (other than Exempt Accounts) to provide Agent with such information with respect to such account as Agent may from time to time reasonably request, and each Grantor hereby consents to such information being provided to Agent. Such Grantor will use commercially reasonable efforts to promptly cause each financial institution at which such Grantor maintains a Deposit Account or other account to enter into a control agreement or other similar agreement with Agent and such Grantor, in form and substance reasonably satisfactory to Agent, in order to give Agent "control" (within the meaning set forth in Section 9-104 of the Code) of such account, except for Exempt Accounts.

5.8. Other Matters. Grantor shall use commercially reasonable efforts to deliver to Agent, at Agent's request, a Collateral Access Agreement with respect to (a) each bailee with which such Grantor keeps Collateral as of the Tranche 1 Funding Date having a fair market value in excess of \$200,000 and (b) each landlord which leases real property (and the accompanying facilities) to such Grantor as of the Tranche 1 Funding Date at which it maintains its chief executive office or a substantial amount of its books or records. If such Grantor shall (x) cause to be delivered Inventory or other property constituting Collateral having a fair market value in excess of \$200,000 to any bailee after the Tranche 1 Funding Date, such Grantor shall use commercially reasonable efforts to deliver, on or prior to such delivery, a signed Collateral Access Agreement from such bailee or (y) enter into any lease for real property after the Tranche 1 Funding Date at which it maintains its chief executive office or a substantial amount of its books and records, such Grantor use commercially reasonable efforts to deliver, prior to the first day of the term of such lease, a signed Collateral Access Agreement from such landlord.

5.9. Commercial Tort Claims. If any Grantor shall at any time acquire any Commercial Tort Claim with a value greater than \$200,000, such Grantor shall promptly notify Agent thereof in writing, therein providing a reasonable description and summary thereof, and upon delivery thereof to Agent, such Grantor shall be deemed to thereby grant to Agent (and such Grantor hereby grants to Agent), for the benefit of Agent and Lenders, a security interest in such Commercial Tort Claim and all proceeds thereof, and subject to Section 6.8 of the Credit Agreement, such Grantor shall execute such documentation as Agent shall reasonably require in order to document and effectuate such grant of a security interest.

6. Remedial Provisions.

6.1. Certain Matters Relating to Receivables.

(a) After the occurrence and during the continuance of an Event of Default, Agent shall have the right to make test verifications of the Receivables pledged as Collateral in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information Agent may reasonably require in connection with such test verifications. After the occurrence and during the continuance of an Event of Default, upon Agent's reasonable request and at the expense of the relevant Grantor, such Grantor shall cause independent public accountants or others reasonably satisfactory to Agent to furnish to Agent reports showing reconciliations, agings and test verifications of, and trial balances for, such Receivables.

(b) If required by Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables pledged as Collateral, when collected or received by or on behalf of any Grantor, (i) shall be forthwith (and, in any event, within 2 Business Days) deposited by such Grantor in the exact form received, duly indorsed (but without any representation or warranty) by such Grantor to Agent if required, in a collateral account maintained under the sole dominion and control of Agent, for application to the Secured Obligations in accordance with Section 6.5, and (ii) until so turned over, shall be held by such Grantor in trust for Agent and Lenders, segregated from other funds of such Grantor. In connection with each such deposit of Proceeds of such Receivables such Grantor shall deliver to Agent a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) After the occurrence and during the continuance of an Event of Default, at Agent's request, each Grantor shall deliver to Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to such Receivables, including all original orders, invoices and shipping receipts.

6.2. Communications with Obligors; Grantors Remain Liable.

(a) Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables pledged as Collateral to verify with them to Agent's reasonable satisfaction the existence, amount and terms of such Receivables.

(b) Upon the request of Agent at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on such Receivables that such Receivables have been assigned to Agent for the benefit of Agent and Lenders and that payments in respect thereof shall be made directly to Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable in respect of each of the Receivables to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither Agent nor any Lender shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by Agent or any Lender of any payment relating thereto, nor shall Agent or any Lender be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(d) Solely for the purpose of enabling Agent to exercise rights and remedies under this Agreement and while an Event of Default is continuing, each Grantor hereby grants to Agent, for the benefit of Agent and Lenders, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, license or sublicense any Intellectual Property that constitutes part of the Collateral now owned or hereafter acquired by such Grantor, to the extent such Intellectual Property may be so licensed or sublicensed, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

6.3. Investment Property.

(a) Unless an Event of Default shall have occurred and be continuing and Agent shall have given notice to the relevant Grantor of Agent's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends and distributions, payments and Proceeds paid in respect of the Pledged Equity, the Pledged Notes and all other Investment Property that constitutes Collateral, to the extent permitted in the Credit Agreement, and to exercise all voting and other rights and any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Equity, Pledged Notes and Investment Property (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by such Grantor of any right, privilege or option pertaining to such Pledged Equity, Pledged Notes or Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Pledged Equity, Pledged Notes and Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as such Grantor may determine); provided, that no vote shall be cast or other right exercised or action taken which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing, upon notice to the relevant Grantor, Agent shall have the right to (i) receive any and all cash dividends and distributions, payments or other Proceeds paid in respect of the Pledged Equity, the Pledged Notes and all other Investment Property pledged as Collateral and make application thereof to the Secured Obligations in accordance with Section 6.5, (ii) register any or all of such Investment Property in the name of Agent or its nominee, (iii) exercise, or permit its nominee to exercise, all voting and other rights pertaining to such Investment Property, and (iv) exercise, or permit its nominee to exercise, any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as Agent may determine), all without liability except to account for property actually received by it, but Agent shall have no duty to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement and the Credit Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends, distributions or other payments with respect to the Investment Property directly to Agent.

6.4. Proceeds to be Turned Over To Agent. In addition to the rights of Agent specified in Section 6.1 with respect to payments of Receivables pledged as Collateral, if an Event of Default shall occur and be continuing, all such Proceeds of Collateral received by or on behalf of any Grantor consisting of cash, checks and other cash equivalent items shall be held by such Grantor in trust for Agent and Lenders, and shall, at the written request of Agent, be segregated from other funds of such Grantor and forthwith upon receipt by such Grantor, be turned over to Agent in the exact form received by such Grantor (duly indorsed (but without any representation or warranty) by such Grantor to Agent, if required). All Proceeds received by Agent hereunder shall be applied to the Secured Obligations as provided in Section 6.5.

6.5. Application of Proceeds. If an Event of Default shall have occurred and be continuing, Agent shall apply all or any part of Proceeds of Collateral held in any collateral account established pursuant hereto or otherwise received by Agent to the payment of the Secured Obligations in the manner set forth in Section 2.9.2 of the Credit Agreement.

6.6. Code and Other Remedies. If an Event of Default shall occur and be continuing, Agent, on behalf of Agent and Lenders, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the Code, or any other applicable foreign or domestic law. Without limiting the generality of the foregoing, if an Event of Default shall occur or be continuing, Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of Agent or any Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery with assumption of any credit risk. Agent may disclaim any warranties that might arise in connection with any such lease, assignment, grant of option or other disposition of Collateral and have no obligation to provide any warranties at such time. Agent or any Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Such sales may be adjourned and continued from time to time with or without notice. Agent shall have the right to conduct such sales on any Grantor's premises or elsewhere and shall have the right to use any Grantor's premises without charge for such time or times as Agent deems necessary or advisable. Each Grantor further agrees after an Event of Default has occurred and is continuing, at Agent's request, to assemble the Collateral and make it available to Agent at places which Agent shall reasonably select, whether at such Grantor's premises or elsewhere. Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of Agent and Lenders hereunder, including reasonable attorneys' fees and disbursements, to the payment of the Secured Obligations in the manner set forth in Section 2.9.2 of the Credit Agreement. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against Agent or any Lender arising out of the exercise by them of any rights hereunder, except to the extent such claims, damages or demands arise from the gross negligence or willful misconduct of the Agent or Lenders as determined by a court of competent jurisdiction in a non-appealable order. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper so long as (a) it is given at least 15 days before such sale or other disposition, and (b) contains such information as may be prescribed by applicable law.

6.7. Pledged Equity. Each Grantor recognizes that Agent may be unable to effect a public sale of any or all the Pledged Equity, by reason of certain prohibitions contained in the Securities Act and other applicable securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Agent shall be under no obligation to delay a sale of any of the Pledged Equity for the period of time necessary to permit the Issuer thereof to register such securities or other interests for public sale under the Securities Act, or other applicable state securities laws, even if such Issuer would agree to do so.

6.8. Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient for the Secured Obligations to be Paid in Full and the fees and disbursements of any attorneys employed by Agent or any Lender to collect such deficiency.

6.9. Permitted Licenses. Agent hereby covenants and agrees that in connection with any foreclosure or other exercise of Agent's rights with respect to Permitted Licenses, Agent shall not terminate, limit, or otherwise adversely affect the rights of the licensees or sublicensees under such Permitted Licenses, so long as such licensee or sublicensee is not then otherwise in default under the applicable Permitted License in a way that would permit the applicable licensor to terminate such Permitted License.

6.10. Actions in Concert. Section 9.12 of the Credit Agreement shall be incorporated herein by reference.

7. Agent.

7.1. Agent's Appointment as Attorney-in-Fact, etc.

(a) Effective upon the occurrence of any Event of Default and for so long as such Event of Default is continuing, each Grantor hereby irrevocably constitutes and appoints Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact and proxy with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of strictly carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives Agent the power and right, on behalf of and at the expense of such Grantor, without notice to or assent by such Grantor, to do any or all of the following to the extent otherwise expressly permitted by the terms of this Agreement and the Credit Agreement (including the satisfaction of any requirement to give notice to such Grantor prior to doing any of the following):

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse (but without any representation or warranty) and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise reasonably deemed appropriate by Agent for the purpose of collecting any and all such moneys due under any Receivable pledged as Collateral or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property pledged as Collateral, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as Agent may reasonably request to evidence Agent's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) discharge Liens (other than Permitted Liens) levied or placed on or threatened against the Collateral, and effect any repairs or insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to Agent or as Agent shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse (but without any representation or warranty) any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as Agent may deem appropriate; (G) assign any Copyright, Patent or Trademark pledged as Collateral, throughout the world for such term or terms, on such conditions, and in such manner, as Agent shall in its sole discretion determine; (H) vote any right or interest with respect to any Investment Property pledged as Collateral; (I) order good standing certificates and conduct lien searches in respect of such jurisdictions or offices as Agent may deem appropriate; and (J) generally sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Agent were the absolute owner thereof for all purposes, and do, at Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which Agent deems necessary to protect, preserve or realize upon the Collateral and Agent's security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

(b) THE POWER-OF-ATTORNEY AND PROXY GRANTED HEREBY IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. SUCH PROXY SHALL BE EFFECTIVE AUTOMATICALLY UPON THE OCCURRENCE AND DURING THE CONTINUATION OF ANY EVENT OF DEFAULT AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY INVESTMENT PROPERTY ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE INVESTMENT PROPERTY OR ANY OFFICER OR AGENT THEREOF). Each Grantor acknowledges and agrees that in any event such power-of-attorney

and proxy is intended to and shall, to the fullest extent permitted by applicable law, be valid and irrevocable until (x) the Secured Obligations have been Paid in Full and (y) Lenders and Agent have no further obligations under the Loan Documents (excluding any obligations under the Residual Royalty Agreement). Such power-of-attorney and proxy shall be valid and irrevocable as provided herein notwithstanding any limitations to the contrary set forth in the charter, bylaws or other organizational documents of the relevant entities.

(c) Upon exercise of the proxy set forth herein, all prior proxies given by any Grantor with respect to any of the Investment Property pledged as Collateral (other than to Agent or otherwise pursuant to the Loan Documents) are hereby revoked, and until the Secured Obligations are Paid in Full, no subsequent proxies (other than to Agent or otherwise under the Loan Documents) will be given with respect to any of such Investment Property. To the extent permitted by this Agreement, Agent, as proxy, will be empowered and may exercise the irrevocable proxy to vote such Investment Property at any and all times, including but not limited to, at any meeting of shareholders, partners or members, as the case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by applicable law, Agent shall have no agency, fiduciary or other implied duties to any Grantor or any other party when acting in its capacity as such attorney-in-fact or proxy. Each Grantor hereby waives and releases any claims that it may otherwise have against Agent with respect to any breach or alleged breach of any such agency, fiduciary or other duty, other than claims resulting from the gross negligence or willful misconduct of Agent as determined by a court of competent jurisdiction in a non-appealable order. Notwithstanding the foregoing grant of a power of attorney and proxy, Agent shall have no duty to exercise any such right or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so.

(d) Anything in Section 7.1(a) to the contrary notwithstanding, Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1 unless an Event of Default shall have occurred and be continuing.

(e) If any Grantor fails to perform or comply with any of its agreements contained herein, Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement at such Grantor's sole cost and expense.

(f) Each Grantor hereby ratifies that such attorneys shall be authorized hereunder to lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2. Duty of Agent. Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Agent deals with similar property for its own account. Neither Agent or any Lender nor any of their respective officers, directors, employees or agents shall be liable for any failure to demand, collect or realize upon any of the Collateral or for any delay in doing so (except to the extent Agent, such Lender or such officers, directors, employees or agents acted with gross negligence or in willful misconduct as determined by a court of competent jurisdiction in a non-appealable order) or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on Agent and Lenders hereunder are solely to protect Agent's and Lenders' interests in the Collateral and shall not impose any duty upon Agent or any Lender to exercise any such powers. Agent and Lenders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except to the extent Agent or a Lender (or such officer, director, employee or agent) acted with gross negligence or in willful misconduct as determined by a court of competent jurisdiction in a non-appealable order.

7.3. Photocopy of this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

7.4. Authority of Agent. Each Grantor acknowledges that the rights and responsibilities of Agent under this Agreement with respect to any action taken by Agent or the exercise or non-exercise by Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between Agent and Lenders, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between Agent and the Grantors, Agent shall be conclusively presumed to be acting as agent for Lenders with full and valid authority to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

8. Miscellaneous.

8.1. [Reserved].

8.2. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

8.3. Notices. All notices, requests and demands to or upon Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement and each such notice, request or demand to or upon any Grantor shall be addressed to such Grantor in care of Borrower at Borrower's notice address set forth on Schedule 1.

8.4. Indemnification by Grantors. Each Grantor hereby agrees, on a joint and several basis, to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party" and collectively, the "Lender Parties") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs, but expressly excluding any consequential, special or lost profits damages (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any act or omission by Borrower or any of its officer, directors, agents, including without limitation (a) any tender offer, merger, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any hazardous substance at any property owned or leased by any Grantor or any Subsidiary, (c) any violation of any Environmental Laws with respect to conditions at any property owned or leased by any Grantor or any Subsidiary or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Grantor or any Subsidiary or their respective predecessors are alleged to have directly or indirectly disposed of hazardous substances, or (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except, in each case, to the extent any such Indemnified Liabilities result from the applicable Lender Party's own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a non-appealable order. If and to the extent that the foregoing undertaking may be unenforceable for any reason, each Grantor hereby agrees to make the maximum contribution to the

payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. The agreements in this Section 8.4 shall survive repayment of the Secured Obligations, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

8.5. Enforcement Expenses.

(a) Each Grantor agrees, on a joint and several basis, to pay or reimburse on demand each Lender and Agent for all reasonable out-of-pocket costs and expenses (including Legal Costs) incurred in collecting against any Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents in accordance with Section 10.4 of the Credit Agreement.

(b) Each Grantor agrees to pay, and to save Agent and Lenders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The agreements in this Section 8.5 shall survive repayment of the Secured Obligations, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

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

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

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

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

8.10. Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by any Grantor of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of Agent or Lenders.

8.11. Successors; Assigns. This Agreement shall be binding upon Grantors, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Grantors, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. No Grantor may assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent.

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

8.13. Forum Selection; Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED THAT* ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

8.14. Waiver of Jury Trial. EACH GRANTOR, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

8.15. Set-off. Each Grantor agrees that Agent and each Lender have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, each Grantor agrees that at any time any Event of Default has occurred and is continuing, Agent and each Lender may apply to the payment of any Secured Obligations, whether or not then due, any and all balances, credits, deposits, accounts or moneys of such Grantor then or thereafter with Agent or such Lender.

8.16. Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) it has received a fully executed copy of this Agreement;

(c) neither Agent nor any Lender has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and Agent and Lenders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among Lenders or among the Grantors and Lenders.

8.17. Additional Grantors. Each Loan Party that is required to become a party to this Agreement pursuant to Sections 6.8 and 7.14 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Loan Party of a joinder agreement in the form of Annex I hereto.

8.18. Releases.

(a) At such time as the Secured Obligations have been Paid in Full, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights in and to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, Agent shall deliver to the Grantors any Collateral held by Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the equity interests of such Guarantor shall be sold, transferred, liquidated, dissolved or otherwise disposed of in a transaction permitted by the Credit Agreement.

8.19. Obligations and Liens Absolute and Unconditional. Each Grantor understands and agrees that the obligations of each Grantor under this Agreement shall be construed as continuing, absolute and unconditional without regard to (a) the validity or enforceability of any Loan Document, any of the Secured Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by Agent or any Lender, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or

be asserted by any Grantor or any other Person against Agent or any Lender, or (c) any other circumstance whatsoever (with or without notice to or knowledge of any Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Grantor for the Secured Obligations, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any other Grantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from any other Grantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of any other Grantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Agent or any Lender against any Grantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

8.20. Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor or any Issuer for liquidation or reorganization, should any Grantor or any Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's or any Issuer's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.21. Conflicting Terms. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Credit Agreement, the terms of the Credit Agreement shall control.

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

Each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

GRANTORS:

ACER THERAPEUTICS INC.,
a Delaware corporation

By: _____
Name:
Title:

AGENT:

MAMAARDVARK, LLC,

a Delaware limited liability company, as Agent

By: _____

Name:

Title:

SYNTHETIC ROYALTY AGREEMENT

This SYNTHETIC ROYALTY AGREEMENT (this "Agreement") dated as of March 4, 2022, is among Acer Therapeutics Inc., a Delaware corporation (the "Company"), MAM Aardvark, LLC, a Delaware limited liability company (as "Agent"), and Marathon Healthcare Finance Fund, L.P., a Delaware limited partnership ("MHFF").

WITNESSETH:

WHEREAS, the Company, Agent and certain other financial institutions have entered into that certain Credit Agreement (as amended from time to time the "Credit Agreement"), dated as of the date hereof;

WHEREAS, each of Agent and MHFF are a "Lender" under the Credit Agreement and together are "Lenders";

WHEREAS, as a condition to the Lenders' agreement to enter into the Credit Agreement and to make certain Loans (as defined in the Credit Agreement) thereunder, the Company and the Lenders have agreed to enter into this Agreement regarding the payment by the Company to the Lenders of certain Revenue-Based Payments (as defined below); and

WHEREAS, the Company and the Lenders desire to memorialize the terms and conditions regarding the payment of such Revenue-Based Payments as set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties set forth herein and in the Credit Agreement and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINED TERMS AND RULES OF CONSTRUCTION

Section 1.1 Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. The following terms, as used herein, shall have the following respective meanings:

"Affiliate" of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any managing member, officer or director of such Person and (c) with respect to either Lender, any entity administered or managed by any Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans.

"Agent" shall mean MAM Aardvark, LLC, or any successor agent.

"Aggregate Revenue" shall mean the aggregate Net Sales and Other Payments.

"Business Day" means any day on which commercial banks are open for commercial banking business in New York, NY.

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

(A) a consolidation, merger or other business combination of the Company with or into any other corporation or other entity or person (whether or not the Company is the surviving corporation), or any other corporate reorganization or transaction or series of related transactions in which in any of such events the voting stockholders of the Company prior to such event cease to own 50% or more of the voting power, or corresponding voting equity interests, of the surviving entity after such event; or

(B) in one or a series of related transactions, there is a sale or transfer of all or substantially all of the assets of the Company, determined on a consolidated basis.

“Fiscal Quarter” means a calendar quarter of a Fiscal Year.

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

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

“Governmental Authority” shall have the meaning set forth in the Credit Agreement.

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

“Health Care Laws” shall have the meaning set forth in the Credit Agreement.

“Lender” shall have the meaning set forth in the Credit Agreement, and shall include any subsequent Lender to the Credit Agreement or to whom any interest hereunder is assigned by Agent or a Lender.

“Lien” shall have the meaning set forth in the Credit Agreement.

“Material Adverse Effect” means (a) a material adverse change in, or a material and adverse effect upon, the condition (financial or otherwise), operations, assets, business or properties of the Company and/or its Subsidiaries taken as a whole, or (b) a material impairment of the ability of the Company to perform any of its payment obligations under this Agreement.

“Material Contract” shall have the meaning set forth in the Credit Agreement.

“Net Sales” means the gross amount of monies or cash equivalent or other consideration which is received for sales, leases or other modes of transfer of Product by the Company or its Affiliates, or their respective licensees, assignees or successors, to a non-affiliated third party end user customer less: (i) customary trade, quantity or cash discounts and rebates to the extent actually allowed and taken; (ii) amounts repaid or credited to customers by reason of rejections or returns made of previously sold Product based on product defect; (iii) to the extent separately stated on purchase orders, invoices or other documents of sale, taxes or other governmental charges (except filing fees) which are actually paid by or on behalf of the Company or its Affiliates, or their respective licensees, assignees or successors, for the production, sale, transportation, delivery or use of Product; and (iv) reasonable charges for delivery or transportation of Product to customers through the use of third party delivery or transportation services, if separately stated and not charged to or reimbursed by the customer. The term “Net Sales” in the case of non-cash sales means the fair market value of all equivalent or other consideration received by the Company or its Affiliates, or their respective licensees, assignees or successors, for the sale, lease or transfer of Product to third party end user customers. For clarity: (i) if the Company or its Affiliate sells or transfers Product to a licensee, Net Sales are to be calculated on such licensee’s sale to a third party and not on the sale or transfer price to the Company or its Affiliate; and (ii) if the Company or its Affiliate, or any licensee thereof, sells or transfers Product to a third party such as a wholesaler, specialty pharmacy, distributor or reseller that will conduct a further sale or transfer to a third party end user customer or other third party reseller, then Net Sales are to be calculated on the list price of the Company or its Affiliate, or any licensee thereof, as applicable.

“Other Payments” means the amount of any upfront, milestone or other fees to the extent in respect of rights of the Company or its Affiliates to Product which is received by the Company or its Affiliates from any licensee of the Company or its Affiliates of such rights; provided, however, that the following shall be excluded from Other Payments: (i) payments which are based directly or indirectly on Net Sales or any amount which is akin thereto (including royalties or profit sharing); (ii) payments (including as reimbursement of expenses) in respect of research or development (including activities towards commercialization) or legal or patent expenses; (iii) equity investment; and (iv) payments with a repayment obligation.

“Payment Date” means the fifteenth (15th) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15th day is not a Business Day), commencing on the first of such dates in the first Fiscal Quarter following the Synthetic Royalty Commencement Date.

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

“Product” means a pharmaceutical composition or preparation which consists of or includes a taste-masked, immediate release formulation of sodium phenylbutyrate, including for the potential treatment of various inborn errors of metabolism such as urea cycle disorder(s) and maple syrup urine disease.

“Pro Rata Share” means Agent (31.6%) and MHFF (68.4%), as such may be revised by the Agent and provided by written notice to the Company, at least before the first (1st) day of the month of the next Payment Date.

“Royalty Cap” means \$15,000,000.00.

“Services” means services provided by the Company or any Affiliate of the Company to un-Affiliated Persons, including any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

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

“Synthetic Royalty Commencement Date” means the Tranche 1 Funding Date as that term is defined in the Credit Agreement.

Section 1.2 Rules of Construction. Unless the context otherwise requires, in this Agreement:

- (a) A term has the meaning assigned to it and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.
- (b) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words in the singular shall include the plural, and vice versa.
- (c) The terms “include”, “including” and similar terms shall be construed as if followed by the phrase “without limitation”.
- (d) References to an agreement or other document include references to such agreement or document as amended, restated, reformed, supplemented or otherwise modified in accordance with the terms hereof and thereof and include any annexes, exhibits and schedules attached thereto.
- (e) References to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor.
- (f) References to any Person shall be construed to include such Person’s successors and permitted assigns.
- (g) The word “will” shall be construed to have the same meaning and effect as the word “shall”.
- (h) The words “hereof”, “herein”, “hereunder” and similar terms when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision hereof, and Article, Section and Exhibit references herein are references to Articles and Sections of, and Exhibits to, this Agreement unless otherwise specified.

(i) In the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and each of the words “to” and “until” means “to but excluding”.

(j) Where any payment is to be made, any funds are to be applied or any calculation is to be made under this Agreement on a day that is not a Business Day, unless this Agreement otherwise provides, such payment shall be made, such funds shall be applied and such calculation shall be made on the succeeding Business Day, and payments shall be adjusted accordingly.

ARTICLE II SYNTHETIC ROYALTY PAYMENTS

Section 2.1 Revenue-Based Payment.

(a) Commencing as of the Synthetic Royalty Commencement Date, the Company promises to pay to the Lenders, in the aggregate, two percent (2.00%) of the Aggregate Revenue in each successive Fiscal Quarter (or, in the case of the initial Fiscal Quarter in which the Synthetic Royalty Commencement Date occurs, such partial Fiscal Quarter) (each a “Revenue-Based Payment”). The Revenue-Based Payment with respect to a Fiscal Quarter shall be payable on the Payment Date next following the end of such Fiscal Quarter.

(b) In the event that the Company makes any adjustment to Aggregate Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based Payment due to the Lenders pursuant to this Section 2.1, the Company shall so notify the Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment hereunder. Notwithstanding the foregoing, the Agent and the Company shall discuss the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based Payments..

Section 2.2 Payment Upon Change of Control. Upon a Change of Control or sale of the Product business to a third-party, non-Affiliate of the Company, the Company shall immediately upon consummation of such transaction pay to the Lenders an amount equal to the Royalty Cap less the aggregate amount of the Revenue-Based Payments received by the Lenders prior to the Change of Control, not including any payments with respect to indemnity or expense reimbursement obligations (the “Change of Control Payment”).

Section 2.3 Payments. All payments due under this Agreement shall be made by the Company in immediately-available funds, without set-off or deduction except as specifically provided herein, via wire transfer as directed by the Agent in writing, not later than 1:00 p.m. New York, NY time on the date due, and funds received after that hour shall be deemed to have been received by such Lender on the following Business Day. All payments shall be paid to the Lenders in the amount of each Lender’s Pro Rata Share.

Section 2.4 Taxes. If any withholding or deduction from any payment to be made by the Company to any Lender hereunder is required in respect of any income, excise, stamp, documentary, property, franchise or other tax, fee, duty, levy, withholding or other similar charge imposed by any governmental authority pursuant to any applicable law, rule or regulation, then (i) the Company shall: (x) make such withholding or deduction; (y) pay directly to the relevant governmental authority the full amount required to be so withheld or deducted; and (z) as promptly as practicable forward to the Agent the original or a certified copy of an official receipt or other documentation evidencing such payment to such governmental authority; and (ii) such amount shall be deemed for purposes of this Agreement to have been paid to the respective Lender as part of the applicable payment.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Section 3.1 Representations and Warranties of the Company.

(a) **Organization.** The Company is duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to carry on its business in each jurisdiction in which failure to so qualify would reasonably be likely to have or result in a Material Adverse Effect. Each Loan Party has the power to own its assets and carry on its business as it is being conducted.

(b) **Authorization; No Conflict.** The Company is duly authorized to execute and deliver this Agreement, and to perform its obligations hereunder. The execution, delivery and performance by the Company of this Agreement, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any applicable Health Care Law), (ii) the certificate of incorporation, by-laws or other organizational documents of the Company, or (iii) any Material Contract, or any judgment, order or decree, which is binding upon the Company or any of its properties or (c) require, or result in, the creation or imposition of any Lien on any asset of any the Company.

(c) **Validity; Binding Nature.** This Agreement is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness.

ARTICLE IV
COVENANTS

Section 4.1 Reporting. Not later than five (5) Business Days prior to each Payment Date, the Company shall furnish to the Agent a report, in form reasonably acceptable to the Agent, setting forth (i) the Aggregate Revenues (and each component thereof) from the prior Fiscal Quarter and (ii) the Company's calculation of the Revenue-Based Payment for the prior Fiscal Quarter. Audited annual financial statements shall be provided within 90 days after the close of

each Fiscal Year (unless the Company files a Notice of Late Filing (12b-25 Notice) in which case such report shall be due within one hundred five (105) days of the end of the relevant Fiscal Year); provided, that, for long as the Company has shares of capital stock listed on The Nasdaq Stock Market, the Company's prompt filing of such annual report described in this Section 3.1 with the U.S. Securities and Exchange Commission shall satisfy the Company's obligations under this Section 3.1.

Section 4.2 Audits. Beginning on the Synthetic Royalty Commencement Date, the Company shall, upon the Agent's written request (and using an accountant designated by the Agent and reasonably satisfactory to the Company, the "Designated Auditor"), inspect and audit the Company's books and records, no more often than once on an annual basis, regarding the Revenue-Based Payments or the Change of Control Payment (together, the "Company Payments") that are paid or payable to the Lenders pursuant to the terms of this Agreement for the prior twelve (12) month period. The Company and the Lenders agree that each party shall bear its own costs and expenses relating to such inspection and audit of the Company's books and records other than the expenses of the Designated Auditor, which shall be borne by the Lenders; provided, that if the amount of the Company Payments that should have been made to the Lenders is equal to or greater than 105% of the amount of the Company Payments actually made to the Lenders during the applicable audited period, then all of the expenses of the Designated Auditor relating to such inspection or audit shall be borne and paid for by the Company.

ARTICLE V INDEMNIFICATION

Section 5.1 Indemnification by the Company. In consideration of the execution and delivery of this Agreement and the Credit Agreement by the Agent and the Lenders and the agreement to extend the Commitments (as defined in the Credit Agreement) provided under the Credit Agreement, the Company hereby agrees to indemnify and hold Agent and the Lenders and each of the officers, directors, employees, Affiliates, representatives and agents of Agent and the Lenders (each an "Indemnified Party") harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals, and all court costs and similar legal expenses (collectively, the "Indemnified Liabilities"), incurred by the Indemnified Parties or any of them as a result of, or arising out of, or relating to, the status of the Indemnified Parties relative to this Agreement in combination with any of the following: (a) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Substance at any property owned or leased by the Company or any of its Subsidiaries; (b) any violation of any Environmental Laws with respect to conditions at any property owned or leased by the Company or any of its Subsidiaries or the operations conducted thereon; (c) the investigation, cleanup or remediation of offsite locations at which the Company or any of its Subsidiaries or their respective predecessors are alleged to have directly or indirectly disposed of Hazardous Substances; (d) any breach of or default under any covenant or agreement by the Company set forth in this Agreement, or (e) the Company's general operation of its business, including, but not limited to, all product liability arising out of or in connection with the Company's or any of its Affiliates' or licensees' manufacture, use or sale of Product or the provision by the Company or any of its Affiliates of any Services. If and to the extent that the

foregoing undertaking may be unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All obligations provided for in this Section 5.1 shall survive termination of this Agreement.

**ARTICLE VI
MISCELLANEOUS**

Section 6.1 Remedies Upon an Event of Default

(a) Upon the occurrence and continuation of a default by the Company, the Agent, on behalf of the Lenders, may exercise any and all rights, options and remedies provided for in this Agreement, under any applicable laws or otherwise at law or in equity, including the right to specific performance of this Agreement.

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

Section 6.2 Payment Default. In addition to the remedies set forth in Section 6.1, if the Company fails to pay any Revenue-Based Payment on or before the applicable Payment Date, all such unpaid amounts shall bear interest at a rate of ten percent (10%) per annum, compounded annually (“Default Interest”), commencing on the applicable Payment Date on which such Revenue-Based Payment was not paid and continuing until such time as the unpaid Revenue-Based Payment is paid. The receipt by the Lenders of such Default Interest shall not be construed as a waiver by the Lenders of any default or any of the rights or remedies of Agent or the Lenders under this Agreement.

Section 6.3 Termination of Agreement. This Agreement shall terminate upon the first to occur of the following: (i) the receipt by the Lenders of the Change of Control Payment and all other unpaid Revenue-Based Payments owed to the Lenders under this Agreement for periods prior to such Change of Control; (ii) the date upon which the Lenders, in the aggregate, have received payments pursuant to this Agreement equal to the Royalty Cap, not including any payments with respect to indemnity or expense reimbursement obligations; or (iii) the Company and the Agent mutually agree in writing to terminate this Agreement.

Section 6.4 Nature of Remedies. All of the obligations of the Company and rights of the Agent and the Lenders expressed herein shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of the Agent or the Lenders, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 6.5 Notices. All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at its address shown below or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by registered or certified mail, first class postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. The Company and the Agent each hereby acknowledge that, from time to time, the Agent and the Company may deliver information and notices using electronic mail.

if to the Company, to:

Acer Therapeutics Inc.
One Gateway Center, Suite 351
300 Washington Street
Newton, MA 02458
Attention: Chief Executive Officer
Email: cschelling@acertx.com
Attention: General Counsel
Email: djoseph@acertx.com

if to the Agent or the Lenders, to:

MAM Aardvark, LLC
c/o Marathon Asset Management, LP
One Bryant Park
38th Floor
New York NY 10036
Attn: Steve DeNelsky
Email: sdenelsky@marathonfund.com

With a copy (that does not constitute notice) to:

Holland & Knight LLP
200 Crescent Court, Suite 1600
Dallas, Texas 75201
Attn: Ryan Magee
Email: ryan.magee@hklaw.com
Attn: Paul Smith
Email: paul.smith@hklaw.com

Section 6.6 Successors and Assigns. This Agreement shall be binding upon the Company, the Agent and the Lenders and their respective successors and assigns, and shall inure to the benefit of the Company, the Agent and the Lenders and the successors and assigns of the Agent and the Lenders. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement. The Company may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Agent.

Section 6.7 Independent Nature of Relationship. Nothing herein contained shall constitute the Company, the Agent and/or the Lenders as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 6.7 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. Neither the Company, the Agent nor the Lenders has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Company, the Agent and the Lenders agree that neither the Agent nor the Lenders are involved in or responsible for the manufacture, marketing or sale of any Product or the provision of any related Services.

Section 6.8 Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

Section 6.9 Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE.

Section 6.10 Forum Selection; Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 6.11 Waiver of Jury Trial. EACH PARTY HERETO, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Section 6.12 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

Section 6.13 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts with the same effect as if all parties had executed the same document. All counterparts shall be construed together and shall constitute a single agreement. Further, the parties hereto consent and agree that this Agreement may be signed and/or transmitted by e-mail of any .pdf file, .jpeg file, or any other electronic or image file, or any "electronic signature" as defined under the U.S. Electronic Signatures in Global and National Commerce Act or the New York Electronic Signatures and Records Act, which includes any electronic signature provided using Orbit, Adobe Sign, DocuSign, or any other similar platform identified by the parties hereto and reasonably available at no undue burden or expense to the Agent and the Lenders), except to the extent the Agent requires otherwise. Any such electronic signatures shall be valid, effective and legally binding as if such electronic signatures were handwritten signatures and shall be deemed to have been duly and validly delivered for all purposes hereunder. No party hereto shall raise the use of e-mail or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of e-mail or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

Section 6.14 Amendments; No Waivers. Neither this Agreement nor any term or provision hereof may be amended, supplemented, restated, waived, changed or modified except with the written consent of the parties hereto. No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No notice to or demand on either party hereto in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval hereunder shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 6.15 Captions. Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

Section 6.16 Appointment of Agent. Each Lender hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement, together with such powers as are reasonably incidental thereto.

Notwithstanding any provision to the contrary contained elsewhere in this Agreement, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. The remainder of Section 9 of the Credit Agreement is hereby incorporated by reference to Section 9.2 through 9.12 thereof as if set forth herein as applicable to this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

ACER THERAPEUTICS INC.

By: /s/ Chris Schelling
Name: Chris Schelling
Title: Chief Executive Officer

[Signature Page to Synthetic Royalty Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

AS AGENT AND LENDER:

MAMAARDVARK, LLC

By: /s/ Louis Hanover
Name: Louis Hanover
Title: Authorized Signatory

AS LENDER:

MARATHON HEALTHCARE FINANCE FUND, L.P.

By: /s/ Louis Hanover
Name: Louis Hanover
Title: Authorized Signatory

[Signature Page to Synthetic Royalty Agreement]



Acer Therapeutics Secures up to \$48.5 Million in Convertible Note and Secured Loan Financing Facilities

NEWTON, MA – March 7, 2022 – Acer Therapeutics Inc. (Nasdaq: ACER), a pharmaceutical company focused on the acquisition, development and commercialization of therapies for serious rare and life-threatening diseases with significant unmet medical needs, today announced that it has entered into convertible note and loan financing facilities for up to \$48.5 million with affiliates of Marathon Asset Management L.P. (Marathon) and SWK Holdings Corporation (Nasdaq: SWKH), subject to certain conditions. Proceeds from these financings would be used to advance Acer's pipeline.

Summaries of the financing facilities are as follows:

1. Marathon \$6.0 Million Secured Convertible Note

Under the terms of a secured convertible note agreement, and subject to certain customary closing conditions, Marathon is expected to fund \$6.0 million at a closing no later than March 14, 2022. The secured convertible note issued to Marathon would have a 3-year term, bear interest at 6.5% per annum, be secured by a lien on all of Acer's assets, be convertible at Marathon's option into shares of Acer common stock at a conversion price of \$2.50 per share, and be redeemable at Marathon's option during the 30-day periods beginning 12 months, 18 months and 24 months after issuance.

2. SWK \$6.5 Million Secured Loan

Under the terms of a senior secured term loan agreement, and subject to certain customary closing conditions as well as the funding of the Marathon secured convertible note referenced above, SWK is expected to fund \$6.5 million at a closing no later than March 14, 2022. If the Company's drug candidate ACER-001 (sodiumphenylbutyrate) receives FDA approval for marketing (referred to as ACER-001 Marketing Approval) on or before September 30, 2022, then this loan would be payable within 12 business days of such approval; otherwise, this loan would have a 2-year term. As background, FDA has assigned a PDUFA target action date of June 5, 2022, to Acer's pending New Drug Application for ACER-001 for the treatment of patients with urea cycle disorders. This loan would bear interest per annum at the sum of 3-month LIBOR (with a floor of 1%) plus 11% and would be secured by a senior lien on all of Acer's assets. If the loan is paid off or ACER-001 Marketing Approval occurs prior to September 30, 2022, SWK would receive an exit fee from Acer yielding a return (inclusive of principal, interest and origination and other fees) of 1.3x the outstanding principal; otherwise, SWK would receive an exit fee from Acer yielding a return of 1.5x the outstanding principal. SWK would also receive a warrant with a 7-year term to acquire 150,000 shares of Acer common stock at an exercise price of \$2.46 per share.

Proceeds from the foregoing two facilities would currently be expected to finance into mid-2022 Acer's planned additional investments in ACER-001 pre-commercial activities as well as activities relating to a planned ACER-801 (osanetant) Phase 2a proof of concept trial in postmenopausal women and a planned EDSIVO™ (celiprolol) pivotal Phase 3 trial in COL3A1 positive vascular Ehlers-Danlos syndrome (vEDS) patients. A portion of the proceeds from these financings would also be required to pay the cost of obtaining such financing, including origination fees, transaction costs and financial advisor fees, as well as a commitment fee and certain other costs associated with the contingent Marathon lending arrangement referenced below. Note that additional capital will be required to conduct beyond mid-2022 and complete the planned pivotal Phase 3 trial of EDSIVO™.

3. Marathon \$42.5 Million Secured Loan

Acer has also entered into a senior secured loan agreement with Marathon for an additional \$42.5 million which, in addition to customary conditions, is contingent upon ACER-001 Marketing Approval occurring not later than December 31, 2022. This loan would have a 6-year term, bear interest at 13.5% per annum (with Acer having the option to capitalize up to 4% for the first 3 years), be secured by a senior lien on all of Acer's assets, have the outstanding principal amortize at a monthly rate of 2.78% commencing on the third anniversary, and be subject to prepayment fees ranging from 5% if repaid prior to the third anniversary to 1% if repaid after five years. Acer and Marathon have also entered into a synthetic royalty agreement whereby, if this loan is funded, Acer would pay Marathon, on a quarterly basis, 2% of certain aggregate revenue from ACER-001 during that quarter (i.e., 2% of the net sales and of the amount of certain other payments), subject to a cap on the aggregate amount of such payments of \$15 million. The funds from this facility would be used to pay off the SWK loan referenced above (i.e., \$6.5 million in principal, plus an exit fee as noted above, leaving loans of \$48.5 million in principal between the two Marathon facilities) as well as provide capital for an ACER-001 commercial product launch, if ACER-001 is approved, and advancement of other pipeline programs and ongoing operations into the second half of 2023 based upon current expectations. A portion of the proceeds from this financing would also be used to pay certain costs of obtaining such financing, including a commitment fee, transaction costs and financial advisor fees. If this loan is funded, then Acer may also request an increase in the loan amount by \$50 million, although any such increase is subject to Marathon's sole discretion.

"Accessing these loan facilities is a significant achievement for Acer as they provide capital to fund advancement of our pipeline programs at what we believe will be a lower cost of capital than equity financing," said Chris Schelling, CEO and Founder of Acer. "Our financing agreements with Marathon and SWK significantly extend our cash runway and we appreciate their commitment to our mission of delivering much-needed therapies to patients in need."

"This transaction represents the beginning of Marathon's partnership with Acer," said Dr. Evan Bedil, Head of Healthcare at Marathon. "Acer is led by an experienced and highly talented management team with a suite of innovative medications to advance the health and wellbeing of those affected by rare life-threatening metabolic disease and to improve the quality of life of post-menopausal women suffering from vasomotor symptoms. Our financing commitments provide Acer with growth capital to commercialize their products and advance the Company's pipeline."

“The proceeds from our loan, together with Marathon’s convertible note, will provide Acer the necessary funding to potentially achieve near-term value inflection points,” said Winston Black, CEO of SWK. “We look forward to Acer’s continued progress as it prepares for ACER-001 PDUFA in June and initiates important clinical trials.”

Each of these loan transactions includes additional terms which are customary in transactions of this type. Further information with respect to the debt financing agreements with Marathon and SWK is contained in a Current Report on Form 8-K filed by Acer with the Securities and Exchange Commission. ACER-001, ACER-801 and EDSIVO™ are investigational product candidates that have not been approved by FDA. There is no guarantee that any of these product candidates will receive regulatory authority approval in any territory or become commercially available for the indications under investigation.

Reedland Capital Partners, acting through Weild & Co., member FINRA/SIPC, served as financial advisor to Acer in connection with these financing transactions. For more information, please visit www.reedland.com

About ACER-001

ACER-001 (sodiumphenylbutyrate) is being developed for the treatment of various inborn errors of metabolism, including urea cycle disorders (UCDs) and Maple Syrup Urine Disease (MSUD). ACER-001 is a nitrogen-binding agent in development for use as adjunctive therapy in the chronic management of patients with UCDs involving deficiencies of carbamylphosphate synthetase (CPS), ornithine transcarbamylase (OTC), or argininosuccinic acid synthetase (AS). ACER-001’s multi-particulate dosage formulation for oral administration is designed to minimize the aversive taste and odor of sodium phenylbutyrate while quickly dissolving in the stomach. The ACER-001 NDA for UCDs is currently under FDA review with a PDUFA target action date of June 5, 2022. ACER-001 is also being developed for MSUD and has been granted orphan drug designation by the FDA for this indication. ACER-001 is an investigational product candidate which has not been approved by FDA, the European Medicines Agency (EMA), or any other regulatory authority.

About Acer Therapeutics Inc.

Acer is a pharmaceutical company focused on the acquisition, development and commercialization of therapies for serious rare and life-threatening diseases with significant unmet medical needs. Acer’s pipeline includes four programs: ACER-001 (sodiumphenylbutyrate) for treatment of various inborn errors of metabolism, including UCDs and MSUD; ACER-801 (osanetant) for treatment of induced Vasomotor Symptoms (iVMS); EDSIVO™ (celiprolol) for treatment of vascular Ehlers-Danlos syndrome (vEDS) in patients with a confirmed type III collagen (COL3A1) mutation; and ACER-2820 (emetine), a host-directed therapy against a variety of infectious diseases, including COVID-19. Each of Acer’s product candidates is believed to present a comparatively de-risked profile, having one or more of a favorable safety profile, clinical proof-of-concept data, mechanistic differentiation and/or accelerated paths for development through specific programs and procedures established by the FDA. In March 2021, Acer entered into a Collaboration and License Agreement with Relief Therapeutics Holding SA for development and commercialization of ACER-001. For more information, visit www.acertx.com

About Marathon Asset Management LP

Marathon Asset Management LP, with \$24 billion of assets under management, was formed in 1998 by Bruce Richards (Chairman & Chief Executive Officer) and Louis Hanover (Chief Investment Officer). The firm seeks attractive absolute returns through investments in the global capital markets and the private credit markets whereby it is known for its ability to provide capital solutions to companies across industries. Marathon’s healthcare team, led by Dr. Evan Bedil, is known for buying pharmaceutical royalties in addition to providing capital solutions across the capital structure to emerging biopharmaceutical companies. Marathon has significant experience investing in companies through multiple cycles and possesses a broad-based skill set and proprietary platform to research, analyze and act upon complex capital structures and situations. For additional information, please visit www.marathonfund.com

About SWK Holdings Corporation

SWK Holdings Corporation (SWKH.OB) is a specialized finance company with a focus on the global healthcare sector. SWK partners with ethical product marketers and royalty holders to provide flexible financing solutions at an attractive cost of capital to create long-term value for both SWK's business partners and its investors. SWK believes its financing structures achieve an optimal partnership for companies, institutions and investors seeking capital for expansion or capital and estate planning by allowing its partners to monetize future cash flow with minimal dilution to their equity stakes. Additional information is available on the company's website at www.swkhold.com

References

1. Peña-Quintana L, et al. Profile of sodiumphenylbutyrate granules for the treatment of urea-cycle disorders: patient perspectives. *Patient Prefer Adherence*. 2017 Sep 6;11:1489-1496.

Acer Forward-Looking Statements

This press release contains "forward-looking statements" that involve substantial risks and uncertainties for purposes of the safe harbor provided by the Private Securities Litigation Reform Act of 1995. All statements, other than statements of historical facts, included in this press release regarding regulatory submissions, actions or approvals, financings, cash position, liquidity, strategy, future operations, timelines, future financial position, future revenues, projected expenses, prospects, plans and objectives of management are forward-looking statements. Examples of such statements include, but are not limited to, statements relating to the potential for our product candidates to safely and effectively treat diseases and to be approved for marketing; our ability to close upon and obtain the proceeds of any proposed financing as well as to satisfy the ongoing conditions and requirements for maintaining related financing facilities and avoiding default or an accelerated repayment requirement; the commercial or market opportunity of any of our product candidates in any target indication and any territory; our ability, in addition to currently proposed financings, to secure the additional capital necessary to fund our various product candidate development programs; the adequacy of our capital to support our future operations and our ability to successfully fund, initiate and complete clinical trials and regulatory submissions; the ability to protect our intellectual property rights; our strategy and business focus; and the development, expected timeline and commercial potential of any of our product candidates. We may not actually achieve the plans, carry out the intentions or meet the expectations or projections disclosed in the forward-looking statements and you should not place undue reliance on these forward-looking statements. Such statements are based on management's current expectations and involve risks and uncertainties. Actual results and performance could differ materially from those projected in the forward-looking statements as a result of many factors, including, without limitation, risks and uncertainties associated with the ability to project future cash utilization and reserves needed for contingent future liabilities and business operations, the availability of sufficient resources to fund our various product candidate development programs and to meet our business objectives and operational requirements, the fact that the results of earlier studies and trials may not be predictive of future clinical trial results, the protection and market exclusivity provided by our intellectual property, risks related to the drug development and the regulatory approval process, including the timing and requirements of regulatory actions, and the impact of competitive products and technological changes. We disclaim any intent or obligation to update these forward-looking statements to reflect events or circumstances that exist after the date on which they were made. You should review additional disclosures we make in our filings with the Securities and Exchange Commission, including our Quarterly Reports on Form 10-Q and 10-Q/A, and our Annual Report on Form 10-K. You may access these documents for no charge at <http://www.sec.gov>.

Investor Contact:

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