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

FORM 10-Q

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

For the quarterly period ended March 31, 2021

OR

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

For the transition period from to

Commission File Number 001-35366

FORTRESS BIOTECH, INC.

(Exact name of registrant as specified in its charter)

Delaware	**20-5157386**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

2 Gansevoort Street, 9th Floor
New York, New York 10014
(Address including zip code of principal executive offices)

(781) 652-4500
(Registrant's telephone number, including area code)

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

Title of Class	Trading Symbol(s)	Exchange Name
Common Stock	FBIO	Nasdaq Capital Market
9.375% Series A Cumulative Redeemable Perpetual Preferred Stock	FBIOP	Nasdaq Capital Market

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

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

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

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

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

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

Class of Stock	Outstanding Shares as of May 13, 2021
Common Stock, $0.001 par value	97,319,238
9.375% Series A Cumulative Redeemable Perpetual Preferred Stock, $0.001 par value	3,427,138

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Quarterly Report on Form 10-Q

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SUMMARY RISK FACTORS

Our business is subject to risks of which you should be aware before making an investment decision. The risks described below are a summary of the principal risks associated with an investment in us and are not the only risks we face. You should carefully consider these risk factors, the risk factors described in Item 1A, and the other reports and documents that we have filed with the Securities and Exchange Commission ("SEC"). As used below and throughout this filing (including in the risk factors described in Item 1A), the words "we", "us" and "our" may refer to Fortress Biotech, Inc. individually or together with one or more partner companies, as dictated by context.

Risks Inherent in Drug Development

- Many of our and our partner companies' product candidates are in early development stages and are subject to time and cost intensive regulation and clinical testing. As a result, our product candidates may never be successfully developed or commercialized.
- Our competitors may develop treatments for our or our partner companies' products' target indications, which could limit our product candidates' commercial opportunity and profitability.

Risks Pertaining to the Need for and Impact of Existing and Additional Financing Activities

- We have a history of operating losses and we expect such losses to continue in the future.
- We have funded our operations in part through the assumption of debt, which lending agreements may restrict our operations. Further, the occurrence of any default event under any applicable loan document could adversely affect our business.
- Our research and development ("R&D") programs will require additional capital, which we may be unable to raise as needed and which may impede our R&D programs, commercialization efforts, or planned acquisitions.
- If we raise additional capital by issuing securities, our existing stockholders will be diluted.

Risks Pertaining to Our Existing Revenue Stream from Journey Medical Corporation ("Journey")

- Our operating income derives primarily from the sale of our partner company Journey's dermatology products, particularly Qbrexza, Ximino, Targadox, Accutane, and Exelderm. Any issues relating to the manufacture, sale, utilization, or reimbursement of Journey's products (including products liability claims) could significantly impact our operating results.
- The majority of Journey's sales derive from products that are without patent protection and/or are or may become subject to third party generic competition; the introduction of new competitor products, or an increase in market share of existing competitor products, could have a significant adverse effect on our operating income. With respect to Journey products that are covered by valid claims of issued patents, such patents may be subject to invalidation, which would harm our operating income.
- Continued sales and coverage, including formulary inclusion without the need for a prior authorization or step edit therapy, of our products for commercial sale will depend in part on the availability of reimbursement from third-party payors. Third-party payors are increasingly examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy, and, accordingly, significant uncertainty exists as to the reimbursement status of newly approved therapeutics.

Risks Pertaining to our Business Strategy, Structure and Organization

- We have entered, and will likely in the future enter, into certain collaborations or divestitures which may cause a reduction in our business' size and scope, market share and opportunities in certain markets, or our ability to compete in certain markets and therapeutic categories.
- We have also entered into several arrangements under which we have agreed to contingent dispositions of partner companies and/or their assets. The failure to consummate any such transaction may impair the value of such companies and/or assets, and we may not be able to identify or execute alternative arrangements on favorable terms, if at all.
- Our growth and success depend on our acquiring or in-licensing products or product candidates and integrating such products into our business.
- We act as guarantor and/or indemnitor of certain obligations of our subsidiaries and affiliates, which could require us to pay substantial amounts based on the actions of said subsidiaries or affiliates.

Risks Pertaining to Reliance on Third Parties

- We rely heavily on third parties for several aspects of our operations, including manufacturing and developing product candidates, conducting clinical trials, and producing commercial supplies for products. Such reliance on third-parties reduces our ability to control every aspect of the drug development process and may hinder our ability to develop and commercialize our products in a cost-effective and timely manner.

Risks Pertaining to Intellectual Property and Potential Disputes with Licensors Thereof

- If we are unable to obtain and maintain patent protection for our technology and products, or if the scope of the patent protection obtained is not sufficiently broad, our competitors could develop and commercialize technology and products similar or identical to ours, and our ability to successfully commercialize our technology and products may be impaired.
- We or our licensors may be subject to costly and time-consuming litigation for infringement of third-party intellectual property rights or to enforce our or our licensors' patents.
- Any dispute with our licensors may affect our ability to develop or commercialize our product candidates.

Risks Pertaining to Generic Competition and Paragraph IV Litigation

- Generic drug companies may submit applications seeking approval to market generic versions of our products.
- In connection with these applications, generic drug companies may seek to challenge the validity and enforceability of our patents through litigation and/or with the United States Patent and Trademark Office (PTO), such as the Paragraph IV certification made by Perrigo pertaining to the patents covering Qbrexza, a product being commercialized by our partner company Journey. Such challenges may subject us to costly and time-consuming litigation and/or PTO proceedings.
- As a result of the loss of any patent protection from such litigation or PTO proceedings, or the "at-risk" launch by a generic competitor of our products, our products could be sold at significantly lower prices, and we could lose a significant portion of sales of that product in a short period of time, which could adversely affect our business, financial condition, operating results and prospects.

Risks Pertaining to the Commercialization of Product Candidates

- If our products are not broadly accepted by the healthcare community, the revenues from any such product are likely to be limited.
- We may not obtain the desired product labels or intended uses for product promotion, or favorable scheduling classifications desirable to successfully promote our products.
- Even if a product candidate is approved, it may be subject to various post-marketing requirements, including studies or clinical trials, the results of which could cause such products to later be withdrawn from the market.
- Any successful products liability claim related to any of our current or future product candidates may cause us to incur substantial liability and limit the commercialization of such products.

Risks Pertaining to Legislation and Regulation Affecting the Biopharmaceutical and Other Industries

- We operate in a heavily regulated industry, and we cannot predict the impact that any future legislation or administrative or executive action may have on our operations.

PART I. FINANCIAL INFORMATION

Item 1. Unaudited Condensed Consolidated Financial Statements

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
($ in thousands except for share and per share amounts)

	March 31, 2021 (Unaudited)	December 31, 2020
ASSETS		
Current assets		
Cash and cash equivalents	$ 289,897	$ 233,351
Accounts receivable, net	19,439	19,349
Inventory	2,291	1,404
Other receivables - related party	849	744
Prepaid expenses and other current assets	5,517	6,723
Total current assets	317,993	261,571
Property and equipment, net	12,291	11,923
Operating lease right-of-use asset, net	20,072	20,487
Restricted cash	1,645	1,645
Long-term investment, at fair value	23,479	17,566
Intangible asset, net	14,442	14,629
Other assets	1,121	1,013
Total assets	**$ 391,043**	**$ 328,834**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable and accrued expenses	$ 39,181	$ 40,674
Deferred revenue	7,200	—
Income taxes payable	136	136
Operating lease liabilities, short-term	1,840	1,849
Partner company note payable, short-term	5,463	5,300
Total current liabilities	53,820	47,959
Notes payable, long-term (net of debt discount of $ 8,014 and $ 8,323 at March 31, 2021 and December 31, 2020, respectively)	51,986	51,677
Operating lease liabilities, long-term	22,447	22,891
Partner company note payable, long-term	5,613	7,359
Partner company convertible preferred shares	10,687	—
Partner company derivative warrant liability	362	—
Other long-term liabilities	1,903	1,949
Total liabilities	**146,818**	**131,835**
Commitments and contingencies		
Stockholders' equity		
Cumulative redeemable perpetual preferred stock, $ .001 par value, 15,000,000 authorized, 5,000,000 designated Series A shares, 3,427,138 shares issued and outstanding as of March 31, 2021 and December 31, 2020, respectively, liquidation value of $25.00 per share	3	3
Common stock, $.001 par value, 150,000,000 shares authorized, 97,263,054 and 94,877,492 shares issued and outstanding as of March 31, 2021 and December 31, 2020, respectively	97	95
Additional paid-in-capital	597,384	583,000
Accumulated deficit	(491,582)	(482,760)
Total stockholders' equity attributed to the Company	105,902	100,338
Non-controlling interests	138,323	96,661
Total stockholders' equity	244,225	196,999
Total liabilities and stockholders' equity	**$ 391,043**	**$ 328,834**

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

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations
($ in thousands except for share and per share amounts)
(Unaudited)

	Three Months Ended March 31,	
	2021	**2020**
Revenue		
Product revenue, net	$ 10,719	$ 11,946
Collaboration revenue	800	—
Revenue - related party	68	972
Net revenue	11,587	12,918
Operating expenses		
Cost of goods sold - product revenue	3,908	3,810
Research and development	20,028	14,867
Research and development - licenses acquired	126	250
Selling, general and administrative	17,542	15,519
Total operating expenses	41,604	34,446
Loss from operations	(30,017)	(21,528)
Other income (expense)		
Interest income	227	627
Interest expense and financing fee	(2,189)	(3,125)
Change in fair value of investments	5,913	—
Change in fair value of derivative liability	—	(42)
Total other income (expense)	3,951	(2,540)
Net loss	**(26,066)**	**(24,068)**
Less: net loss attributable to non-controlling interests	17,244	11,698
Net loss attributable to common stockholders	**$ (8,822)**	**$ (12,370)**
Net loss per common share - basic and diluted	$ (0.32)	$ (0.38)
Net loss per common share attributable to non - controlling interests - basic and diluted	$ (0.21)	$ (0.18)
Net loss per common share attributable to common stockholders - basic and diluted	$ (0.11)	$ (0.19)
Weighted average common shares outstanding - basic and diluted	80,851,671	63,496,256

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

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statement of Changes in Stockholders' Equity
($ in thousands)
(Unaudited)

For the Three Months Ended March 31, 2021

	Series A Perpetual Preferred Stock		Common Stock		Paid-In	Accumulated	Non-Controlling	Total Stockholders' Equity
	Shares	Amount	Shares	Amount	Capital	Deficit	Interests	(Deficit)
Balance at December 31, 2020	**3,427,138**	**$ 3**	**94,877,492**	**$ 95**	**$ 583,000**	**$ (482,760)**	**$ 96,661**	**$ 196,999**
Stock-based compensation expense	—	—	—	—	3,773	—	—	3,773
Issuance of common stock related to equity plans	—	—	2,385,562	2	(2)	—	—	—
Preferred A dividends declared and paid	—	—	—	—	(2,007)	—	—	(2,007)
Partner company's at-the-market offering, net	—	—	—	—	71,422	—	—	71,422
Partner company's exercise of options for cash	—	—	—	—	7	—	—	7
Issuance of common stock under partner company's ESPP	—	—	—	—	158	—	—	158
Partner company's dividends declared and paid	—	—	—	—	(187)	—	—	(187)
Issuance of partner company's common shares for research and development expenses	—	—	—	—	126	—	—	126
Non-controlling interest in partner companies	—	—	—	—	(58,906)	—	58,906	—
Net loss attributable to non-controlling interest	—	—	—	—	—	—	(17,244)	(17,244)
Net loss attributable to common stockholders	—	—	—	—	—	(8,822)	—	(8,822)
Balance at March 31, 2021	**3,427,138**	**$ 3**	**97,263,054**	**$ 97**	**$ 597,384**	**$ (491,582)**	**$ 138,323**	**$ 244,225**

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

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statement of Changes in Stockholders' Equity
($ in thousands)
(Unaudited)

For the Three Months Ended 3/31/2020

	Series A Perpetual Preferred Stock		Common Stock		Shares Issuable	Treasury Stock	Paid-In Capital	Accumulated Deficit	Non-Controlling Interests	Total Stockholders' Equity (Deficit)
	Shares	Amount	Shares	Amount						
Balance at December 31, 2019	**1,341,167**	**$ 1**	**74,027,425**	**$ 74**	**$ 500**	**$ —**	**$461,874**	**$ (436,234)**	**$ 46,317**	**$ 72,532**
Stock-based compensation expense	—	—	—	—	—	—	3,400	—	—	3,400
Issuance of common stock related to equity plans	—	—	1,952,407	2	—	—	(2)	—	—	—
Issuance of common stock for at-the-market offering, net	—	—	2,341,000	3	—	—	5,877	—	—	5,880
Preferred A dividends declared and paid	—	—	—	—	—	—	(1,207)	—	—	(1,207)
Repurchase of Series A preferred stock for cash, net	(5,000)	—	—	—	—	(70)	(2)	—		(72)
Issuance of Series A preferred stock for cash, net	718,750	1	—	—	—	—	13,066	—	—	13,067
Partner company's at-the-market offering, net	—	—	—	—	—	—	4,910	—	—	4,910
Partner company's exercise of warrants for cash	—	—	—	—	—	—	13	—	—	13
Issuance of common stock under partner company's ESPP	—	—	—	—	—	—	169	—	—	169
Common shares issued for 2017 Subordinated Note Financing interest expense	—	—	251,337	—	(500)	—	500	—	—	—
Common shares issuable for 2017 Subordinated Note Financing interest expense	—	—	—	—	506	—	—	—	—	506
Common shares issuable for 2019 Notes interest expense	—	—	—	—	155	—	—	—	—	155
Non-controlling interest in partner companies	—	—	—	—	—	—	(3,438)	—	3,438	—
Net loss attributable to non-controlling interest	—	—	—	—	—	—	—	—	(11,698)	(11,698)
Net loss attributable to common stockholders	—	—	—	—	—	—	—	(12,370)	—	(12,370)
Balance at March 31, 2020	**2,054,917**	**$ 2**	**78,572,169**	**$ 79**	**$ 661**	**$ (70)**	**$485,160**	**$ (448,604)**	**$ 38,057**	**$ 75,285**

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

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
($ in thousands)
(Unaudited)

	Three Months Ended March 31,	
	2021	2020
Cash Flows from Operating Activities:		
Net loss	$ (26,066)	$ (24,068)
Reconciliation of net loss to net cash used in operating activities:		
Depreciation expense	603	527
Bad debt expense	70	—
Amortization of debt discount	309	747
Non-cash interest	221	150
Amortization of product revenue license fee	584	355
Amortization of operating lease right-of-use assets	415	403
Stock-based compensation expense	3,773	3,400
Issuance of partner company's common shares for research and development expenses	126	—
Common shares issuable for 2017 Subordinated Note Financing interest expense	—	506
Common shares issuable for 2019 Notes interest expense	—	155
Change in fair value of derivative liability	—	42
Change in fair value of investment	(5,913)	—
Research and development-licenses acquired, expense	—	250
Increase (decrease) in cash and cash equivalents resulting from changes in operating assets and liabilities:		
Accounts receivable	(160)	(2,271)
Inventory	(887)	88
Other receivables - related party	(105)	(888)
Prepaid expenses and other current assets	1,206	(393)
Other assets	(108)	(195)
Accounts payable and accrued expenses	(2,457)	(612)
Accounts payable and accrued expenses - related party	—	13
Interest payable	—	39
Interest payable - related party	—	(39)
Deferred revenue	7,200	—
Lease liabilities	(453)	(54)
Other long-term liabilities	(46)	(47)
Net cash used in operating activities	(21,688)	(21,892)
Cash Flows from Investing Activities:		
Purchase of research and development licenses	—	(1,250)
Purchase of property and equipment	(458)	(526)
Net cash used in investing activities	(458)	(1,776)

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

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
($ in thousands)
(Unaudited)

	Three Months Ended March 31,	
	2021	2020
Cash Flows from Financing Activities:		
Payment of Series A perpetual preferred stock dividends	$ (2,007)	$ (1,207)
Purchase of treasury stock	—	(70)
Payment of costs related to purchase of treasury stock	—	(2)
Proceeds from issuance of Series A perpetual preferred stock	—	14,375
Payment of costs related to issuance of Series A perpetual preferred stock	—	(1,213)
Proceeds from issuance of common stock for at-the-market offering	—	6,068
Payment of costs related to issuance of common stock for at-the-market offering	—	(188)
Proceeds from partner companies' ESPP	158	169
Partner company's dividends declared and paid	(187)	—
Payment of costs related to partner companies' sale of stock	—	(69)
Proceeds from partner companies' at-the-market offering	72,947	4,997
Payment of costs related to partner companies' at-the-market offering	(1,584)	(87)
Payment of costs related to partner company's preferred stock offering	(13)	—
Proceeds from exercise of partner company's warrants	—	13
Proceeds from exercise of partner company's options	7	—
Payment of debt issuance costs associated with 2017 Subordinated Note Financing	—	(26)
Payment of debt issuance costs associated with 2018 Venture Notes	—	(7)
Payment of debt issuance costs associated with Oaktree Note	(13)	—
Repayment of partner company note payable	(1,800)	—
Proceeds from partner company convertible preferred shares	12,537	—
Payment of debt issuance costs associated with partner company convertible preferred shares	(1,353)	—
Net cash provided by financing activities	78,692	22,753
Net increase (decrease) in cash and cash equivalents and restricted cash	56,546	(915)
Cash and cash equivalents and restricted cash at beginning of period	234,996	153,432
Cash and cash equivalents and restricted cash at end of period	$ 291,542	$ 152,517
Supplemental disclosure of cash flow information:		
Cash paid for interest	$ 1,670	$ 1,609
Supplemental disclosure of non-cash financing and investing activities:		
Settlement of restricted stock units into common stock	$ 2	$ 2
Common shares issued from 2017 Subordinated Note Financing interest expense	$ —	$ 500
Unpaid fixed assets	$ 545	$ 540
Partner company's unpaid intangible assets	$ 400	$ —
Unpaid debt offering cost	$ —	$ 8
Unpaid partner company's debt offering cost	$ 135	$ —
Partner company derivative warrant liability associated with partner company convertible preferred shares	$ 362	$ —
Unpaid at-the-market offering cost	$ —	$ 6
Unpaid partner company's at-the-market offering cost	$ 25	$ —
Unpaid Series A perpetual preferred stock offering cost	$ —	$ 98
Unpaid research and development licenses acquired	$ —	$ 350

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

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. Organization and Description of Business

Fortress Biotech, Inc. ("Fortress" or the "Company") is a biopharmaceutical company dedicated to acquiring, developing and commercializing pharmaceutical and biotechnology products and product candidates, which the Company does at the Fortress level, at its majority-owned and majority-controlled subsidiaries and joint ventures, and at entities the Company founded and in which it maintains significant minority ownership positions. Fortress has a talented and experienced business development team, comprised of scientists, doctors and finance professionals, who identify and evaluate promising products and product candidates for potential acquisition by new or existing partner companies. Fortress through its partner companies has executed such arrangements in partnership with some of the world's foremost universities, research institutes and pharmaceutical companies, including City of Hope National Medical Center, Fred Hutchinson Cancer Research Center, St. Jude Children's Research Hospital, Dana-Farber Cancer Institute, Nationwide Children's Hospital, Cincinnati Children's Hospital Medical Center, Columbia University, the University of Pennsylvania, and AstraZeneca plc.

Following the exclusive license or other acquisition of the intellectual property underpinning a product or product candidate, Fortress leverages its business, scientific, regulatory, legal and financial expertise to help the partners achieve their goals. Partner companies then assess a broad range of strategic arrangements to accelerate and provide additional funding to support research and development, including joint ventures, partnerships, out-licensings, and public and private financings. To date, three partner companies are publicly-traded, and three have consummated strategic partnerships with industry leaders Alexion Pharmaceuticals, Inc., InvaGen Pharmaceuticals, Inc. ("InvaGen") (a subsidiary of Cipla Limited) and Sentynl Therapeutics, Inc. ("Sentynl").

Several of our partner companies possess licenses to product candidate intellectual property, including Aevitas Therapeutics, Inc. ("Aevitas"), Avenue Therapeutics, Inc. ("Avenue"), Baergic Bio, Inc. ("Baergic"), Caelum Biosciences, Inc. ("Caelum"), Cellvation, Inc. ("Cellvation"), Checkpoint Therapeutics, Inc. ("Checkpoint"), Cyprium Therapeutics, Inc. ("Cyprium"), FBIO Acquisition Corp. VIII, Helocyte, Inc. ("Helocyte"), Journey Medical Corporation ("Journey" or "JMC"), Mustang Bio, Inc. ("Mustang") and Oncogenuity, Inc. ("Oncogenuity").

Liquidity and Capital Resources

Since inception, the Company's operations have been financed primarily through the sale of equity and debt securities, from the sale of partner companies, and the proceeds from the exercise of warrants and stock options. The Company has incurred losses from operations and negative cash flows from operating activities since inception and expects to continue to incur substantial losses for the next several years as it continues to fully develop and prepare regulatory filings and obtain regulatory approvals for its existing and new product candidates. The Company's current cash and cash equivalents are sufficient to fund operations for at least the next 12 months. However, the Company will need to raise additional funding through strategic relationships, public or private equity or debt financings, sale of a partner company, grants or other arrangements to fully develop and prepare regulatory filings and obtain regulatory approvals for the existing and new product candidates, fund operating losses, and, if deemed appropriate, establish or secure through third parties manufacturing for the potential products, sales and marketing capabilities. If such funding is not available or not available on terms acceptable to the Company, the Company's current development plan and plans for expansion of its general and administrative infrastructure may be curtailed. The Company also has the ability, subject to limitations imposed by Rule 144 of the Securities Act of 1933 and other applicable laws and regulations, to raise money from the sale of common stock of the public companies in which it has ownership positions. In addition to the foregoing, the Company does not expect any material impact on its development timelines, revenue levels and its liquidity due to the worldwide spread of COVID-19. However, the Company is continuing to assess the impact the spread of COVID-19 may have on its operations.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements
(Unaudited)

2. Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, the unaudited interim condensed consolidated financial statements reflect all adjustments, which include only normal recurring adjustments necessary for the fair statement of the balances and results for the periods presented. Certain information and footnote disclosures normally included in the Company's annual financial statements prepared in accordance with GAAP have been condensed or omitted. These condensed consolidated financial statement results are not necessarily indicative of results to be expected for the full fiscal year or any future period.

The unaudited condensed consolidated financial statements and related disclosures have been prepared with the presumption that users of the unaudited condensed consolidated financial statements have read or have access to the audited financial statements for the preceding fiscal year for each of Avenue, Checkpoint and Mustang. Accordingly, these unaudited condensed consolidated financial statements should be read in conjunction with the Company's Form 10-K, which was filed with the United States Securities and Exchange Commission ("SEC") on March 31, 2021, from which the Company derived the balance sheet data at December 31, 2020, as well as Checkpoint's Form 10-K, filed with the SEC on March 12, 2021, Mustang's Form 10-K, filed with the SEC on March 24, 2021, and Avenue's Form 10-K, filed with the SEC on March 31, 2021.

The Company's unaudited condensed consolidated financial statements include the accounts of the Company's subsidiaries. For consolidated entities where the Company owns less than 100% of the subsidiary, the Company records net loss attributable to non-controlling interests in its consolidated statements of operations equal to the percentage of the economic or ownership interest retained in such entities by the respective non-controlling parties. The Company also consolidates subsidiaries in which it owns less than 50% of the subsidiary but maintains voting control. The Company continually assesses whether changes to existing relationships or future transactions may result in the consolidation or deconsolidation of partner companies.

The preparation of the Company's unaudited condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the unaudited condensed consolidated financial statements and the reported amounts of expenses during the reporting period.

Use of Estimates

The Company's unaudited condensed consolidated financial statements include certain amounts that are based on management's best estimates and judgments. The Company's significant estimates include, but are not limited to, useful lives assigned to long-lived assets, fair value of stock options and warrants, stock-based compensation, common stock issued to acquire licenses, investments, accrued expenses, provisions for income taxes, and contingencies. Due to the uncertainty inherent in such estimates, actual results may differ from these estimates.

Significant Accounting Policies

There have been no material changes in the Company's significant accounting policies to those previously disclosed in the 2020 Annual Report, other than the accounting for partner company convertible preferred shares and sequencing.

Partner Company Convertible Preferred Shares

The Journey 8% Cumulative Convertible Class A Preferred Stock ("Journey Preferred Stock") includes settlement features that result in liability classification. The initial carrying value of the Journey Preferred Stock is accreted to the expected settlement value, a fixed monetary amount to be settled by issuing a variable number of Journey common shares. The discount to the settlement value is accreted to interest expense using the effective interest method.

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Sequencing

On March 31, 2021, the Company adopted a sequencing policy under accounting Standards Codification ("ASC") 815-40-35*Derivatives and Hedging* ("ASC 815") whereby in the event that reclassification of contracts from equity to assets or liabilities is necessary pursuant to ASC 815 due to the Company's inability to demonstrate it has sufficient authorized shares as a result of certain securities convertible or exchangeable for a potentially indeterminable number of shares, shares will be allocated on the basis of the earliest issuance date of potentially dilutive instruments, with the earliest grants receiving the first allocation of shares. Pursuant to ASC 815, grants or issuances of securities or options to the Company's non-employees, employees or directors are not subject to the sequencing policy.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019-12, "*Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*("ASU 2019-12"), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. On January 1, 2021, the Company's adoption of this guidance did not have a material impact on its financial statements.

Recently Issued Accounting Pronouncements

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2020-06, "*Debt-Debt with Conversion and Other Options (Subtopic 470-20)* and *Derivatives and Hedging-Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*," which simplifies accounting for convertible instruments by removing major separation models required under current GAAP. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception and it also simplifies the diluted earnings per share calculation in certain areas. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption will be permitted. The Company is currently evaluating the impact of this standard on its financial statements.

In June 2016, the FASB issued ASU 2016-13, *"Financial Instruments – Credit Losses"*. The ASU sets forth a "current expected credit loss" (CECL) model which requires the Company to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions, and reasonable supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial assets measured at amortized cost and applies to some off-balance sheet credit exposures. This ASU is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years, with early adoption permitted. Recently, the FASB issued the final ASU to delay adoption for smaller reporting companies to calendar year 2023. The Company is currently assessing the impact of the adoption of this ASU on its condensed consolidated financial statements.

3. Collaboration and Stock Purchase Agreements

Cyprium

Agreement with Sentynl Therapeutics, Inc. ("Sentynl")

On February 24, 2021, Cyprium entered into an asset purchase agreement with Sentynl. Pursuant to the terms of the agreement, Sentynl paid Cyprium an upfront fee of $8.0 million specifically earmarked to complete the CUTX-101 development program for the treatment of Menkes disease, through the filing of Cyprium's New Drug Application ("NDA") with the U.S. Food and Drug Administration ("FDA"). As further compensation, Cyprium will receive an additional $12.0 million to be paid (i) $3.0 million upon NDA acceptance by the FDA and (ii) $9.0 million upon FDA approval of the NDA and transfer of CUTX-101 to Sentynl. The Company will recognize revenue associated with these future milestones based upon achievement. At March 31, 2021, none of these future milestones were deemed probable.

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Upon the transfer of CUTX-101 to Sentynl, Cyprium is eligible to earn an additional five potential sales milestones totaling $255.0 million in addition to royalties on CUTX-101 net sales ranging from mid-single digits up to the mid-twenties. Cyprium will retain 100% ownership over any FDA priority review voucher that may be issued at NDA approval for CUTX-101.

The Company determined that this agreement falls within the scope of *ASC 606-10-15-3 Revenue from Contracts with Customers* ("ASC-606") and *ASC 808-10-15-5A Revenue from Collaborative Arrangements* ("ASC-808") and as such the Company will recognize revenue in connection with achievement of two future development milestone payments.

In connection with the $8.0 million upfront payment at March 31, 2021, the Company will recognize revenue using an input method based upon the costs incurred to date to the total estimated costs to complete the development activities. Accordingly, the Company will recognize revenue over the period in which the development activities are expected to occur. For the three month period ending March 31, 2021, the company recognized revenue of $0.8 million. No revenue was recognized in connection with this agreement in 2020.

Avenue

Agreement with InvaGen

On November 12, 2018, Avenue entered into a Stock Purchase and Merger Agreement (the "Avenue SPMA") with InvaGen Pharmaceuticals Inc. ("InvaGen"), and Madison Pharmaceuticals Inc. (the "Merger Sub"), under which Avenue would be sold to InvaGen in a two-stage transaction. The first stage of the strategic transaction between InvaGen and Avenue closed in February 2019. InvaGen acquired approximately 5.8 million shares of Avenue's common stock at $6.00 per share for total gross consideration of $35.0 million, representing a 33.3% stake in Avenue's capital stock on a fully diluted basis (the "Stock Purchase Transaction"). At the second stage closing, InvaGen would acquire the remaining shares of Avenue's common stock, for $ 180 million, pursuant to a reverse triangular merger (the "Merger Transaction').

Consummation of the Merger Transaction is conditioned upon, among other things, U.S. Federal Drug Administration ("FDA") approval of IV Tramadol, its labeling and scheduling, and the absence of certain other restrictions in effect with respect to IV Tramadol. Pursuant to the Avenue SPMA, if FDA approval of IV Tramadol was not obtained on or before April 30, 2021, InvaGen would not be subject to the mandatory closing obligations set forth in the Avenue SPMA with respect to the Merger Transaction. As of the date of this report, Avenue has not received approval from the FDA for IV Tramadol. As a result, InvaGen is no longer subject to the mandatory closing obligations under the Avenue SPMA, but retains an option to complete the Merger Transaction until October 31, 2021, and also retains the option to terminate the Avenue SPMA.

In the event that InvaGen does not exercise its right to terminate the Avenue SPMA, certain restrictions relating to Avenue's ability to raise capital and explore strategic alternatives, among other things, could exist through October 31, 2021, the time at which Avenue can choose to terminate the Avenue SPMA. In the event of termination of the Avenue SPMA, InvaGen will retain certain other rights pursuant to the Stockholder's Agreement entered into on November 12, 2018 between Avenue and InvaGen. These rights exist as long as InvaGen maintains at least 75% of the common shares acquired in the Stock Purchase Transaction, and include, among other things, the right to restrict Avenue from certain equity issuances and changes to Avenue's capital stock without obtaining InvaGen's prior written consent.

Subject to the terms and conditions described in the Avenue SPMA, InvaGen may also (in its sole discretion) provide interim financing to Avenue in an amount of up to $7.0 million during the time period between the Stock Purchase Transaction (which occurred on February 8, 2019) and the Merger Transaction. Any amounts drawn on the interim financing would be deducted from the aggregate consideration payable to the Avenue stockholders by virtue of the Merger Transaction. There have been no amounts drawn upon this interim financing as of March 31, 2021.

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Over the past several months, Avenue has communicated with InvaGen relating to InvaGen's assertions that Material Adverse Effects (as defined in the Avenue SPMA) have occurred due to the impact of the COVID-19 pandemic on potential commercialization and projected sales of IV Tramadol. Additionally, in connection with the resubmission of Avenue's NDA in February 2021, InvaGen communicated to Avenue that it believes the proposed label for IV Tramadol would also constitute a Material Adverse Effect (as defined in the Avenue SPMA) on the purported basis that the proposed label under certain circumstances would make the product commercially unviable. InvaGen has communicated to Avenue its desire to consider all options on the proposed merger, including the option to not consummate the merger. Since Avenue did not receive FDA approval for IV Tramadol by April 30, 2021, these assertions have no impact as to whether InvaGen is obligated to close the Avenue SPMA, because, as discussed above, InvaGen no longer has such an obligation. As a result, the possible timing and likelihood of the completion of the merger are uncertain.There can be no assurance that the Merger Transaction will be completed on the expected terms, anticipated schedule, or at all. It is also possible InvaGen could attempt to pursue monetary claims against Avenue and/or Fortress.

Avenue is not yet generating revenue, has incurred substantial operating losses since its inception and expects to continue to incur significant operating losses for the foreseeable future as it executes on its product development plan and may never become profitable. As of March 31, 2021, Avenue had an accumulated deficit of $74.3 million.

On October 12, 2020, Avenue announced that it had received a Complete Response Letter ("CRL") from the FDA regarding the Company's NDA for IV Tramadol. The CRL cited deficiencies related to the terminal sterilization validation and stated that IV Tramadol, intended to treat patients in acute pain who require an opioid, is not safe for the intended patient population. On February 12, 2021, Avenue resubmitted its NDA to the FDA for IV Tramadol. The NDA resubmission follows the receipt of official minutes from a Type A meeting with the FDA. The resubmission included revised language relating to the proposed product label and a report relating to terminal sterilization validation. The FDA assigned a Prescription Drug User Fee Act goal date of April 12, 2021 and informed Avenue that it had not yet completed its review of the NDA resubmission. Avenue's ability to potentially commercialize IV Tramadol, and the timing of any potential commercialization, are dependent on the FDA's review of Avenue's resubmission of its NDA for IV Tramadol, whether or not the FDA ultimately approves IV Tramadol, and potentially on whether or not Avenue procures additional capital.

As of March 31, 2021, Avenue had cash and cash equivalents of$1.8 million. In the event that IV Tramadol is approved by the FDA, this triggers an obligation by Avenue to make $5.0 million in contractual milestone payments, for which Avenue currently does not have sufficient funding. In the event that IV Tramadol is not approved by the FDA, Avenue believes that its cash and cash equivalents should be sufficient to fund its operating expenses only through the end of the second quarter of 2021. Avenue will need to secure additional funds through equity or debt offerings, or other potential sources. Avenue cannot be certain that additional funding will be available on acceptable terms, or at all. These factors individually and collectively raise substantial doubt about Avenue's ability to continue as a going concern within one year from the date of this report.

In light of the foregoing, it may be necessary at some point for Avenue to seek protection under Chapter 11 of the United States Bankruptcy Code, which could have a material adverse impact on Avenue's business, financial condition, operations and could place its shareholders at significant risk of losing all of their investment. In any such Chapter 11 proceeding, Avenue may seek to restructure its obligations or commence an orderly wind-down of its operations and sale of its assets, in either event, holders of equity interests could receive or retain little or no recovery. We also note that the process of exploring refinancing or restructuring alternatives, including those under Chapter 11, may be disruptive to Avenue's business and operations.

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4. Property and Equipment

Fortress' property and equipment consisted of the following:

($ in thousands)	Useful Life (Years)	March 31, 2021 (Unaudited)	December 31, 2020
Computer equipment	3	$ 663	$ 663
Furniture and fixtures	5	1,211	1,199
Machinery & equipment	5	5,748	5,748
Leasehold improvements	2-15	10,580	10,580
Construction in progress [1]	N/A	1,458	499
Total property and equipment		19,660	18,689
Less: Accumulated depreciation		(7,369)	(6,766)
Property and equipment, net		$ 12,291	$ 11,923

Note 1: Relates to the Mustang cell processing facility.

Fortress' depreciation expense for the three months ended March 31, 2021 and 2020 was approximately$0.6 million and $0.5 million, respectively, and was recorded in both research and development expense and general and administrative expense in the Condensed Consolidated Statement of Operations.

5. Fair Value Measurements

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

Fair Value of Caelum

As of March 31, 2021, the Company valued its investment in Caelum in accordance with ASC Topic 820,*Fair Value Measurements and Disclosures*, and estimated the fair value to be $23.5 million based on a per share value of $3.25. As of March 31, 2021, the following inputs were utilized to derive the value: risk free rate of return of 0.07%, volatility of 70% and a discount for lack of marketability of 41.3%.

As of December 31, 2020, the Company valued its investment in Caelum in accordance with ASC Topic 820,*Fair Value Measurements and Disclosures*, and estimated the fair value to be $17.6 million based on a per share value of $2.43. As of December 31, 2020, the following inputs were utilized to derive the value: risk free rate of return of 0.36%, volatility of 70% and a discount for lack of marketability of 21.0% to 31.0% based on various scenarios. Further, the Company considered the impact of the acquisition of Alexion by AZ, which if consummated, will shorted the timeframe in which the option will be exercised in accordance with the second A&R DOSPA (see Note 3.)

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Journey Warrant Liability

The fair value of Journey's Contingently Issuable Warrants in connection with Journey's preferred offering (see Note 10), was measured using a Monte Carlo simulation valuation methodology. A summary of the weighted average (in aggregate) significant unobservable inputs (Level 3 inputs) used in measuring Journey's warrant liability that are categorized within Level 3 of the fair value hierarchy as of March 2021 was as follows:

	March 31, 2021
Risk-free interest rate	0.92 %
Expected dividend yield	—
Expected term in years	1.5
Expected volatility	50 %
Probability of issuance of the warrant	100 %

The following tables classify into the fair value hierarchy of Fortress' financial instruments, measured at fair value as of March 31, 2021 and December 31, 2020:

	Fair Value Measurement as of March 31, 2021			
($ in thousands)	Level 1	Level 2	Level 3	Total
Assets				
Fair value of investment in Caelum	$ —	$ —	$ 23,479	$ 23,479
Total	$ —	$ —	$ 23,479	$ 23,479

	Fair Value Measurement as of March 31, 2021			
($ in thousands)	Level 1	Level 2	Level 3	Total
Liabilities				
Warrant liabilities	$ —	$ —	$ 362	$ 362
Total	$ —	$ —	$ 362	$ 362

	Fair Value Measurement as of December 31, 2020			
($ in thousands)	Level 1	Level 2	Level 3	Total
Assets				
Fair value of investment in Caelum	$ —	$ —	$ 17,566	$ 17,566
Total	$ —	$ —	$ 17,566	$ 17,566

The table below provides a roll-forward of the changes in fair value of Level 3 financial instruments as of March 31, 2021:

($ in thousands)	Investment in Caelum
Balance at December 31, 2020	$ 17,566
Change in fair value of investments	5,913
Balance at March 31, 2021	$ 23,479

($ in thousands)	Warrants liabilities
Balance at December 31, 2020	$ —
Additions - partner company	362
Balance at March 31, 2021	$ 362

As of March 31, 2021, no transfers occurred between Level 1, Level 2, and Level 3 instruments.

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6. Licenses Acquired

In accordance with ASC 730-10-25-1, *Research and Development*, costs incurred in obtaining technology licenses are charged to research and development expense if the technology licensed has not reached technological feasibility and has no alternative future use. The licenses purchased by Fortress and its partner companies require substantial completion of research and development, and regulatory and marketing approval efforts in order to reach technological feasibility. As such, for the three months ended March 31, 2021 and 2020, the purchase price of licenses acquired was classified as research and development-licenses acquired in the Condensed Consolidated Statement of Operations as reflected in the following table:

	Three Months Ended March 31,	
($ in thousands)	**2021**	**2020**
Partner companies:		
Mustang	$ —	$ 250
Aevitas	25	—
FBIO Acquisition Corp VIII	101	—
Total	$ 126	$ 250

Aevitas

For the quarter ended March 31, 2021 and 2020, Aevitas recorded $25,000 and nil, respectively, in connection with its license agreement.

FBIO Acquisition Corp VIII

On November 25, 2020, FBIO Acquisition Corp. VIII entered into a license agreement with Fuji Yakuhin Co., LTD ("Fuji"), a Japanese corporation, for the rights to develop Fuji's novel selective urate reabsorption inhibitor known as Dotinurad in the United States, United Kingdom, European Union and Canada.

Mustang

For the three months ended March 31, 2021 and 2020, Mustang recordednil and $0.3 million, respectively, in connection with its license agreement with City of Hope ("COH"). The $0.3 million represented a non-refundable milestone payment in connection with the twelfth patient treated in the Phase 1 clinical study of MB-103 at COH for the three months ended March 31, 2020.

7. Sponsored Research and Clinical Trial Agreements

Aevitas

In 2018, Aevitas entered into a Sponsored Research Agreement ("SRA") with the Trustees of the University of Pennsylvania ("UPenn SRA"), as amended in July 2019, for certain continued research and development activities related to the development of adeno-associated virus ("AAV") gene therapies in complement-mediated diseases. Also in 2018, Aevitas entered into an SRA with the University of Massachusetts ("UMass SRA"), as amended in January 2020, for certain continued research and development activities related to the development of AAV. For the three months ended March 31, 2021 and 2020, Aevitas recorded the following expense in connection with its sponsored research and clinical trial agreements:

	For the Three Months Ended March 31,	
($ in thousands)	**2021**	**2020**
UMass SRA	$ 248	$ —
UPenn SRA	—	281
Total	$ 248	$ 281

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Mustang

For the three months ended March 31, 2021 and 2020, Mustang recorded the following expense in research and development for sponsored research and clinical trial agreements:

	For the Three Months Ended March 31,	
($ in thousands)	**2021**	**2020**
City of Hope National Medical Center	$ —	$ 500
IL13Rα2 (MB-101)	514	92
CD123 (MB-102)	205	230
CS1 (MB-104)	175	—
HER2 (MB-103)	123	—
PSCA (MB-105)	50	—
Fred Hutchinson Cancer Research Center - CD20 (MB-106)	671	527
St. Jude Children's Research Hospital - XSCID (MB-107)	104	—
Total	$ 1,842	$ 1,349

City of Hope Sponsored Research Agreement

In March 2015, in connection with Mustang's license with COH for the development of chimeric antigen receptor ("CAR") engineered T cell ("CAR T") technology, Mustang entered into a Sponsored Research Agreement in which Mustang will fund continued research in the amount of $ 2.0 million per year, payable in four equal annual installments, through the first quarter of 2020. The research covered under this arrangement is for the IL13Rα2-directed CAR T program (MB-101), the CD123-directed CAR T program (MB-102) and the Spacer technology. For the three months ended March 31, 2021 and 2020, Mustang recorded expense of nil and $0.5 million, respectively, in research and development expense in the Company's Condensed Consolidated Statement of Operations.

IL13Rα2 (MB-101) Clinical Research Support Agreements

On February 17, 2017, Mustang entered into a Clinical Research Support Agreement for the IL13Rα2-directed CAR T program (the "IL13Rα2 GBM CRA") with COH. Pursuant to the terms of this agreement Mustang made an upfront payment of approximately $9,300 and will contribute an additional $0.1 million per patient in connection with the on-going investigator-initiated study. Further, Mustang agreed to fund approximately $0.2 million over three years pertaining to the clinical development of the IL13Rα2-directed CAR T program.

In October 2020, Mustang entered into a Clinical Research Support Agreement with COH for the IL13Rα2-directed CAR T program for adult patients with leptomeningeal glioblastoma, ependymoma or medulloblastoma (the "IL13Rα2 Leptomeningeal CRA"). Pursuant to the terms of the IL13Rα2 Leptomeningeal CRA, Mustang made an upfront payment of approximately $29,000 and will contribute an additional $0.1 million per patient in connection with the on-going investigator-initiated study. Further, the Company agreed to fund approximately $ 0.2 million annually pertaining to the clinical development of the IL13Rα2-directed CAR T program.

For the three months ended March 31, 2021 and 2020, Mustang recorded approximately $0.5 million and $0.1 million, respectively, in research and development expense in the Company's Condensed Consolidated Statement of Operations.

CD123 (MB-102) Clinical Research Support Agreement

On February 17, 2017, Mustang entered into a Clinical Research Support Agreement for the CD123-directed CAR T program. Pursuant to the terms of this agreement, Mustang made an upfront payment of approximately $20,000 and will contribute an additional $0.1 million per patient in connection with the on-going investigator-initiated study. Further, Mustang agreed to fund approximately $0.2 million over three years pertaining to the clinical development of the CD123-directed CAR T program. For the three months ended March 31, 2021 and 2020, Mustang recorded approximately $0.2 million and $0.2 million, respectively, in research and development expense in the Company's Condensed Consolidated Statement of Operations.

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CS1(MB-104) Clinical Research and Support Agreement with COH

In June 2020, Mustang entered into a clinical research and support agreement with COH in connection with an investigator-sponsored study conducted under an Institutional Review Board-approved, investigator-initiated protocol entitled: "Phase I Study to Evaluate Cellular Immunotherapy Using Memory-Enriched T Cells Lentivirally Transduced to Express a CS1-Targeting, Hinge-Optimized, 41BB-Costimulatory Chimeric Antigen Receptor and a Truncated EGFR Following Lymphodepleting Chemotherapy in Adult Patients with CS1+ Multiple Myeloma." The CAR T being studied under this protocol has been designated by Mustang as MB-104. Under the terms of the agreement Mustang paid COH $0.8 million during the three months ended March 31, 2020 for costs incurred and will reimburse COH for costs associated with this trial, when incurred, not to exceed $2.4 million. The agreement will expire upon the delivery of the final study report or earlier. Expense of $0.2 million and nil was incurred for the three months ended March 31, 2021 and 2020, respectively.

HER2 (MB-103) Clinical Research Support Agreement

In September 2020, Mustang entered into a clinical research support agreement with COH in connection with an investigator-sponsored study conducted under an Institutional Review Board-approved, investigator-initiated protocol entitled: “Phase I Study of Cellular Immunotherapy using Memory-Enriched T Cells Lentivirally Transduced to Express a HER2-Specific, Hinge-Optimized, 41BB-Costimulatory Chimeric Receptor and a Truncated CD19 for Patients with Recurrent/Refractory Malignant Glioma.” The CAR T being studied under this protocol has been designated as MB-103. Under the terms of the agreement Mustang paid COH approximately $29,000 upon execution and will reimburse COH for costs associated with this trial not to exceed $3.0 million. The agreement will expire upon the delivery of a final study report or earlier. For the three months ended March 31, 2021 and 2020, Mustang recorded $0.1 million and nil, respectively, in research and development expense in the Company’s Condensed Consolidated Statement of Operations pursuant to this agreement.

PSCA (MB-105) Clinical Research Support Agreement

In October 2020, Mustang entered into a clinical research support agreement with COH in connection with an investigator-sponsored study conducted under an Institutional Review Board-approved, investigator-initiated protocol entitled: “A Phase 1b study to evaluate PSCA-specific chimeric antigen receptor (CAR)-T cells for patients with metastatic castration resistant prostate cancer.” The CAR T being studied under this protocol has been designated as MB-105. Under the terms of the agreement Mustang paid COH $33,000 upon execution and will reimburse COH for costs associated with this trial not to exceed $2.3 million. The agreement will expire upon the delivery of a final study report or earlier. For the three months ended March 31, 2021 and 2020, Mustang recorded $0.1 million and nil, respectively, in research and development expense in the Company’s Condensed Consolidated Statement of Operations pursuant to this agreement.

CD20 (MB-106) Clinical Trial Agreement with Fred Hutchinson Cancer Research Center

On July 3, 2017, in conjunction with the CD20 Technology License from Fred Hutchinson Cancer Research Center (“Fred Hutch”), Mustang entered into an investigator-initiated clinical trial agreement (“CD20 CTA”) to provide partial funding for a Phase 1/2 clinical trial at Fred Hutch evaluating the safety and efficacy of the CD20 Technology in patients with relapsed or refractory B-cell non-Hodgkin lymphomas. In connection with the CD20 CTA, Mustang agreed to fund up to $5.3 million of costs associated with the clinical trial, which commenced during the fourth quarter of 2017. In November 2020, the CD20 CTA was amended to include additional funding of approximately $ 0.8 million for the treatment of five patients with chronic lymphocytic leukemia. For the three months ended March 31, 2021 and 2020, Mustang recorded $0.7 million and $0.5 million of expense, respectively, related to this agreement in research and development expense in the Company’s Condensed Consolidated Statement of Operations.

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XSCID (MB-107) Data Transfer Agreement with St. Jude Children's Research Hospital

In June 2020, Mustang entered into a Data Transfer Agreement with St. Jude Children's Research Center ("St. Jude") under which Mustang will reimburse St. Jude for costs associated with St. Jude's clinical trial for the treatment of infants with X-linked Severe Combined Immunodeficiency ("XSCID"). Pursuant to the terms of this agreement Mustang paid an upfront fee of $1.1 million on July 1, 2020 and will continue to reimburse St. Jude for costs incurred in connection with this trial. For the three months ended March 31, 2021 and 2020, Mustang recorded $0.1 million and nil, respectively, related to this agreement in research and development expense in the Company's Condensed Consolidated Statement of Operations.

Oncogenuity

	For the Three Months Ended March 31,	
($ in thousands)	**2021**	**2020**
Columbia	$ 188	$ —
Oxford	79	—
McCormick Labs	56	—
Total	$ 323	$ —

Columbia Sponsored Research Agreement

Pursuant to the terms of a SRA entered into with the Trustees of Columbia University in the City of New York ("Columbia") in May 2020, to develop novel oligonucleotides for the treatment of genetically driven cancers (the "Columbia SRA"), Oncogenuity will make semi-annual research payments to Columbia semiannually for five years ending in November 2024, such payments not to exceed $4.8 million. For the three months ended March 31, 2021, Oncogenuity recorded expense of $0.2 million and nil, respectively, in research and development in the Company's Condensed Consolidated Statement of Operations.

The Regents of the University of California Sponsored Research Agreement

In December 2020, Oncogenuity entered into a SRA with The Regents of the University of California, with Frank McCormick PhD, FRS as principal investigator ("McCormick SRA"). For the three months ended March 31, 2021, Oncogenuity recorded expense of $0.1 million in research and development in the Company's Condensed Consolidated Statement of Operations. No expense was recorded in 2020.

The Chancellor Masters and Scholars of the University of Oxford Sponsored Research Agreement

In December, 2020, Oncogenuity entered into a Sponsored Research Agreement with The Chancellor Masters and Scholars of the University of Oxford, (the "Oxford SRA"). For the three months ended March 31, 2021, Oncogenuity recorded expense of $0.1 million in research and development in the Company's Condensed Consolidated Statement of Operations. No expense was recorded in 2020.

8. Intangibles, net

The table below provides a summary of the Journey intangible assets as of March 31, 2021 and December 31, 2020, respectively:

($ in thousands)	**Estimated Useful Lives (Years)**	**March 31, 2021**	**December 31, 2020**
		(Unaudited)	
Total Intangible assets – asset purchases	3 to 7	$ 19,003	$ 18,606
Accumulated amortization		(4,561)	(3,977)
Net intangible assets		$ 14,442	$ 14,629

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The table below provides a summary for the three months ended March 31, 2021, of Journey's recognized expense related to its product licenses, which was recorded in costs of goods sold on the Condensed Consolidated Statement of Operations:

($ in thousands)	Intangible Assets, Net
Beginning balance at January 1, 2021	$ 14,629
Additions:	
Exelderm milestone	397
Amortization expense	(584)
Ending balance at March 31, 2021	$ 14,442

The future amortization of these intangible assets is as follows:

($ in thousands)	Ximino®	Exelderm®	Accutane®	Total Amortization
Nine Months Ended December 31, 2021	$ 764	$ 417	$ 709	$ 1,890
Year Ended December 31, 2022	1,019	—	946	1,965
Year Ended December 31, 2023	1,019	—	945	1,964
Year Ended December 31, 2024	1,019	—	946	1,965
Year Ended December 31, 2025	1,019	—	945	1,964
Thereafter	595	—	158	753
Sub-total	$ 5,435	$ 417	$ 4,649	$ 10,501
Assets not yet placed in service:				
Anti-itch product license acquisition (amortization commencing second half of 2021)	—	—	—	3,941
Total	$ 5,435	$ 417	$ 4,649	$ 14,442

9. Debt and Interest

Debt

Total debt consists of the following as of March 31, 2021 and December 31, 2020:

($ in thousands)	March 31, 2021 (Unaudited)	December 31, 2020	Interest rate	Maturity
Total notes payable - Oaktree Note	$ 60,000	$ 60,000	11.00 %	August - 2025
Less: Discount on notes payable	(8,014)	(8,323)		
Total notes payable	$ 51,986	$ 51,677		

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Interest Expense

The following table shows the details of interest expense for all debt arrangements during the periods presented. Interest expense includes contractual interest; fees include amortization of the debt discount and amortization of fees associated with loan transaction costs, amortized over the life of the loan:

	Three Months Ended March 31,					
	2021			2020		
($ in thousands)	*Interest*	*Fees*	Total	*Interest*	*Fees*	Total
IDB Note[1]	$ —	$ —	$ —	$ 84	$ -	$ 84
2017 Subordinated Note Financing[2]	—	—	—	1,084	312	1,396
2019 Notes[3]	—	—	—	269	—	269
2018 Venture Notes[4]	—	—	—	433	176	609
LOC Fees	9	—	9	15	—	15
Mustang Horizon Notes[5]	—	—	—	341	259	600
Oaktree Note	1,650	309	1,959	—	—	—
Note Payable[6]	221	—	221	150	—	150
Other	—	—	—	2	—	2
Total Interest Expense and Financing Fee	$ 1,880	$ 309	$ 2,189	$ 2,378	$ 747	$ 3,125

Note 1: During August 2020, the Company repaid the IDB Note utilizing the cash collateral securing the IDB Note, which was classified as restricted cash on the Company's Condensed Consolidated Balance Sheet.
Note 2: In August 2020, the Company used certain proceeds from the Oaktree Note to pay off the $28.4 million balance previously outstanding under the 2017 Subordinated Note Financing.
Note 3: August 2020, the Company used certain proceeds from the Oaktree Note to pay off the $9.0 million balance previously outstanding under the 2019 Notes.
Note 4: In August 2020, the Company used certain proceeds from the Oaktree Note to pay off the $21.7 million balance previously outstanding under the 2018 Venture Notes.
Note 5: In September 2020, Mustang repaid the amount outstanding under the Horizon Notes in full, which was comprised of $15.0 million face value of the outstanding notes, $0.1 million in accrued and unpaid interest, a $0.8 million final payment fee and prepayment penalties of $0.6 million.
Note 6: Imputed interest expense related to Journey's agreements for Ximino and Accutane.

Oaktree Note

On August 27, 2020 (the "Closing Date"), Fortress, as borrower, entered into a $60.0 million senior secured credit agreement (the "Agreement") with Oaktree. The Oaktree Note bears interest at a fixed annual rate of 11.0%, payable quarterly and maturing on the fifth anniversary of the Closing Date, August 27, 2025, the ("Maturity Date"). The Company is required to make quarterly interest-only payments until the Maturity Date, at which point the outstanding principal amount is due. The Company may voluntarily prepay the Oaktree Note at any time subject to a Prepayment Fee as defined in the Terms section. The Company is required to make mandatory prepayments of the Oaktree Note under various circumstances as defined in the Terms section. No amounts paid or prepaid may be reborrowed without Oaktree consent.

Pursuant to the terms of the Agreement on the Closing Date the Company paid Oaktree an upfront commitment fee equal to 3% of the $60.0 million, or $1.8 million. In addition, the Company paid a $35,000 Agency fee to the Agent which was due on the Closing Date and will be due annually, together with fees of $2.5 million, directly to third parties involved in the transaction.

In connection with the Oaktree Note, the Company issued warrants to Oaktree and certain of its affiliates to purchase up to 1,749,450 shares of common stock (see Note 14) with a relative fair value of $4.4 million.

The Company recorded the fees totaling $8.7 million ($1.8 million to Oaktree, $2.5 million of expenses paid to third-parties and $4.4 million representing the relative fair value of the Oaktree Warrants) to debt discount. These costs are being amortized over the term of the Oaktree Note.

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Journey Working Capital Line of Credit

On March 31, 2021 (the "Closing Date"), Journey entered into a Loan and Security Agreement with East West Bank ("EWB Loan") under which Journey may request advances in aggregate not exceeding the lesser of: (i) the Revolving Line of $7.5 million and (ii) a Borrowing Base representing approximately 85% of Journey's eligible accounts receivable. Advances bear interest on the outstanding daily balance, at a floating rate of1.0% above the Prime Rate set by EWB. Interest is due and payable on the last day of the month. The EWB Loan matures on March 31, 2024.

Journey paid an origination fee of $56,250 on the Closing Date in connection with the issuance of the EWB Loan. In addition, Journey agreed to pay certain third party fees incurred by EWB, as well as legal fees incurred by Journey in connection with the EWB Loan totaling approximately $0.1 million. As of March 31, 2021 fees totaling approximately $0.1 million were recorded as a deferred asset on the Condensed Consolidated Balance Sheet.

As of March 31, 2021 Journey had no outstanding advances under the EWB Loan.

10. Partner Company Convertible Preferred Shares

In March 2021, our partner company Journey commenced an offering of Journey 8% Cumulative Convertible Class A Preferred Stock (the "Journey Offering") in an aggregate minimum amount of $12.5 million and an aggregate maximum amount of $30.0 million, which may be increased if Journey and the placement agent agree to do so. The Journey Offering commenced on March 31, 2021 and, unless extended, will terminate on May 31, 2021.

Although the Journey 8% Cumulative Convertible Class A Preferred Stock ("Journey Preferred A") is in the form of preferred stock, in substance this instrument is accounted for as a liability on the Company's Condensed Consolidated Balance Sheet.

Dividends on the Journey Preferred A will be paid quarterly in shares of the Company's common stock based upon a7.5% discount to the average trading price over the 10-day period preceding the dividend payment date. In addition, if the Journey Preferred A has not been converted into Journey common stock upon a sale of Journey or a financing of Journey in an amount of at least $25.0 million within a year of the closing (extendable by another six months at Journey's option), then the Journey Preferred A will be exchanged for shares of the Company's common stock, also based upon a 7.5% discount to the average Company common stock trading price over the 10-day period preceding such exchange. Furthermore, the Company is obligated to file one or more registration statements covering the issuance of shares that result from such dividends/exchange. As consideration for the foregoing Journey will issue to the Company additional shares of Journey common stock, debt securities, or a combination of the foregoing.

National Securities Corporation ("National") is the exclusive placement agent for the Journey Offering and will receive a10% fee on gross proceeds raised, plus either warrants to purchase 5% of the Journey common stock into which the Journey Preferred A converts (in the event of a sale of Journey or a qualified financing) or 5% of the Company common stock for which the Journey Preferred A is exchanged (in the event neither a sale of Journey nor a qualified financing occurs), in addition to reimbursement of legal and other expenses.

The Company evaluated the terms of the Journey Offering under ASC 480, *Distinguishing Liabilities from Equity,* and determined the instrument met the criteria to be recorded as a liability. The value at conversion does not vary with the value of Journey's common shares, so the settlement provision would not be considered a conversion feature. Accordingly, the Company determined a liability classification is appropriate.

On March 31, 2021, Journey completed its first close in connection with the Journey Offering. In connection with the first close, Journey issued an aggregate of 501,480 Journey Preferred A shares at a price of $25.00 per share, for gross proceeds of $12.5 million. Following the payment of placement agent fees of $1.2 million, and other expenses of $0.1 million, Journey received $11.2 million of net proceeds. At March 31, 2021 the Company recorded this transaction on the Condensed Consolidated Balance Sheet as a liability of $12.5 million of partner company convertible preferred shares, which is the fair value at initial recognition, and $1.3 million of debt discount associated with the share settled debt. The initial carrying value of the Journey Preferred A is accreted to the settlement value. The discount to the settlement value is accreted to interest expense using the effective interest method.

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11. Accrued Liabilities and other Long-Term Liabilities

Accrued expenses and other long-term liabilities consisted of the following:

($ in thousands)	March 31, 2021 (Unaudited)	December 31, 2020
Accrued expenses:		
Professional fees	$ 1,592	$ 1,236
Salaries, bonus and related benefits	5,983	6,701
Research and development	4,234	5,007
Research and development - manufacturing	—	518
Research and development - license maintenance fees	564	461
Research and development - milestones	600	600
Accrued royalties payable	2,048	2,682
Accrued coupon expense	10,944	10,869
Other	1,846	1,188
Total accrued expenses	$ 27,811	$ 29,262
Other long-term liabilities:		
Deferred rent and long-term lease abandonment charge[1]	$ 1,903	$ 1,949
Partner company note payable, long-term:		
Ximino agreement[2]	3,790	3,622
Isotretinoin agreement[3]	1,823	2,792
Anti-itch product agreement[4]	—	945
Total other long-term liabilities and partner company note payable, long-term	$ 7,516	$ 9,308

Note 1: As of March 31, 2021, and December 31, 2020, the balance consists of deferred charges related to build-out of the New York facility.

Note 2: As of March 31, 2021, and December 31, 2020, the imputed interest discount was $1.2 million and $1.4 million, respectively, in connection with its acquisition of Ximino in July 2019. As of March 31, 2021, and December 31, 2020, $2.0 million and $2.0 million, respectively, of note payable was classified as short-term.

Note 3: As of March 31, 2021, and December 31, 2020, the imputed discount balance was $0.2 million and $0.2 million, respectively. The imputed interest discount was calculated utilizing a 4.00% effective rate, which represents the market rate for an asset-backedthree year loan, secured by receivables. As of March 31, 2021, and December 31, 2020, $1.5 million and $0.5 million, respectively, of note payable was classified as short-term.

Note 4: As of March 31, 2021, and December 31, 2020, the imputed discount balance was approximately $37,000 and $0.1 million, respectively in connection with its acquisition of an anti-itch product. The imputed interest discount was calculated utilizing a 4.25% effective rate, which represents the market rate for an asset-backed three year loan, secured by receivables. As of March 31, 2021, and December 31, 2020, $2.0 million and $2.8 million, respectively, of note payable was classified as partner company note payable, short-term on the Company's Condensed Consolidated Balance Sheet.

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12. Non-Controlling Interests

Non-controlling interests in consolidated entities are as follows:

($ in thousands)	As of March 31, 2021 NCI equity share	For the three months ended March 31, 2021 Net loss attributable to non-controlling interests	As of March 31, 2021 Non-controlling interests in consolidated entities	Non-controlling ownership
FBIO Acquisition Corp VIII	$ (99)	(28)	$ (127)	24.0 %
Aevitas	(3,874)	(318)	(4,192)	46.0 %
Avenue [2]	1,915	(773)	1,142	77.4 %
Baergic	(1,838)	(12)	(1,850)	39.5 %
Cellvation	(1,313)	(39)	(1,352)	22.1 %
Checkpoint [1]	48,130	(4,588)	43,542	80.4 %
Coronado SO	(290)	—	(290)	13.0 %
Cyprium	(1,033)	(478)	(1,511)	29.8 %
Helocyte	(5,210)	(53)	(5,263)	18.3 %
JMC	1,076	35	1,111	12.0 %
Mustang [2]	119,322	(10,862)	108,460	81.3 %
Oncogenuity	(507)	(128)	(635)	25.3 %
Tamid	(712)	—	(712)	22.8 %
Total	$ 155,567	$ (17,244)	$ 138,323	

($ in thousands)	As of December 31, 2020 NCI equity share	For the twelve months ended December 31, 2020 Net loss attributable to non-controlling interests	As of December 31, 2020 Non-controlling interests in consolidated entities	Non-controlling ownership
FBIO Acquisition Corp VIII	$ (7)	(27)	$ (34)	10.0 %
Aevitas	(2,370)	(823)	(3,193)	39.0 %
Avenue [2]	5,800	(3,974)	1,826	77.4 %
Baergic	(1,662)	(97)	(1,759)	39.5 %
Cellvation	(1,089)	(182)	(1,271)	22.1 %
Checkpoint [1]	41,704	(13,265)	28,439	80.4 %
Coronado SO	(290)	—	(290)	13.0 %
Cyprium	567	(1,478)	(911)	30.5 %
Helocyte	(4,986)	(259)	(5,245)	18.8 %
JMC	138	491	629	7.1 %
Mustang [2]	116,060	(36,429)	79,631	80.9 %
Oncogenuity	(82)	(376)	(458)	25.3 %
Tamid	(663)	(40)	(703)	22.8 %
Total	$ 153,120	$ (56,459)	$ 96,661	

Note 1: Checkpoint is consolidated with Fortress' operations because Fortress maintains voting control through its ownership of Checkpoint's Class A Common Shares which provide super-majority voting rights.

Note 2: Avenue and Mustang are consolidated with Fortress' operations because Fortress maintains voting control through its ownership of Preferred Class A Shares which provide super-majority voting rights.

13. Net Loss per Common Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of shares of Common Stock outstanding during the period, without consideration for Common Stock equivalents. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of Common Stock and Common Stock equivalents outstanding for the period.

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The following shares of potentially dilutive securities have been excluded from the computation of diluted weighted average shares outstanding, as the effect of including such securities would be anti-dilutive for the three months ended March 31, 2021:

	Three Months Ended March 31,	
	2021	2020
Warrants to purchase Common Stock	4,579,954	2,653,234
Options to purchase Common Stock	853,490	1,210,502
Unvested Restricted Stock	16,391,786	14,307,564
Unvested Restricted Stock Units	231,926	487,996
Total	22,057,156	18,659,296

14. Stockholders' Equity

Stock-based Compensation

The following table summarizes the stock-based compensation expense from stock option, employee stock purchase programs and restricted Common Stock awards and warrants for the three months ended March 31, 2021 and 2020:

	Three Months Ended March 31,	
($ in thousands)	2021	2020
Employee awards	$ 1,488	$ 1,217
Executive awards of Fortress Companies' stock	345	401
Non-employee awards	22	54
Partner Companies:		
Avenue	114	215
Checkpoint	774	639
Mustang	996	805
Other	34	69
Total stock-based compensation expense	$ 3,773	$ 3,400

For the three months ended March 31, 2021 and 2020, approximately $1.2 million and $0.9 million, respectively, of stock-based compensation expense was included in research and development expenses in connection with equity grants made to employees and consultants and approximately $2.6 million and $2.5 million, respectively, was included in general and administrative expenses in connection with grants made to employees, members of the board of directors and consultants.

Stock Options

The following table summarizes Fortress stock option activities excluding activity related to Fortress partner companies:

	Number of shares	Weighted average exercise price	Total weighted average intrinsic value	Weighted average remaining contractual life (years)
Options vested and expected to vest at December 31, 2020	1,053,490	$ 5.02	$ 647,482	2.63
Forfeited	(25,000)	4.88	—	—
Options vested and expected to vest at March 31, 2021	1,028,490	$ 5.02	$ 807,138	2.40

As of March 31, 2021, Fortress had no unrecognized stock-based compensation expense related to options.

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Restricted Stock and Restricted Stock Units

The following table summarizes Fortress restricted stock awards and restricted stock units activities, excluding activities related to Fortress Companies:

	Number of shares	Weighted average grant price
Unvested balance at December 31, 2020	15,507,504	$ 2.49
Restricted stock granted	2,330,678	3.17
Restricted stock vested	(236,668)	2.75
Restricted stock units vested	(38,583)	3.48
Unvested balance at March 31, 2021	17,562,931	$ 2.57

As of March 31, 2021 and 2020, the Company had unrecognized stock-based compensation expense related to restricted stock and restricted stock unit awards of approximately $21.8 million and $17.9 million, respectively, which is expected to be recognized over the remaining weighted-average vesting period of 3.6 years and 4.2 years, respectively.

Warrants

The following table summarizes Fortress warrant activities, excluding activities related to Fortress Companies:

	Number of shares	Weighted average exercise price	Total weighted average intrinsic value	Weighted average remaining contractual life (years)
Outstanding as of December 31, 2020	4,590,621	$ 3.17	$ 607,848	4.85
Forfeited	(60,000)	1.37	—	
Outstanding as of March 31, 2021	4,530,621	$ 3.20	$ 1,820,564	4.66
Exercisable as of March 31, 2021	4,370,621	$ 3.23	$ 1,607,964	4.61

In connection with the Oaktree Note (see Note 9), the Company issued warrants to Oaktree and certain of its affiliates to purchase up to 1,749,450 shares of common stock at a purchase price of $3.20 per share (the "Oaktree Warrants"). Oaktree is entitled to additional warrants if at any time prior to the expiration of the Oaktree Warrants in event the Company issues equity, warrants or convertible notes (collectively known as "Security Instruments") at a price that is less than 95% of the market price of the Company's Common Stock on the trading day prior to the issuance of the Security Instruments. The Warrants expire on August 27, 2030 and may be net exercised at the holder's election. The Company also agreed to file a registration statement on Form S-3 to register for resale the shares of common stock issuable upon exercise of the Warrants.

The Company evaluated the accounting treatment of the Oaktree Warrants and determined that the Oaktree warrants met the scope exception of *ASC 815-10-15-74(a) Derivatives and Hedging* and therefore should be classified in stockholders' equity. As such the Company used a Black-Scholes model to value the Oaktree Warrants, utilizing the following inputs: term of 10 years, volatility of 86.8%, and risk-free rate of return of 0.74%, yielding a value of $4.8 million. *ASC 470-20-25-2 Debt – Debt with Conversion and Other Options* dictates that debt or stock issued with detachable warrants requires the proceeds to be allocated to the two instruments based on their relative fair values. The relative fair value of the warrants was determined to be $4.4 million and was recorded as a component of Stockholders' Equity in the Company's Condensed Consolidated Balance Sheet.

Employee Stock Purchase Plan

Eligible employees can purchase the Company's Common Stock at the end of a predetermined offering period at 85% of the lower of the fair market value at the beginning or end of the offering period. The ESPP is compensatory and results in stock-based compensation expense.

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As of March 31, 2021, 577,301 shares have been purchased and 422,699 shares are available for future sale under the Company's ESPP. Share-based compensation expense recorded was approximately $34,000 and $18,000, respectively, for the three months ended March 31, 2021 and 2020.

Capital Raises

Journey 8% Cumulative Convertible Class A Preferred Offering

See Note 10.

At-the-Market Offering

Pursuant to the terms of the Company's Amended and Restated At Market Issuance Sales Agreement, or Sales Agreement, with B. Riley FBR, Inc. ("B. Riley," f/k/a MLV & Co. LLC, and FBR Capital Markets & Co.) (the "ATM"), for the three month period ended March 31, 2020, the Company issued approximately 2.3 million shares of common stock at an average price of $2.59 per share for gross proceeds of $6.1 million. In connection with these sales, the Company paid aggregate fees of approximately $0.2 million. No shares were sold under the ATM for the three month period ended March 31, 2021.

Mustang At-the-Market Offering

During the three months ended March 31, 2021, Mustang issued approximately 11.6 million shares of common stock at an average price of $4.17 per share for gross proceeds of $48.4 million under the Mustang ATM. In connection with these sales, Mustang paid aggregate fees of approximately $0.9 million for net proceeds of approximately $47.5 million. During the three months ended March 31, 2020, Mustang issued approximately 1.2 million shares of common stock at an average price of $3.93 per share for gross proceeds of $5.0 million under the Mustang ATM. In connection with these sales, Mustang paid aggregate fees of approximately $0.1 million for net proceeds of approximately $4.9 million.

Pursuant to the Founders Agreement, Mustang issued 325,221 shares of common stock to Fortress at a weighted average price of $4.16 per share for the three months ended March 31, 2021 and recorded 63,688 shares issuable to Fortress for the Mustang ATM offering noted above. During the three months ended March 31, 2020, Mustang issued 31,220 shares of common stock to Fortress at a weighted average price of $4.00 per share in connection with the Mustang ATM.

On October 23, 2020, Mustang filed a shelf registration statement No. 333-249657 on Form S-3 (the "2020 Mustang S-3"), which was declared effective on December 4, 2020. Under the 2020 Mustang S-3, Mustang may sell up to a total of $100 million of its securities. As of March 31, 2021, approximately $37.8 million of the 2020 Mustang S-3 remains available for sales of securities.

Checkpoint At-the-Market Offering

During the three months ended March 31, 2021, Checkpoint sold a total of 7,025,309 shares of common stock under the Checkpoint ATM for aggregate total gross proceeds of approximately $24.6 million at an average selling price of $3.50 per share, resulting in net proceeds of approximately $23.9 million after deducting commissions and other transaction costs.

Pursuant to the Founders Agreement, Checkpoint issued 175,625 shares of common stock to Fortress at a weighted average price of $3.61 per share for the Checkpoint ATM offerings and the Checkpoint Underwritten Offering, both noted above.

At March 31, 2021, approximately $71.3 million of the Checkpoint shelf remains available for sale under the Checkpoint S-3.

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15. Commitments and Contingencies

Indemnification

In accordance with its certificate of incorporation, bylaws and indemnification agreements, the Company has indemnification obligations to its officers and directors for certain events or occurrences, subject to certain limits, while they are serving at the Company's request in such capacity. The Company has director and officer insurance to address such claims. The Company also provides indemnification of contractual counterparties in certain situtations, including without limitation to clinical sites, service providers and licensors.

In addition, we act, and are likely to continue acting, in as indemnitor of potential losses or liabilities that may be experienced by one or more of our affiliated companies and/or their partners or investors. For instance, under that certain Indemnification Agreement, dated as of November 12, 2018 (the "Indemnification Agreement"), we indemnify InvaGen and its affiliates for losses they may sustain in connection with inaccuracies that may appear in the representations and warranties that Avenue made to InvaGen in the Avenue SPMA, as such representations and warranties were given as of the dates of signing and first closing, and as may be required to be given as of the second stage closing under the Avenue SPMA as well. The maximum amount of indemnification we may have to provide under the Indemnification Agreement is $35.0 million, and such obligation terminates upon the consummation of the Merger Transaction (as defined in the Avenue SPMA). In the event of payment by us of any such indemnification amount, we would be able to recoup such amounts (other than our pro rata share of the indemnification as a shareholder in Avenue) from the Merger Transaction proceeds, but if the Merger Transaction never occurs, we would have no means of recouping such previously-paid indemnification amounts. If we become obligated to pay all or a portion of such indemnification amounts (regardless of whether or not we are partially reimbursed out of the proceeds of the Merger Transaction), our business and the market value of our common stock and/or debt securities may be materially adversely impacted.

Legal Proceedings

In November 2020, a purported securities class action complaint was filed in the U.S. District Court for the Eastern District of New York, putatively on behalf of all shareholders who purchased or otherwise acquired Fortress securities between December 11, 2019 and October 9, 2020 (the "Class Period"), and who were allegedly damaged in connection therewith. The case is captioned *Cushman v. Fortress Biotech, Inc., et al*, Case No. 1:20-cv-05767, and names as defendants the Company and two of our officers. The complaint alleges that, throughout the Class Period, the Company made false and/or misleading statements and/or failed to disclose various facts and circumstances with respect to a New Drug Application filed by Avenue Therapeutics, Inc., our partner company, regarding IV Tramadol, Avenue's lead product candidate. The complaint alleges violations of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and seeks damages as well as attorneys' fees, expert fees and other costs. The action is in the early stages of litigation, and the Company intends to vigorously contest the claims.

On March 31, 2021 Journey executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc. a subsidiary of Eli Lilly and Company ("Dermira"). Pursuant to the terms of the agreement Journey acquired the rights to Qbrexza® (glycoprronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. Upon closing of the Qbrexza® purchase, Journey became substituted for Dermira as the plaintiff in U.S. patent litigation commenced by Dermira on October 21, 2020 in the U.S. District Court of Delaware (the "Patent Litigation") against Perrigo Pharma International DAC ("Perrigo") alleging infringement of certain patents covering Qbrexza® (the "Qbrexza® Patents"), which are included among the proprietary rights to Qbrexza® to be acquired pursuant to the APA. The Patent Litigation was initiated following the submission by Perrigo, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application, or ANDA. The ANDA seeks approval to market a generic version of Qbrexza® prior to the expiration of the Qbrexza® Patents and alleges that the Qbrexza® Patents are invalid. Perrigo is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on March 9, 2023. Trial in the Patent Litigation is scheduled for September 19, 2022. The Company cannot make any predictions about the final outcome of this matter or the timing thereof.

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

16. Related Party Transactions

The Company's Chairman, President and Chief Executive Officer, individually and through certain trusts over which he has voting and dispositive control, beneficially owned approximately 10.8% of the Company's issued and outstanding Common Stock as of March 31, 2021. The Company's Executive Vice Chairman, Strategic Development owns approximately 11.6% of the Company's issued and outstanding Common Stock as of March 31, 2021.

Shared Services Agreement with TG Therapeutics, Inc ("TGTX")

In July 2015, TGTX and the Company entered into an arrangement to share the cost of certain research and development employees. The Company's Executive Vice Chairman, Strategic Development, is Executive Chairman and Interim Chief Executive Officer of TGTX. Under the terms of the Agreement, TGTX will reimburse the Company for the salary and benefit costs associated with these employees based upon actual hours worked on TGTX related projects. In connection with the shared services agreement, the Company invoiced TGTX $0.1 million and $0.1 million, and received payments of $0.1 million and $0.1 million for the three months ended March 31, 2021 and 2020, respectively.

Desk Space Agreements with TGTX and OPPM

In connection with the Company's Desk Space Agreements for the New York, NY office space, for the three ended March 31, 2021 and 2020, the Company had paid $0.7 million and $0.7 million in rent, respectively, and invoiced TGTX and OPPM approximately $0.4 million and $0.4 million and nil and nil respectively, for their prorated share of the rent base. At March 31, 2021, there were no amounts due related to this arrangement from TGTX or OPPM.

As of July 1, 2018, TGTX employees began to occupy desks in the Waltham, MA office under the Desk Share Agreement. TGTX began to pay their share of the rent based on actual percentage of the office space occupied on a month by month basis. For the three months ended March 31, 2021 and 2020, the Company had paid approximately $0.1 million and $0.1 million in rent for the Waltham, MA office, and invoiced TGTX approximately $28,000 and $29,000, respectively.

Avenue Credit Facility Agreement

On June 12, 2020, Avenue, the Company and InvaGen entered into a Facility Agreement ("Avenue Facility Agreement"), under which, beginning on October 1, 2020, Avenue could have borrowed up to $2.0 million collectively from the Company and InvaGen, subject to certain conditions set forth therein. The Company's commitment amount was $0.8 million, and InvaGen's was $1.2 million, and a 7% per annum interest rate applied (payable on the last day of each fiscal quarter. The Avenue Facility Agreement expired on April 29, 2021 and went undrawn. As of March 31, 2021, there were no amounts drawn by Avenue on the Avenue Facility Agreement.

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Founders Agreement

The Company has entered into Founders Agreements and, in some cases, Exchange Agreements with certain of its subsidiaries as described in the Company's Form 10-K for the year ended December 31, 2020, filed with the SEC on March 31, 2021. The following table summarizes, by partner company, the effective date of the Founders Agreements and PIK dividend or equity fee payable to the Company in accordance with the terms of the Founders Agreements, Exchange Agreements, and the subsidiaries' certificates of incorporation:

Fortress Partner Company	Effective Date [1]	PIK Dividend as a % of fully diluted outstanding capitalization	Class of Stock Issued
Helocyte	March 20, 2015	2.5 %	Common Stock
Avenue	February 17, 2015	0.0 %[2]	Common Stock
Mustang	March 13, 2015	2.5 %	Common Stock
Checkpoint	March 17, 2015	0.0 %[3]	Common Stock
Cellvation	October 31, 2016	2.5 %	Common Stock
Baergic	December 17, 2019 [4]	2.5 %	Common Stock
Cyprium	March 13, 2017	2.5 %	Common Stock
Aevitas	July 28, 2017	2.5 %	Common Stock
Oncogenuity	April 22, 2020 [4]	2.5 %	Common Stock
FBIO Acquisition Corp. VIII	November 7, 2017 [4]	0.0 %	Common Stock

Note 1: Represents the effective date of each subsidiary's Founders Agreement. Each PIK dividend and equity fee is payable on the annual anniversary of the effective date of the original Founders Agreement or has since been amended to January 1 of each calendar year.

Note 2: Concurrently with the execution and delivery of the Stock Purchase and Merger Agreement ("Avenue SPMA") entered into between, Avenue, the Company and InvaGen Pharmaceuticals Inc. ("InvaGen") (together, the " SPMA Parties"), the SPMA Parties entered into a waiver agreement (the "Waiver Agreement"), pursuant to which the Company irrevocably waived its right to receive the annual dividend of Avenue's common shares under the terms of the Class A preferred stock and any fees, payments, reimbursements or other distributions under the management services agreement between the Company and Avenue and the Founders Agreement, for the period from the effective date of the Waiver Agreement until such time as InvaGen beneficially owns less than 75% of the shares of Avenue common stock it acquired under the first closing of the Avenue SPMA. Pursuant to the Waiver Agreement, immediately prior to the closing of the Merger Transaction contemplated under the Avenue SPMA, the Company will convert all of its preferred shares into common shares pursuant to the terms of the certificate of incorporation of Avenue, as amended from time to time.

Note 3: Instead of a PIK dividend, Checkpoint pays the Company an annual equity fee in shares of Checkpoint's common stock equal to2.5% of Checkpoint's fully diluted outstanding capitalization.

Note 4: Represents the Trigger Date, the date that the Fortress partner company first acquires, whether by license or otherwise, ownership rights in a product.

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Management Services Agreements

The Company has entered in Management Services Agreements (the "MSAs") with certain of its partner companies as described in the Company's Form 10-K for the year ended December 31, 2019, filed with the SEC on March 16, 2020. The following table summarizes the effective date of the MSA and the annual consulting fee payable by the partner company to the Company in quarterly installments:

Fortress partner company	Effective Date	Annual MSA Fee (Income)/Expense
Helocyte	March 20, 2015	$ 500
Avenue [1]	February 17, 2015	—
Mustang	March 13, 2015	500
Checkpoint	March 17, 2015	500
Cellvation	October 31, 2016	500
Baergic	March 9, 2017	500
Cyprium	March 13, 2017	500
Aevitas	July 28, 2017	500
Oncogenuity	February 10, 2017	500
FBIO Acquisition Corp. VIII	November 7, 2017	500
Fortress		(4,500)
Consolidated (Income)/Expense		$ —

Note 1: Concurrently with the execution and delivery of the Avenue SPMA entered into among, Avenue, the Company and InvaGen Pharmaceuticals Inc. ("InvaGen") (together, the "SPMA Parties"), the SPMA Parties entered into a waiver agreement (the "Waiver Agreement"), pursuant to which the Company irrevocably waived its right to receive the annual dividend of Avenue's common shares under the terms of the Class A preferred stock and any fees, payments, reimbursements or other distributions under the management services agreement between the Company and Avenue and the Founders Agreement, for the period from the effective date of the Waiver Agreement until such time as InvaGen beneficially owns less than 75% of the shares of Avenue common stock it acquired under the first closing of the Avenue SPMA. Pursuant to the Waiver Agreement, immediately prior to the closing of the Merger Transaction contemplated under the Avenue SPMA, the Company will convert all of its preferred shares into common shares pursuant to the terms of the certificate of incorporation of Avenue, as amended from time to time. (See Note 3).

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
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17. Segment Information

The Company operates in two reportable segments, Dermatology Product Sales and Pharmaceutical and Biotechnology Product Development. The accounting policies of the Company's segments are the same as those described in Note 2. The following tables summarize, for the periods indicated, operating results from continued operations by reportable segment:

($ in thousands) **Three Months Ended March 31, 2021**	**Dermatology Products Sales**	**Pharmaceutical and Biotechnology Product Development**	**Consolidated**
Net revenue	$ 10,719	$ 868	$ 11,587
Direct cost of goods	(3,908)	—	(3,908)
Sales and marketing costs	(5,070)	—	(5,070)
Research and development	—	(20,154)	(20,154)
General and administrative	(1,156)	(11,316)	(12,472)
Other expense	(221)	4,172	3,951
Segment income (loss)	$ 364	(26,430)	$ (26,066)
Segment assets			
Intangible assets, net	14,442	—	14,442
Tangible assets	42,200	334,401	376,601
Total segment assets	$ 56,642	$ 334,401	$ 391,043

($ in thousands) **Three Months Ended March 31, 2020**	**Dermatology Products Sales**	**Pharmaceutical and Biotechnology Product Development**	**Consolidated**
Net revenue	$ 11,946	$ 972	$ 12,918
Direct cost of goods	(3,810)	—	(3,810)
Sales and marketing costs	(4,679)	—	(4,679)
Research and development	—	(15,117)	(15,117)
General and administrative	(953)	(9,887)	(10,840)
Other expense	(207)	(2,333)	(2,540)
Segment income (loss)	$ 2,297	$ (26,365)	$ (24,068)
Segment assets			
Intangible assets, net	7,022	—	7,022
Tangible assets	23,550	198,187	221,737
Total segment assets	$ 30,572	$ 198,187	$ 228,759

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
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18. Revenues from Contracts and Significant Customers

Disaggregation of Total Revenue

Product revenue is comprised of Journey's seven marketed products: Targadox®, Luxamend®, Ceracade®, Exelderm®, Ximino®, Accutane® and Qbrexza®. Substantially all of the product revenue is recorded in the U.S. The Company's collaboration revenue is from Cyprium's agreement with Sentynl (see Note 3). The Company's related party revenue is from Checkpoint's collaboration with TGTX. The table below summarizes the Company's revenue for the three months ending March 31, 2021 and 2020:

	Three months ended March 31,	
	2021	2020
Revenue		
Product revenue, net	$ 10,719	$ 11,946
Collaboration revenue	800	—
Revenue – related party	68	972
Net revenue	$ 11,587	$ 12,918

Significant Customers

For the March 31, 2021, none of the Company's dermatology products customers accounted for more than 10% of its total gross product revenue.

For the three months ended March 31, 2020, two of the Company's dermatology products customers accounted for more than 10% of its total gross product revenue.

At March 31, 2021, none of the Company's dermatology products customers accounted for more than 10% of its total accounts receivable balance.

At March 31, 2020, two of the Company's dermatology products customers accounted for more than 10% of its total accounts balance in the amounts of $5.4 million and $2.5 million.

19. Income taxes

On March 11, 2021, the President of the United States signed the American Rescue Plan Act, also called the COVID-19 Stimulus Package or American Rescue Plan into law. The American Rescue Plan includes many non-tax and tax provisions to help address the continuing pandemic, including extending the Employee Retention Credit to December 31, 2021. The Company will continue to evaluate the impact of the American Rescue Plan on its financial positions, results of operations and cash flows.

The Company and its subsidiaries are subject to US federal and state income taxes. Income tax expense is the total of the current year income tax due or refundable and the change in deferred tax assets and liabilities. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Deferred tax assets are reduced by a valuation allowance when, in the opinion of Management, it is more likely than not that some portion, or all, of the deferred tax asset will not be realized.

The Company files a consolidated income tax return with subsidiaries for which the Company has an 80% or greater ownership interest. Subsidiaries for which the Company does not have an 80% or more ownership are not included in the Company's consolidated income tax group and file their own separate income tax return. As a result, certain corporate entities included in these financial statements are not able to combine or offset their taxable income or losses with other entities' tax attributes.

Income tax expense for the three months ended March 31, 2021 and 2020 is based on the estimated annual effective tax rate.

FORTRESS BIOTECH, INC. AND SUBSIDIARIES
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20. Subsequent Event

On March 31, 2021 Journey executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc. a subsidiary of Eli Lilly and Company ("Dermira"). Pursuant to the terms of the agreement Journey acquired the rights to Qbrexza® (glycoprronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older.

Upon HSR acceptance, which was received on May 13, 2021, Journey paid the upfront fee of $12.5 million to Dermira. In addition, Dermira is eligible to receive up to $144 million in the aggregate upon the achievement of certain milestones. Royalties ranging from the lower teen digits to the upper teen digits will be payable on net sales of Qbrexza® products, of which royalty amounts are subject to 50% diminution in the event of loss of exclusivity due to the introduction of an authorized generic.

Upon closing of the Qbrexza® purchase, Journey became substituted for Dermira as the plaintiff in U.S. patent litigation commenced by Dermira on October 21, 2020 in the U.S. District Court of Delaware (the "Patent Litigation") against Perrigo Pharma International DAC ("Perrigo") alleging infringement of certain patents covering Qbrexza® (the "Qbrexza® Patents"), which are included among the proprietary rights to Qbrexza® to be acquired pursuant to the APA. The Patent Litigation was initiated following the submission by Perrigo, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application, or ANDA. The ANDA seeks approval to market a generic version of Qbrexza® prior to the expiration of the Qbrexza® Patents and alleges that the Qbrexza® Patents are invalid. Perrigo is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on March 9, 2023. Trial in the Patent Litigation is scheduled for September 19, 2022. The Company cannot make any predictions about the final outcome of this matter or the timing thereof.

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

Forward-Looking Statements

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our condensed consolidated financial statements and the related notes included elsewhere in this Form 10-Q. Our condensed consolidated financial statements have been prepared in accordance with U.S. GAAP. The following discussion and analysis contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 (the "Exchange Act"), including, without limitation, statements regarding our expectations, beliefs, intentions or future strategies that are signified by the words "expect," "anticipate," "intend," "believe," "may," "plan", "seek" or similar language. All forward-looking statements included in this document are based on information available to us on the date hereof and we assume no obligation to update any such forward-looking statements. For such forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Our business and financial performance are subject to substantial risks and uncertainties. Actual results could differ materially, from those projected in the forward-looking statements. In evaluating our business, you should carefully consider the information set forth under the heading "Risk Factors" herein and in our Annual Report on Form 10-K for the year ended December 31, 2020. As used below, the words "we," "us" and "our" may refer to Fortress Biotech, Inc. individually or together with one or more partner companies, as dictated by context.

Overview

We are a biopharmaceutical company dedicated to acquiring, developing and commercializing pharmaceutical and biotechnology products and product candidates, which we do at the Fortress level, at our majority-owned and majority-controlled subsidiaries and joint ventures, and at entities we founded and in which we maintain significant minority ownership positions. Fortress has a talented and experienced business development team, comprising scientists, doctors, and finance professionals, who identify and evaluate promising products and product candidates for potential acquisition by new or existing partner companies. Through our partner companies, we have executed such arrangements in partnership with some of the world's foremost universities, research institutes and pharmaceutical companies, including City of Hope National Medical Center, Fred Hutchinson Cancer Research Center, St. Jude Children's Research Hospital, Dana-Farber Cancer Institute, Nationwide Children's Hospital, Cincinnati Children's Hospital Medical Center, Columbia University, the University of Pennsylvania, and AstraZeneca plc.

Following the exclusive license or other acquisition of the intellectual property underpinning a product or product candidate, we leverage our business, scientific, regulatory, legal and finance expertise to help our partners achieve their goals. Our partner companies then assess a broad range of strategic arrangements to accelerate and provide additional funding to support research and development, including joint ventures, partnerships, out-licensings, and public and private financings; to date, three partner companies are publicly-traded, and two have consummated strategic partnerships with industry leaders Alexion Pharmaceuticals, Inc. and InvaGen Pharmaceuticals, Inc. (a subsidiary of Cipla Limited).

Recent Events

Marketed Dermatology Products

- Our seven dermatology products are marketed by our partner company, Journey Medical Corporation ("Journey" or "JMC").
- During the three months ended March 31, 2021 and 2020, JMC's marketed products generated net revenue of $10.7 million and $11.9 million, respectively.
- Journey acquired and recently launched its seventh prescription dermatology product, Qbrexza®.
- On April 1, 2021, Journey entered into an agreement with East West Bank ("EWB") in which EWB will provide a $7.5 million working capital line of credit.
- On March 31, 2021, Journey completed its first close in connection with its Cumulative Convertible Class A Preferred Stock Offering. In connection with the first close, Journey issued an aggregate of 501,480 Journey Preferred A shares at a price of $25.00 per share, for net proceeds of $11.2 million after deducting commissions, fees and expenses.

Late Stage Product Candidates

Intravenous (IV) Tramadol

- In October 2020, Avenue Therapeutics ("Avenue") announced that it had received a Complete Response Letter ("CRL") from the FDA regarding Avenue's NDA for IV tramadol. The FDA held a Type A meeting with Avenue in November 2020 to discuss the issues outlined in the CRL. On February 12, 2021, Avenue resubmitted its NDA to the FDA for IV tramadol. The NDA resubmission followed the receipt of the official minutes from Avenue's Type A meeting with the FDA. The NDA resubmission included revised language relating to the proposed product label and a report relating to terminal sterilization validation. On February 26, 2021, Avenue received an acknowledgement letter from the FDA stating that Avenue's resubmission of its NDA is a complete, class 1 response to the CRL, and a Prescription Drug User Free Act ("PDUFA") goal date was set for April 12, 2021. On April 13, 2021, Avenue announced that the FDA was still reviewing its NDA for IV Tramadol and had not provided a decision regarding the NDA. As of May 1, 2021, Avenue had not received approval from the FDA for IV Tramadol. Accordingly, under the Avenue SPMA, InvaGen retains an option to consummate the second stage closing until October 31, 2021 (after which Avenue can choose to terminate the Avenue SPMA), and also retains the option to terminate the Avenue SPMA.
- Also in October 2020, InvaGen Pharmaceuticals Inc. ("InvaGen") communicated to Avenue that it believes a Material Adverse Event (as defined in the SPMA entered into on November 12, 2018 between Avenue, InvaGen and Madison Pharmaceuticals Inc., a newly formed, wholly owned subsidiary of InvaGen) has occurred due to the impact of the COVID-19 pandemic on potential commercialization and projected sales of IV tramadol. Additionally, in connection with the resubmission of Avenue's NDA in February 2021, InvaGen communicated to Avenue that it believes the proposed label for IV tramadol would also constitute a Material Adverse Event on the purported basis that the proposed label under certain circumstances would make the product commercially unviable. While Avenue disagrees with InvaGen's assertions, it is possible InvaGen could attempt to seek to use either or both the foregoing claims as a basis to pursue monetary claims against Avenue and/or Fortress.
- IV tramadol is currently in development at our partner company, Avenue.

CUTX-101 (Copper Histidinate for Menkes disease)

- In February 2021, our partner company, Cyprium, and Sentynl Therapeutics ("Sentynl"), a wholly-owned subsidiary of the Zydus Group, signed a Development and Asset Purchase Agreement for CUTX-101 for the treatment of Menkes disease. Under the terms of the agreement, Cyprium received $8.0 million upfront to fund the development of CUTX-101 and could receive up to $12.0 million in regulatory milestone payments through NDA approval, and is eligible to receive sales milestones plus royalties. Royalties start from mid-single digits, scaling up to 25% on sales exceeding $100.0 million annually. Cyprium will retain 100% ownership over any FDA priority review voucher that may be issued at NDA approval for CUTX-101. Cyprium is responsible for the development of CUTX-101 through approval of the NDA by the FDA, and Sentynl will be responsible for commercialization of CUTX-101, as well as progressing newborn screening activities.
- We intend to begin the rolling submission of the NDA for CUTX-101 to the FDA in the second half of 2021.
- CUTX-101 is currently in development at our partner company, Cyprium Therapeutics, Inc.

MB-107/MB-207 (Ex vivo Lentiviral Therapies for X-linked Severe Combined Immunodeficiency (XSCID))

- In February 2021, we announced encouraging MB-107 and MB-207 clinical updates from our investigator-IND X-linked severe combined immunodeficiency ("XSCID") trials, as well as additional consistent safety and efficacy data. On January 28, 2021, the FDA removed a CMC hold on the MB-107 Phase 2 clinical trial Investigational New Drug ("IND") application after reviewing a comprehensive CMC package that was submitted in late December 2020. We expect to enroll the first patient in this pivotal multicenter trial in the second quarter of 2021 and we are targeting topline data from the trial in the second half of 2022. We also expect to file an IND in the second quarter of 2021 for our pivotal multicenter Phase 2 clinical trial of MB-207.
- MB-107 and MB-207 are currently in development at our partner company, Mustang Bio, Inc. ("Mustang Bio").

Cosibelimab (anti-PD-L1 antibody (formerly CK-301))

- Checkpoint's registration-enabling study in metastatic cutaneous squamous cell carcinoma ("mCSCC") is fully enrolled and we are on track to report top-line results by year-end. With a potentially favorable safety profile versus anti-PD-L1 therapy and a plan to commercialize at a substantially lower price, we believe cosibelimab has the potential to be a market disruptive product in the $25 billion and growing PD-(L)1 class.
- Also, a Phase 3 registration-enabling trial is planned to begin in first-line metastatic non-small cell lung cancer ("NSCLC") in mid-2021.
- Cosibelimab is currently in development at our partner company, Checkpoint Therapeutics, Inc. ("Checkpoint").

CAEL-101 (light chain fibril-reactive monoclonal antibody for AL amyloidosis)

- Caelum Biosciences, Inc. ("Caelum") has two on-going Phase 3 studies of CAEL-101 for AL amyloidosis.
- Caelum formed a collaboration with Alexion Pharmaceuticals, Inc. in 2019, which includes an option to acquire Caelum. AstraZeneca announced the execution of a definitive agreement to purchase Alexion Pharmaceuticals, Inc. In event of the closing of such transaction, the timeline for a potential exercise of the option to purchase Caelum will be accelerated to six months following the date of acquisition closing.
- In May 2021, Caelum and AstraZeneca announced that two abstracts on CAEL-101 were accepted for e-poster presentation at the European Hematology Association 2021 Virtual Congress ("EHA2021"). Both presentations will include new data from the Phase 2 open-label dose escalation study evaluating the safety and tolerability of CAEL-101 in combination with standard-of-care therapy in AL amyloidosis.
- CAEL-101 is currently in development at Caelum Biosciences, Inc., a company founded by Fortress in 2017 and in which Fortress maintains a minority position.

Early Stage Product Candidates

MB-106 (CD20-targeted CAR T cell therapy)

- In May 2021, we announced that that the FDA approved Mustang's IND application to initiate a multicenter, Phase 1/2clinical trial investigating the safety and efficacy of MB-106, a CD20-targeted CAR T therapy for relapsed or refractory non-Hodgkin lymphoma ("B-NHL") and chronic lymphocytic leukemia ("CLL").
- Also in May 2021, we announced MB-106 data was selected for presentation at EHA2021. In the abstract posted on the EHA2021 website, our partner Fred Hutch reported on twelve patients treated with MB-106 under the new manufacturing process. The 12 patients were treated at dose levels ("DL") ranging from $3.3x10^5$ to $1x10^7$ CAR T cells/kg, and clinical responses were observed at all DLs with no dose-limiting toxicities. Cytokine release syndrome occurred in three patients (25%): two patients with grade 1 and one patient with grade 2. Only one patient required tocilizumab and dexamethasone, and no immune effector cell-associated neurotoxicity syndrome of any grade was observed. Overall response rate ("ORR") was 92% (11/12) with a complete response ("CR") rate of 58% (7/12). In nine patients with follicular lymphoma, ORR and CR were 89% (8/9) and 67% (6/9), respectively. The patient with CLL had a PET-negative CR and undetectable measurable residual disease in peripheral blood and bone marrow by flow cytometry (10^{-4}) (uMRD4) on day 28. Among patients who received the highest two dose levels, DL3 ($3.3x10^6$ CAR T cells/kg; n=4) and DL4 ($1x10^7$ CAR T cells/kg; n=1), CR rate was 100% (5/5). All seven patients who achieved a CR remain in remission at a median follow-up of four months. CAR T expansion was robust, with median peak blood levels of CAR+ T cells of 122 CAR+ cells/µl (range 0.27-2024), corresponding to 19% (range 0.15 - 65%) of all CD3+ cells. Updated data will be presented at EHA2021.
- MB-106 is currently in development at our partner company, Mustang Bio.

Dotinurad (Urate Transporter (URAT1) Inhibitor)

- In May 2021, we announced an exclusive license agreement with Fuji Yakuhin Co. Ltd. to develop Dotinurad in North America and Europe. Dotinurad is a potential best-in-class urate transporter (URAT1) inhibitor for gout and possibly other hyperuricemic indications including chronic kidney disease and heart failure. Dotinurad (URECE® tablet) was approved in Japan in 2020 as a once-daily oral therapy for gout and hyperuricemia. Dotinurad was efficacious and well-tolerated in more than 500 Japanese patients treated for up to 58 weeks in Phase 3 clinical trials.
- Dotinurad is currently in development at our partner company, FBIO Acquisition Corp. VIII.

Critical Accounting Policies and Use of Estimates

See Note 2 to the Condensed Consolidated Financial Statements.

Results of Operations

General

For the three months ended March 31, 2021 and 2020, we generated $11.6 million and $12.9 million, respectively, of net revenue, of which $10.7 million and $11.9 million, respectively, relates primarily to the sale of Journey branded and generic products and approximately $68,000 and $1.0 million, respectively, relates to Checkpoint's collaborative agreements with TG Therapeutics Inc. ("TGTX"). Additional collaboration revenue of $0.8 million recognized in the quarter ended March 31, 2021 is a result of Cyprium's agreement with Sentynl. As of March 31, 2021, we had an accumulated deficit of $491.6 million. While we may in the future generate revenue from a variety of sources, including license fees, milestone payments, research and development payments in connection with strategic partnerships and/or product sales, our and our subsidiaries' current product candidates are at an early stage of development and may never be successfully developed or commercialized. Accordingly, we expect to continue to incur substantial losses from operations for the foreseeable future, and there can be no assurance that we will ever generate significant revenues.

For the three months ended March 31, 2021 and 2020, we had $3.9 million and $3.8 million, respectively, of costs of goods sold in connection with the sale of Journey's marketed products. The increase is as a result of the amortization of license fees including the drug user fee related to the expansion of the marketed product portfolio as well as higher royalty fees attributed directly to net sales.

Research and Development Expenses

Research and development costs primarily consist of personnel related expenses, including salaries, benefits, travel, and other related expenses, stock-based compensation, payments made to third parties for license and milestone costs related to in-licensed products and technology, payments made to third party contract research organizations for preclinical and clinical studies, investigative sites for clinical trials, consultants, the cost of acquiring and manufacturing clinical trial materials, costs associated with regulatory filings and patents, laboratory costs and other supplies.

For the three months ended March 31, 2021 and 2020, research and development expenses were approximately $20.0 million and $14.9 million, respectively. Additionally, during the three months ended March 31, 2021 and 2020, we expensed approximately $0.1 million and $0.3 million, respectively, in costs related to the acquisition of licenses. Noncash, stock-based compensation expense included in research and development for the three months ended March 31, 2021 and 2020, was $1.2 million and $0.9 million, respectively.

The table below provides a summary of research and development costs associated with the development of our licenses by entity, for the quarter ended March 31, 2021 and 2020, by entity:

	Three Months Ended March 31,		% of total	
($ in thousands)	**2021**	**2020**	**2021**	**2020**
Research & Development				
Fortress	$ 647	$ 678	3 %	5 %
Partner Companies:				
Avenue	259	697	1 %	5 %
Checkpoint	4,213	2,635	21 %	18 %
Mustang	11,562	9,251	58 %	62 %
Other[1]	3,347	1,606	17 %	10 %
Total Research & Development Expense	**$ 20,028**	**$ 14,867**	**100 %**	**100 %**

Note 1: Includes the following partner companies: Aevitas, Baergic, Cellvation, Cyprium, Helocyte, Oncogenuity and FBIO Acquisition Corp VIII.

General and Administrative Expenses

General and administrative expenses consist principally of sales and marketing costs, personnel-related costs, professional fees for legal, consulting, audit and tax services, rent, and other general operating expenses not otherwise included in research and development expenses. For the three months ended March 31, 2021 and 2020, general and administrative expenses were approximately $17.5 million and $15.5 million, respectively. Noncash, stock-based compensation expense included in general and administrative expenses for the three months March 31, 2021 and 2020, was $2.6 million and $2.5 million, respectively.

The table below provides a summary of general and administrative costs for the quarter ended March 31, 2021 and 2020, by entity:

	Three Months Ended March 31,		% of Total	
($ in thousands)	2021	2020	2021	2020
Selling, General & Administrative				
Fortress	$ 5,819	$ 5,663	33 %	36 %
Partner Companies:				
Avenue	744	577	4 %	4 %
Checkpoint	1,614	1,553	9 %	10 %
JMC[1]	6,226	5,689	36 %	37 %
Mustang	2,203	1,769	13 %	11 %
Other[2]	936	268	5 %	2 %
Total Selling, General & Administrative Expense	**$ 17,542**	**$ 15,519**	**100 %**	**100 %**

Note 1: Includes cost of outsourced sales force for the three months ended March 31, 2021 and 2020 of $2.9 million and $3.0 million, respectively.

Note 2: Includes the following partner companies: Aevitas, Baergic, Cellvation, Cyprium, Helocyte, Oncogenuity and FBIO Acquisition Corp VIII.

Comparison of three months ended March 31, 2021 and 2020

	Three Months Ended March 31,		Change	
($ in thousands)	2021	2020	$	%
Revenue				
Product revenue, net	$ 10,719	$ 11,946	$ (1,227)	(10)%
Collaboration revenue	800	—	800	100 %
Revenue – related party	68	972	(904)	(93)%
Net revenue	11,587	12,918	(1,331)	(10)%
Operating expenses				
Cost of goods sold – product revenue	3,908	3,810	98	3 %
Research and development	20,028	14,867	5,161	35 %
Research and development – licenses acquired	126	250	(124)	(50)%
Selling, general and administrative	17,542	15,519	2,023	13 %
Total operating expenses	41,604	34,446	7,158	21 %
Loss from operations	(30,017)	(21,528)	(8,489)	39 %
Other income (expense)				
Interest income	227	627	(400)	(64)%
Interest expense and financing fee	(2,189)	(3,125)	936	(30)%
Change in fair value of investments	5,913	—	5,913	100 %
Change in fair value of derivative liability	—	(42)	42	(100)%
Total other income (expense)	3,951	(2,540)	6,491	(256)%
Net Loss	**(26,066)**	**(24,068)**	**(1,998)**	**8 %**
Less: net loss attributable to non-controlling interest	17,244	11,698	5,546	47 %
Net loss attributable to common stockholders	**$ (8,822)**	**$ (12,370)**	**$ 3,548**	**(29)%**

Net revenues decreased $1.3 million, or 10%, from the three months ended March 31, 2020 to the three months ended March 31, 2021 primarily due to increased coupon expense costs related to standard insurance deductible resets, as well as a decrease in collaboration revenue between Checkpoint and TGTX. Related party revenue for the three months ended March 31, 2020 included $0.9 million from TGTX for a cosibelimab clinical trial milestone achievement not replicated in the current quarter. Additional collaboration revenue of $0.8 million in the quarter ended March 31, 2021 was a result of Cyprium's agreement with Sentynl.

Cost of goods sold increased by $0.1 million, or 3%, from the three months ended March 31, 2020 to the three months ended March 31, 2021 due to the increase in the amortization of license fees, including the drug user fee, related to the expansion of Journey's marketed product portfolio.

Research and development expenses increased $5.2 million or 35% from the three months ended March 31, 2020 to the three months ended March 31, 2021. The following table shows the change in research and development spending by Fortress and its partner companies:

	Three Months Ended March 31,		Change	
($ in thousands)	2021	2020	$	%
Research & Development				
Stock-based compensation				
Fortress	$ 304	$ 201	$ 103	51 %
Partner Companies:				
Avenue	41	85	(44)	(52)%
Checkpoint	161	144	17	12 %
Mustang	672	453	219	48 %
Other[1]	3	10	(7)	(75)%
Sub-total stock-based compensation expense	1,181	893	288	32 %
Other Research & Development				
Fortress	343	477	(134)	(28)%
Partner Companies:				
Avenue	218	612	(394)	(64)%
Checkpoint	4,052	2,491	1,561	63 %
Mustang	10,890	8,798	2,092	24 %
Other[1]	3,344	1,596	1,748	110 %
Total Research & Development Expense	**$ 20,028**	**$ 14,867**	**$ 5,161**	**35 %**

Note 1: Includes the following partner companies: Aevitas, Baergic, Cellvation, Cyprium, Helocyte, Oncogenuity and FBIO Acquisition Corp VIII.

The increase in stock-based compensation for the quarter ended March 31, 2021 is primarily due to the effect of new equity grants to key employees and non-employees at both Mustang and Fortress.

The increased spending at Checkpoint of $1.6 million is attributable primarily to increased costs related to Checkpoint's clinical costs related to their product candidates and manufacturing costs. Mustang's increase in research and development spending of $2.1 million is attributable to increased costs associated with lab supplies, consulting and professional fees, sponsored research and clinical trial agreements, and personnel related expenses. Avenue's decrease of $0.4 million is primarily due to decreases in expenses associated with NDA related and advisory committee preparation costs as well as personnel costs. The increase in "Other" of $1.7 million is attributable to increased spend in the three months ended March 31, 2021 as compared to the three months ended March 31, 2020 for Cyprium, as Cyprium prepares to file for its rolling NDA.

General and administrative expenses increased $2.0 million, or 13%, from the three months ended March 31, 2020 to the three months ended March 31, 2021. The following table shows the change in general and administrative spending by Fortress and its partner companies:

($ in thousands)	Three Months Ended March 31, 2021	2020	Change $	Change %
Selling, General & Administrative				
Stock-based compensation				
Fortress	$ 1,551	$ 1,471	$ 80	5 %
Partner Companies:				
Avenue	73	130	(57)	(43)%
Checkpoint	613	495	118	24 %
Mustang	324	352	(28)	(8)%
Other[2]	31	59	(28)	(48)%
Sub-total stock-based compensation expense	2,592	2,507	85	3 %
Other Selling, General & Administrative				
Fortress	4,268	4,192	76	2 %
Partner Companies:				
Avenue	671	447	224	50 %
Checkpoint	1,001	1,058	(57)	(5)%
JMC[1]	6,226	5,689	537	9 %
Mustang	1,879	1,417	462	33 %
Other[2]	905	209	696	333 %
Total Selling, General & Administrative Expense	**$ 17,542**	**$ 15,519**	**$ 2,023**	**13 %**

Note 1: Includes cost of outsourced sales force for the three months ended March 31, 2021 and 2020 of $2.9 million and $3.0 million, respectively.

Note 2: Includes the following partner companies: Aevitas, Baergic, Cellvation, Cyprium, Helocyte, Oncogenuity and FBIO Acquisition Corp VIII.

For the quarter ended March 31, 2021, the increase in general and administrative expenses of $2.0 million, or 13%, is primarily attributable to Journey's increased sales and marketing costs associated with the expanded product portfolio, as well as Mustang's increase in professional fees and investor relations. Avenue's increase is due to legal expenses, partially offset by decreases in personnel costs. The increase in "Other" of $0.7 million is attributed to Cyprium's increase in personnel-related expenses.

Total other income (expense) increased $6.5 million, or 256%, from expense of $2.5 million for the three months ended March 31, 2020 to income of $4.0 million for the three months ended March 31, 2021, primarily due to interest expense and financing fees offset by the change in fair value of the Company's investment in Caelum of $5.9 million recorded in the three months ended March 31, 2021.

Net loss attributable to common stockholders decreased $3.5 million, or 29%, from a net loss of $12.4 million for the three months ended March 31, 2020 to a net loss of $8.8 million for the three months ended March 31, 2021.

Liquidity and Capital Resources

We will require additional financing to fully develop and prepare regulatory filings and obtain regulatory approvals for our existing and new product candidates, fund operating losses, and, if deemed appropriate, establish or secure through third parties manufacturing for our potential products, and sales and marketing capabilities. We have funded our operations to date primarily through the sale of equity and debt securities. We believe that our current cash and cash equivalents is sufficient to fund operations for at least the next twelve months. Our failure to raise capital as and when needed would have a material adverse impact on our financial condition and our ability to pursue our business strategies. We may seek funds through equity or debt financings, collaborative or other arrangements with corporate sources, sales of stakes in partner companies, the potential acquisition of Avenue, the contingent acquisition of Caelum, or through other sources of financing.

In addition to the foregoing, based on the Company's current assessment, the Company does not expect any material impact on its long-term development timeline and its liquidity due to the worldwide spread of the COVID-19 virus. However, the Company is continuing to assess the effect on its operations by monitoring the spread of COVID-19 and the actions implemented to combat the virus throughout the world.

Cash Flows for the Three Months Ended March 31, 2021 and 2020

($ in thousands)	Three Months Ended March 31, 2021	2020
Statement of cash flows data:		
Total cash (used in)/provided by:		
Operating activities	$ (21,688)	$ (21,892)
Investing activities	(458)	(1,776)
Financing activities	78,692	22,753
Net increase (decrease) in cash and cash equivalents and restricted cash	$ 56,546	$ (915)

Components of cash flows from publicly-traded partner companies are comprised of:

($ in thousands)	For the Three Months Ended March 31, 2021				
	Fortress[1]	Avenue	Checkpoint	Mustang	Total
Statement of cash flows data:					
Total cash (used in)/provided by:					
Operating activities	$ (144)	$ (1,307)	$ (4,657)	$ (15,580)	$ (21,688)
Investing activities	—	—	—	(458)	(458)
Financing activities	7,169	—	23,918	47,605	78,692
Net increase in cash and cash equivalents and restricted cash	$ 7,024	$ (1,307)	$ 19,261	$ 31,567	$ 56,546

($ in thousands)	For the Three Months Ended March 31, 2020				
	Fortress[1]	Avenue	Checkpoint	Mustang	Total
Statement of cash flows data:					
Total cash (used in)/provided by:					
Operating activities	$ (6,029)	$ (1,171)	$ (4,540)	$ (10,152)	$ (21,892)
Investing activities	(250)	(1,000)	—	(526)	(1,776)
Financing activities	17,730	—	(56)	5,079	22,753
Net increase in cash and cash equivalents and restricted cash	$ 11,451	$ (2,171)	$ (4,596)	$ (5,599)	$ (915)

Note 1: Includes Fortress and non-public partner companies.

Operating Activities

Net cash used in operating activities decreased $0.2 million from the three months ended March 31, 2020, compared to the three months ended March 31, 2021. The decrease is due to the increase of $8.0 million in deferred revenue related to the Cyprium Sentnyl deal, offset by the $5.9 million increase in the fair value of the investment in Caelum, as well as the $2.8 million increase in net loss.

Investing Activities

Net cash used in investing activities for the three months ended March 31, 2020 of $1.8 million, as compared to net cash used in investing activities of $0.5 million for the three months ended March 31, 2021 is a $1.3 million change in cash flows from investing activities. The change is primarily due to a $1.3 million decrease in the purchase of research and development licenses, as well as the $0.1 million decrease in cash used in the purchase of property and equipment.

Financing Activities

Net cash provided by financing activities was $22.8 million for the three months ended March 31, 2020, compared to $78.7 million of net cash provided by financing activities for the three months ended March 31, 2021, an increase of $56.0 million. During the three

months ended March 31, 2021, net proceeds from at-the-market offerings for the partner companies was $71.4 million, and net proceeds from partner company convertible preferred shares was $11.2 million, offset by $2.0 million paid in Series A Preferred dividends. During the three months ended March 31, 2020, net proceeds from the issuance of Series A preferred stock was $13.2 million, net proceeds from the Company and partner companies' at-the-market offerings were $10.8 million, offset by $1.2 million paid in Series A Preferred dividends.

Off-Balance Sheet Arrangements

We are not party to any off-balance sheet transactions. We have no guarantees or obligations other than those which arise out of normal business operations.

Item 3. Quantitative and Qualitative Disclosures About Market Risks

Market risk represents the risk of loss that may result from the change in value of financial instruments due to fluctuations in their market price. Market risk is inherent in all financial instruments. Market risk may be exacerbated in times of trading illiquidity when market participants refrain from transacting in normal quantities and/or at normal bid-offer spreads. Our exposure to market risk is directly related to derivatives, debt and equity linked instruments related to our financing activities.

Our assets and liabilities are denominated in U.S. dollars. Consequently, we have not considered it necessary to use foreign currency contracts or other derivative instruments to manage changes in currency rates. We do not know, nor do we plan to, use derivative financial instruments for speculative or trading purposes. However, these circumstances might change.

The primary quantifiable market risk associated with our financial instruments is sensitivity to changes in interest rates. Interest rate risk represents the potential loss from adverse changes in market interest rates. We use an interest rate sensitivity simulation to assess our interest rate risk exposure. For purposes of presenting the possible earnings effect of a hypothetical, adverse change in interest rates over the 12-month period from our reporting date, we assume that all interest rate sensitive financial instruments will be impacted by a hypothetical, immediate 100 basis point increase in interest rates as of the beginning of the period. The sensitivity is based upon the hypothetical assumption that all relevant types of interest rates that affect our results would increase instantaneously, simultaneously and to the same degree. We do not believe that our cash and equivalents have significant risk of default or illiquidity.

The sensitivity analyses of the interest rate sensitive financial instruments are hypothetical and should be used with caution. Changes in fair value based on a 1% or 2% variation in an estimate generally cannot be extrapolated because the relationship of the change in the estimate to the change in fair value may not be linear. Also, the effect of a variation in a particular estimate on the fair value of financial instruments is calculated independent of changes in any other estimate; in practice, changes in one factor may result in changes in another factor, which might magnify or counteract the sensitivities. In addition, the sensitivity analyses do not consider any action that we may take to mitigate the impact of any adverse changes in the key estimates.

Based on our analysis, for the years ended December 31, 2019 and December 31, 2020, and for the interim period through March 31, 2021, we determined the effect of a 100+1- basis point change in interest rates on the value of our financial instruments and the resultant effect on our net loss to be immaterial.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness, as of March 31, 2021, of the design and operation of our disclosure controls and procedures, as such term is defined in Exchange Act Rules 13a-15(e) and 15d-15(e). Based on this evaluation, our principal executive officer and principal financial officer have concluded that, as of such date, our disclosure controls and procedures are effective to ensure that information required to be disclosed by us in our Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

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

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

In November 2020, a purported securities class action complaint was filed in the U.S. District Court for the Eastern District of New York, putatively on behalf of all shareholders who purchased or otherwise acquired Fortress securities between December 11, 2019 and October 9, 2020 (the "Class Period"), and who were allegedly damaged in connection therewith. The case is captioned *Cushman v. Fortress Biotech, Inc., et al*, Case No. 1:20-cv-05767, and names as defendants the Company and two of our officers. The complaint alleges that, throughout the Class Period, the Company made false and/or misleading statements and/or failed to disclose various facts and circumstances with respect to a New Drug Application filed by Avenue Therapeutics, Inc., our partner company, regarding IV Tramadol, Avenue's lead product candidate. The complaint alleges violations of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and seeks damages as well as attorneys' fees, expert fees and other costs. The action is in the early stages of litigation, and the Company intends to vigorously contest the claims.

On March 31, 2021 Journey executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc. a subsidiary of Eli Lilly and Company ("Dermira"). Pursuant to the terms of the agreement Journey acquired the rights to Qbrexza® (glycoprronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. Upon closing of the Qbrexza® purchase, Journey became substituted for Dermira as the plaintiff in U.S. patent litigation commenced by Dermira on October 21, 2020 in the U.S. District Court of Delaware (the "Patent Litigation") against Perrigo Pharma International DAC ("Perrigo") alleging infringement of certain patents covering Qbrexza® (the "Qbrexza® Patents"), which are included among the proprietary rights to Qbrexza® to be acquired pursuant to the APA. The Patent Litigation was initiated following the submission by Perrigo, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application, or ANDA. The ANDA seeks approval to market a generic version of Qbrexza® prior to the expiration of the Qbrexza® Patents and alleges that the Qbrexza® Patents are invalid. Perrigo is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on March 9, 2023. Trial in the Patent Litigation is scheduled for September 19, 2022. The Company cannot make any predictions about the final outcome of this matter or the timing thereof.

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

Item 1A. Risk factors

Investing in our Common Stock, Series A Preferred Stock or any other type of equity or debt securities (together our "Securities") involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K including the consolidated financial statements and the related notes, as well as the risks, uncertainties and other information set forth in the reports and other materials filed or furnished by our partners and affiliates Checkpoint, Mustang, and Avenue with the SEC, before deciding to invest in our Securities. If any of the following risks or the risks included in the public filings of Checkpoint, Mustang or Avenue were to materialize, our business, financial condition, results of operations, and future growth prospects could be materially and adversely affected. In that event, the market price of our Securities could decline, and you could lose part of or all of your investment in our Securities. In addition, you should be aware that the below stated risks should be read as being applicable to our partners and affiliates such that, if any of the negative outcomes associated with any such risk is experienced by one of our partners or affiliates, the value of Fortress' holdings in such partner or affiliate (if any) may decline.

Risks Inherent in Drug Development

Most of our or our partner companies' product candidates are in the early stages of development and may not be successfully developed or commercialized, and the product candidates that do advance into clinical trials may not receive regulatory approval.

Most of our existing product candidates remain in the early stages of development and will require substantial further capital expenditures, development, testing and regulatory approvals prior to commercialization. The development and regulatory approval processes take several years, and it is unlikely that our product candidates, even if successfully developed and approved by the FDA and/or foreign equivalent regulatory bodies, would be commercially available for several years. Only a small percentage of drugs under development successfully obtain regulatory approval and are successfully commercialized. Accordingly, even if we are able to obtain the requisite financing to fund development programs, we cannot be sure that any of our product candidates will be successfully developed or commercialized, which could result in the failure of our business and a loss of your investment.

Pharmaceutical development has inherent risks. Before we may seek regulatory approval for the commercial sale of any of our products, we will be required to demonstrate, through well-controlled clinical trials, that our product candidates are effective and have a favorable benefit-risk profile for their target indications. Success in early clinical trials is not necessarily indicative of success in later stage clinical trials, during which product candidates may fail to demonstrate sufficient safety or efficacy, despite having progressed through initial clinical testing, which may cause significant setbacks. Further, we may need to conduct additional clinical trials that are not currently anticipated. As a result, product candidates that we advance into clinical trials may never receive regulatory approval.

Even if any of our product candidates are approved, regulatory authorities may approve any such product candidates for fewer or more limited indications than we request, may place limitations on our ability to commercialize products at the intended price points, may grant approval contingent on the product's performance in costly post-marketing clinical trials, or may approve a label that does not include the claims necessary or desirable for the successful commercialization of that product candidate. The regulatory authority may also require the label to contain warnings, contraindications, or precautions that limit the commercialization of the product. In addition, the Drug Enforcement Agency ("DEA"), or foreign equivalent, may schedule one or more of our product candidates under the Controlled Substances Act, or its foreign equivalent, which could impede such product's commercial viability. Any of these scenarios could impact the commercial prospects for one or more of our current or future product candidates.

The extensive regulation to which our product candidates are subject may be costly and time consuming, causeanticipated delays, and/or prevent the receipt of the required approvals for commercialization.

The research and clinical development, testing, manufacturing, labeling, storage, record-keeping, advertising, promotion, import, export, marketing and distribution of any product candidate, including our product candidates, is subject to extensive regulation by the FDA in the United States and by comparable health authorities in foreign markets. In the United States, we are not permitted to market a product candidate until the FDA approves such product candidate's Biologics License Application ("BLA") or New Drug Application ("NDA"). The approval process is uncertain, expensive, often spans many years, and can vary substantially based upon the type, complexity and novelty of the products involved. In addition to significant and expansive clinical testing requirements, our ability to obtain marketing approval for product candidates depends on the results of required non-clinical testing, including the characterization of the manufactured components of our product candidates and validation of our manufacturing processes. The FDA may determine that our manufacturing processes, testing procedures or equipment and facilities are inadequate to support approval. Further, the FDA has

substantial discretion in the pharmaceutical approval process and may change approval policies or interpretations of regulations at any time, which could delay, limit or preclude a product candidate's approval.

The FDA and other regulatory agencies may delay, limit or refuse approval of a product candidate for many reasons, including, but not limited to:

- disagreement with the trial design or implementation of our clinical trials, including proper use of clinical trial methods and methods of data analysis;
- an inability to establish sufficient data and information to demonstrate that a product candidate is safe and/or effective for an indication;
- the FDA's rejection of clinical data from trials conducted by individual investigators or in countries where the standard of care is potentially different from that of the United States;
- the FDA's determination that clinical trial results do not meet the statistical significance levels required for approval;
- a disagreement by the applicable regulator regarding the interpretation of preclinical study or trial data;
- determination by the FDA that our manufacturing processes or facilities or those of third-party manufacturers with which we or our collaborators contract for clinical supplies or plan to contract for commercial supplies, do not satisfactorily comply with CGMPs; or
- a change to the FDA's approval policies or interpretation of regulations rendering our clinical data, product characteristics, or benefit-risk profile insufficient or unfavorable for approval.

Foreign approval procedures vary by country and may, in addition to the aforementioned risks, involve additional product testing, administrative review periods and agreements with pricing authorities. In addition, rapid drug and biological development during the COVID-19 pandemic has raised questions about the safety and efficacy of certain marketed pharmaceuticals and may result in increased cautiousness by the FDA and comparable foreign regulatory authorities in reviewing new pharmaceuticals based on safety, efficacy or other regulatory considerations and may result in significant delays in obtaining regulatory approvals. Any delay in obtaining, or inability to obtain, applicable regulatory approvals would prevent us from commercializing our product candidates.

Delays in the commencement of our clinical trials, or suspensions or terminations of such trials, could result in increased costs and/or delay our ability to pursue regulatory approvals.

The commencement or resumption of clinical trials can be delayed for a variety of reasons, including, but not necessarily limited to, delays in:

- obtaining regulatory approval to commence a clinical trial;
- identifying, recruiting and training suitable clinical investigators;
- reaching and maintaining agreements on acceptable terms with prospective clinical research organizations ("CROs") and trial sites, the terms of which may be subject to extensive negotiation and modification from time to time and may vary significantly among different CROs and trial sites;
- obtaining sufficient quantities of a product candidate for use in clinical trials;
- obtaining IRB or ethics committee approval to conduct a clinical trial at a prospective site;
- developing and validating companion diagnostics on a timely basis, if required;
- adding new clinical sites once a trial has begun;

- the death, disability, departure or other change to the principal investigator or other staff overseeing the clinical trial at a given site;
- identifying, recruiting and enrolling patients to participate in a clinical trial; or
- retaining patients who participate in a clinical trial and replacing those who may withdraw due to adverse events from the therapy, insufficient efficacy, fatigue with the clinical trial process, personal issues, or other reasons.

Any delays in the commencement of our clinical trials will delay our ability to pursue regulatory approval for product candidates. In addition, many of the factors that cause, or lead to, a delay in the commencement of clinical trials may also ultimately lead to the denial of regulatory approval of a product candidate.

If any of our product candidates causes unacceptable adverse safety events in clinical trials, we may not be able to obtain regulatory approval or commercialize such product, preventing us from generating revenue from such products' sale. Alternatively, even if a product candidate is approved for marketing, future adverse events could lead to the withdrawal of such product from the market.

Suspensions or delays in the completion of clinical testing could result in increased costs and delay or prevent our ability to complete development of that product or generate product revenues.

Once a clinical trial has begun, patient recruitment and enrollment may be slower than we anticipate due to the nature of the clinical trial plan, the proximity of patients to clinical sites, the eligibility criteria for participation in the study or other factors. Clinical trials may also be delayed as a result of ambiguous or negative interim results or difficulties in obtaining sufficient quantities of product manufactured in accordance with regulatory requirements and on a timely basis. Further, a clinical trial may be modified, suspended or terminated by us, an IRB, an ethics committee or a data safety monitoring committee overseeing the clinical trial, any clinical trial site with respect to that site, or the FDA or other regulatory authorities, due to a number of factors, including, but not necessarily limited to:

- failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols;
- inspection of the clinical trial operations or clinical trial site by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;
- stopping rules contained in the protocol;
- unforeseen safety issues or any determination that the clinical trial presents unacceptable health risks; and
- lack of adequate funding to continue the clinical trial.

Regulatory requirements and guidance may change, and we may need to amend clinical trial protocols to reflect these changes. Any such change may require us to resubmit clinical trial protocols to IRBs, which may in turn impact a clinical trial's cost, timing, and likelihood of success. If any clinical trial is delayed, suspended, or terminated, our ability to obtain regulatory approval for that product candidate will be delayed, and the commercial prospects, if any, for the product candidate may suffer. In addition, many of these factors may ultimately lead to the denial of regulatory approval of a product candidate.

If our competitors develop treatments for any of our product candidates' target indications and those competitor products are approved more quickly, marketed more successfully or demonstrated to be more effective, the commercial opportunity for our product candidates will be reduced or eliminated.

The biotechnology and pharmaceutical industries are subject to rapid and intense technological change. We face, and will continue to face, competition in the development and marketing of our product candidates from academic institutions, government agencies, research institutions and biotechnology and pharmaceutical companies. Furthermore, new developments, including the development of other drug technologies and methods of preventing the incidence of disease, occur in the pharmaceutical industry at a rapid pace. Any of these developments may render one or more of our product candidates obsolete or noncompetitive.

Competitors may seek to develop alternative formulations that do not directly infringe on our in-licensed patent rights. The commercial opportunity for one or more of our product candidates could be significantly harmed if competitors are able to develop alternative formulations outside the scope of our in-licensed patents. Compared to us, many of our potential competitors have substantially greater:

- capital resources;
- development resources, including personnel and technology;
- clinical trial experience;
- regulatory experience;
- expertise in prosecution of intellectual property rights; and
- manufacturing, distribution and sales and marketing capabilities.

As a result of these factors, our competitors may obtain regulatory approval for their products more rapidly than we are able to, or may obtain patent protection or other intellectual property or exclusivity rights that limit our ability to develop or commercialize one or more of our product candidates. Our competitors may also develop drugs that are more effective, safe, useful and/or less costly than ours and may be more successful than us in manufacturing and marketing their products. Smaller or early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. We will also face competition from these third parties in establishing clinical trial sites, in patient registration for clinical trials, and in identifying and in-licensing new product candidates.

Negative public opinion and increased regulatory scrutiny of the therapies that underpin many of our product candidates may damage public perception of our product candidates or adversely affect our ability to conduct our business or obtain regulatory approvals for our product candidates.

If any of the technologies underpinning our product candidates, including gene therapy, is claimed to be unsafe, such product candidate may not gain the acceptance of the public or the medical community. The success of our gene therapy platforms in particular depends upon physicians who specialize in treating the diseases targeted by our product candidates prescribing treatments involving our product candidates in lieu of, or in addition to, treatments with which they are already familiar and for which greater clinical data may be available. More restrictive government regulations or negative public opinion would have a negative effect on our business or financial condition and may delay or impair the development and commercialization of our product candidates or demand for any products we may develop. Adverse events in our clinical trials, even if not ultimately attributable to our product candidates, and the resulting publicity, could lead to increased governmental regulation, unfavorable public perception, potential regulatory delays in the testing or approval of our potential product candidates, stricter labeling requirements for those product candidates that do obtain approval and/or a decrease in demand for any such product candidates. Concern about environmental spread of our products, whether real or anticipated, may also hinder the commercialization of our products.

The FDA limits regulatory approval for our product candidates to those specific indications and conditions for which clinical safety and efficacy have been demonstrated.

Any regulatory approval is limited to the indications for use and related treatment of those specific diseases set forth in the approval for which a product is deemed to be safe and effective by the FDA. In addition to the FDA approval required for new formulations, any new indication for an approved product also requires FDA approval. If we are not able to obtain FDA approval for any desired future indications for our products, our ability to effectively market and sell our products may be reduced and our business may be adversely affected.

While physicians may prescribe drugs for uses that are not described in the product's label or that differ from those tested in clinical studies and approved by the regulatory authorities ("off label uses"), our ability to promote the products is limited to those indications that are specifically approved by the FDA. Such off-label uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. Regulatory authorities in the U.S. generally do not regulate the practice of medicine or behavior of physicians in their choice of treatments. Regulatory authorities do, however, restrict communications by pharmaceutical companies regarding the promotion of off-label use. If our promotional activities fail to comply with these regulations or guidelines, we may be subject to compliance or enforcement actions, including Warning Letters, by, these authorities. In addition, our failure to follow FDA laws, regulations and guidelines relating to promotion and advertising may cause the FDA to suspend or withdraw an approved product from the market, request a recall, institute fines, or could result in disgorgement of money, operating restrictions, corrective advertising, injunctions or criminal prosecution, any of which could harm our business.

Risks Pertaining to the Need for and Impact of Existing and Additional Financing Activities

We have historically financed a significant portion of our growth and operations in part through the assumption of debt. Should an event of default occur under any applicable loan documents, our business would be materially adversely affected. Further, our current credit arrangement with Oaktree Capital restricts our and certain of our partner companies' abilities to take certain actions.

At December 31, 2020, the total amount of debt outstanding, net of the debt discount was $51.7 million. If we default on our obligations, the holders of our debt may declare the outstanding amounts immediately payable together with accrued interest, and/or take possession of any pledged collateral. If an event of default occurs, we may be unable to cure it within the applicable cure period, if at all. If the maturity of our indebtedness is accelerated, we may not have sufficient funds available for repayment and we may be unable to borrow or obtain sufficient funds to replace the accelerated indebtedness on terms acceptable to us, or at all. In addition, current or future debt obligations may limit our ability to finance future operations, satisfy capital needs, or to engage in, expand or pursue our business activities. Such restrictions may also prevent us from engaging in activities that could be beneficial to our business and our stockholders unless we repay the outstanding debt, which may not be desirable or possible.

On August 27, 2020, we entered into a $60.0 million senior secured credit agreement with Oaktree Fund Administration, LLC and the lenders from time-to-time party thereto (collectively, "Oaktree"). The Oaktree credit agreement contains certain affirmative and negative covenants restricting our and certain of our partner companies' abilities to take certain actions, especially as pertains indebtedness, liens, investments, affiliate transactions, acquisitions, mergers, dispositions, prepayment of other indebtedness, dividends and other distributions (subject in each case to exceptions). The Oaktree credit agreement also contains financial covenants obligating us to maintain a minimum liquidity amount and a minimum amount of revenue, in both cases subject to exceptions. The breach of any such provisions (even, potentially, in an immaterial manner) could result in an event of default under the Oaktree credit agreement, the announcement and impact of which could have a negative impact on the trading prices of our securities. The restrictions imposed by such provisions may also inhibit our and certain of our partner companies' ability to enter into certain transactions or arrangements that management otherwise believes would be in our or such partner companies' best interests, such as dispositions that would result in cash inflows to Fortress and/or our partner companies, or acquisitions or financings that would promote future growth.

We have a history of operating losses that is expected to continue, and we are unable to predict the extent of future losses, whether we will be able to sustain current revenues or whether we will ever achieve or sustain profitability.

We continue to generate operating losses in all periods including losses from continuing operations of approximately $103.0 million and $101.7 million for the years ended December 31, 2020 and 2019, respectively. At December 31, 2020, we had an accumulated deficit of approximately $482.8 million. We expect to make substantial expenditures and incur increasing operating costs and interest expense in the future, and our accumulated deficit will increase significantly as we expand development and clinical trial activities for our product candidates and finance investments in certain of our existing and new partners and affiliates in accordance with our growth strategy. Our losses have had, and are expected to continue to have, an adverse impact on our working capital, total assets and stockholders' equity.

Because of the numerous risks and uncertainties associated with developing pharmaceutical products, we are unable to predict the timing or amount of increased expenses or when or if, we will be able to achieve profitability. Our net losses may fluctuate significantly from quarter to quarter and year to year. We anticipate that our expenses will increase substantially if:

- one or more of our development-stage product candidates is approved for commercial sale and we decide to commercialize such product(s) ourselves, due to the need to establish the necessary commercial infrastructure to launch and commercialize this product candidate without substantial delays, including hiring sales and marketing personnel and contracting with third parties for manufacturing, testing, warehousing, distribution, cash collection and related commercial activities;
- we are required by the FDA or a foreign regulatory authority to perform studies in addition to those currently expected;
- there are any delays in completing our clinical trials or the development of any of our product candidates;
- we execute other collaborative, licensing or similar arrangements, depending on the timing of payments we may make or receive under these arrangements;
- there are variations in the level of expenses related to our future development programs;

- we become involved in any product liability or intellectual property infringement lawsuits; and
- there are any regulatory developments affecting our competitors' product candidates.

Our ability to become profitable depends upon our ability to generate revenue. To date, we have not generated any revenue from our development stage products, and we do not know when, or if, we will generate any revenue from such development-stage products. Our ability to generate revenue from such development-stage products depends on a number of factors, including, but not limited to, our ability to:

- obtain regulatory approval for one or more of our product candidates, or any future product candidate that we may license or acquire in the future;
- manufacture commercial quantities of one or more of our product candidates or any future product candidate, if approved, at acceptable cost levels; and
- develop a commercial organization and the supporting infrastructure required to successfully market and sell one or more of our product candidates or any future product candidate, if approved.

Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would depress the value of our company and could impair our ability to raise capital, expand our business, maintain our research and development efforts, diversify our product offerings or even continue our operations. A decline in the value of our company could also cause you to lose all or part of your investment.

To fund our operations and service our debt securities, which may be deemed to include our Series A Preferred Stock, we will be required to generate a significant amount of cash. Our ability to generate cash depends on a number of factors, some of which are beyond our control, and any failure to meet our debt obligations would have a material adverse effect on our business, financial condition, cash flows and results of operations and could cause the market value of our common stock and/or preferred stock to decline.

Prevailing economic conditions and financial, business and other factors, many of which are beyond our control, may affect our ability to make payments on our debt. If we do not generate sufficient cash flow to satisfy our debt obligations, we may have to undertake alternative financing plans, such as refinancing or restructuring our debt, selling assets, reducing or delaying capital investments or seeking to raise additional capital. Alternatively, as we have done in the past, we may also elect to refinance certain of our debt, for example, to extend maturities. Our ability to restructure or refinance our debt will depend on the capital markets and our financial condition at such time. If we are unable to access the capital markets, whether because of the condition of those capital markets or our own financial condition or reputation within such capital markets, we may be unable to refinance our debt. In addition, any refinancing of our debt could be at higher interest rates and may require us to comply with more onerous covenants, which could further restrict our business operations. Our inability to generate sufficient cash flow to satisfy our debt obligations or to refinance our obligations on commercially reasonable terms, or at all, could have a material adverse effect on our business, financial condition, cash flows and results of operations and could cause the market value of our common stock and/or debt securities to decline.

Repayment of our indebtedness is dependent in part on the generation of cash flow by Journey and its ability to make such cash available to us, by dividend, debt repayment or otherwise. Journey may not be able to, or may not be permitted to, make distributions to enable us to make payments in respect of our indebtedness. Each of our subsidiaries, including Journey, is a distinct legal entity and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from our subsidiaries.

Our ability to continue to reduce our indebtedness will depend upon factors including our future operating performance, our ability to access the capital markets to refinance existing debt and prevailing economic conditions and financial, business and other factors, many of which are beyond our control. We can provide no assurance of the amount by which we will reduce our debt, if at all. In addition, servicing our debt will result in a reduction in the amount of our cash flow available for other purposes, including operating costs and capital expenditures that could improve our competitive position and results of operations.

We may need substantial additional funding and may be unable to raise capital when needed, which may force us to delay, curtail or eliminate one or more of our R&D programs, commercialization efforts or planned acquisitions and potentially change our growth strategy.

Our R&D programs will require substantial additional capital for research, preclinical testing and clinical trials, establishing pilot scale and commercial scale manufacturing processes and facilities, and establishing and developing quality control, regulatory, marketing, sales, and administrative capabilities to support these programs. We expect to fund our R&D activities from a combination of cash generated from royalties and milestones from our partners in various past, ongoing, and future collaborations, and through additional equity or debt financings from third parties. These financings could depress the stock prices of our securities. If additional funds are required to support our operations and such funds cannot be obtained on favorable terms, we may not be able to develop products, which will adversely impact our growth strategy.

Our operations have consumed substantial amounts of cash since inception. During the years ended December 31, 2020 and 2019 we incurred R&D expenses of approximately $61.3 million and $75.2 million, respectively. We expect to continue to spend significant amounts on our growth strategy. We believe that our current cash and cash equivalents will enable us to continue to fund operations in the normal course of business for at least the next 12 months from the filing of this 10-K. Until such time, if ever, as we can generate a sufficient amount of product revenue and achieve profitability, however, we expect to seek to finance potential cash needs. Our ability to obtain additional funding when needed, changes to our operating plans, our existing and anticipated working capital needs, the acceleration or modification of our planned R&D activities, expenditures, acquisitions and growth strategy, increased expenses or other events may affect our need for additional capital in the future and require us to seek additional funding sooner or on different terms than anticipated. In addition, if we are unable to raise additional capital when needed, we might have to delay, curtail or eliminate one or more of our R&D programs and commercialization efforts and potentially change our growth strategy. The terms of our existing debt arrangements, including that with Oaktree, have and will continue to inhibit our and our subsidiaries' abilities to raise capital.

We may be unable to generate returns for our investors if our partner companies and subsidiaries, several of which have limited or no operating history, have no commercialized revenue generating products, or are not yet profitable, cannot obtain additional third-party financing.

As part of our growth strategy, we have made and will likely continue to make substantial financial and operational commitments in our subsidiaries, which often have limited or no operating history, no commercialized revenue generating products, and require additional third-party financing to fund product and services development or acquisitions. Our business depends in large part on the ability of one or more of our subsidiaries and/or partner companies to innovate, in-license, develop or acquire successful biopharmaceutical products and/or acquire companies in increasingly competitive and highly regulated markets. If certain of our subsidiaries and/or partner companies do not successfully obtain additional third-party financing to commercialize products, or are not acquired in change-of-control transactions that result in cash distributions, as applicable, the value of our businesses and our ownership stakes in our partner companies may be materially adversely affected.

Raising additional funds by issuing securities or through licensing or lending arrangements may cause dilution to our existing stockholders, restrict our operations or require us to relinquish proprietary rights.

To the extent that we raise additional capital by issuing common stock (or preferred stock that is convertible into common stock), the share ownership of existing stockholders will be diluted. We have also entered into financing arrangements to raise capital for our subsidiaries under which Fortress common stock is or may be issuable to investors in lieu of cash, upon certain conditions being met; in the event such issuances take place, they will also be dilutive of the stakes of existing stockholders. Any future debt financings may involve covenants that restrict our operations, including limitations on our ability to incur liens or additional debt, pay dividends, redeem our stock, make certain financial commitments and engage in certain merger, consolidation or asset sale transactions, among other restrictions. In addition, if we raise additional funds through licensing or sublicensing arrangements, it may be necessary to relinquish potentially valuable rights to our product candidates or grant licenses on terms that are not favorable to us.

Risks Pertaining to Our Existing Revenue Stream from Journey Medical Corporation

Future revenue based on sales of our dermatology products, especially Qbrexza, Ximino, Targadox, Accutane, and Exelderm, may be lower than expected or lower than in previous periods.

The vast majority of our operating income for the foreseeable future is expected to come from the sale of dermatology products through our partner company Journey Medical Corporation. Any setback that may occur with respect to such products, in particular Qbrexza, Ximino, Targadox, Accutane, and Exelderm, could significantly impair our operating results and/or reduce our revenue and the market prices of our Securities. Setbacks for such products could include, but are not necessarily limited to, problems with shipping, distribution, demand, manufacturing, product safety, marketing, government regulation or reimbursement, licenses and approvals, intellectual property rights, competition with existing or new products, physician or patient acceptance of the products, as well as higher than expected total rebates, returns or recalls.

Also, the majority of Journey's sales derive from products that are without patent protection and/or are or may become subject to third party generic competition; the introduction of new competitor products, or increased market share of existing competitor products, could have a significant adverse effect on our operating income.

We face challenges as our products face generic competition and/or losses of exclusivity.

Journey's products do and may compete with well-established products, both branded and generic, with similar or the same indications. We face increased competition from manufacturers of generic pharmaceutical products, who may submit applications to FDA seeking to market generic versions of Journey's products. In connection with these applications, the generic drug companies may seek to challenge the validity and enforceability of our patents through litigation. When patents covering certain of our products (if applicable) expire or are successfully challenged through litigation or in PTO proceedings, if a generic company launches a competing product "at risk," or when the regulatory or licensed exclusivity for our products (if applicable) expires or is otherwise lost, we may face generic competition as a result. Generic versions are generally significantly less expensive than branded versions, and, where available, may be required to be utilized before or in preference to the branded version under third-party reimbursement programs, or substituted by pharmacies. Accordingly, when a branded product loses its market exclusivity, it normally faces intense price competition from generic forms of the product. To successfully compete for business with managed care and pharmacy benefits management organizations, we must often demonstrate that our products offer not only medical benefits, but also cost advantages as compared with other forms of care.

Any disruptions to the capabilities, composition, size or existence of Journey's sales force may have a significant adverse impact on our existing revenue stream. If we are unable to establish and/or maintain sales and marketing capabilities or fail to enter into agreements with third parties to market, distribute and sell products that may be successfully developed in the future, we may be unable to effectively market and sell such products and generate product revenue.

Journey's sales force has been and is expected to continue to be an important contributor to its commercial success. Any disruptions to Journey's relationship with such sales force or the third-party contractor through which they are engaged could materially adversely affect Journey's product sales. Journey may from time-to-time acquire additional products with which its existing sales force has little familiarity (e.g., with respect to indications, product labels, dosages, formulations or delivery mechanisms), and there is no guarantee that Journey's sales force will have success in marketing such new products in the near-term or ever.

Apart from Journey, we do not currently have the infrastructure for the sales, marketing and distribution of any of our product candidates, and we must build and maintain such infrastructures or make arrangements with third parties to perform these functions in order to commercialize any products that we may successfully develop. The establishment and development of a sales force, either by us or our partners, or the establishment of a contract sales force, to market any products for which we may receive marketing approval is expensive and time-consuming and could delay any such product launch or compromise the successful commercialization of such products. If we are unable to establish and maintain sales and marketing capabilities or any other non-technical capabilities necessary to commercialize any products that may be successfully developed, we will need to contract with third parties to market and sell such products. We may not be able to establish arrangements with third parties on commercially reasonable terms, or at all.

If our products are not included in managed care organizations' formularies or coverage by other organizations, our products' utilization and market shares may be negatively impacted, which could have a material adverse effect on our business and financial condition.

In the United States, continued sales and coverage, including formulary inclusion without the need for a prior authorization or step edit therapy, of our products for commercial sale will depend in part on the availability of reimbursement from third-party payors, including government health administrative authorities, managed care providers, private health insurers and other organizations. Third-party payors are increasingly examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy, and, accordingly, significant uncertainty exists as to the reimbursement status of newly approved therapeutics. Adequate third party reimbursement may not be available for our products to enable us to realize an appropriate return on our investment of our currently marketed products or those which we may acquire or develop in the future.

Managed care organizations and other third-party payors try to negotiate the pricing of medical services and products to control their costs. Managed care organizations and pharmacy benefit managers typically develop formularies to reduce their cost for medications. Formularies are based on the prices and therapeutic benefits of available products. Due to their lower costs, generic products are often favored. The breadth of the products covered by formularies varies considerably from one managed care organization to another, and many formularies include alternative and competitive products for treatment of particular medical conditions. Failure to be included in such formularies or to achieve favorable formulary status may negatively impact the utilization and market share of our products. If our products are not included within an adequate number of formularies or adequate reimbursement levels are not provided, or if those policies increasingly favor generic products, this could have a material adverse effect on our business and financial condition.

Reimbursement for our product and product candidates may be limited or unavailable in certain market segments, which could make it difficult for us to sell our products profitably.

We have obtained approval for some products, and intend to seek approval for other product candidates, to commercialize in both the United States and in countries and territories outside the United States. If we obtain approval in one or more foreign countries, we will be subject to rules and regulations in those countries relating to such products. In some foreign countries, particularly in the European Union, the pricing of prescription pharmaceuticals and biologics is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product candidate. In addition, market acceptance and sales of our product candidates will depend significantly on the availability of adequate coverage and reimbursement from third-party payors for any of our product candidates and may be affected by existing and future healthcare reform measures.

Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which pharmaceuticals they will pay for and establish reimbursement levels. Reimbursement by a third-party payor may depend upon a number of factors, including the third-party payor's determination regarding whether a product is:

- a covered benefit under its health plan;
- safe, effective and medically necessary;
- appropriate for the specific patient;
- cost-effective; and
- experimental or investigational.

Obtaining coverage and reimbursement approval for a product from a government or other third-party payor is a time consuming and costly process that could require that we provide supporting scientific, clinical and cost-effectiveness data for the use of our products to the payor. We may not be able to provide data sufficient to gain acceptance with respect to coverage and reimbursement. If reimbursement of our future products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability. Additionally, while we may seek approval of our products in combination with each other, there can be no guarantee that we will obtain coverage and reimbursement for any of our products together, or that such reimbursement will incentivize the use of our products in combination with each other as opposed to in combination with other agents which may be priced more favorably to the medical community.

Legislative and regulatory changes to the healthcare systems of the United States and certain foreign countries could impact our ability to sell our products profitably. In particular, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) changed the way Medicare covers and pays for pharmaceutical products by revising the payment methodology for many products reimbursed by Medicare, resulting in lower rates of reimbursement for many types of drugs, and added a prescription drug benefit to the Medicare program that involves commercial plans negotiating drug prices for their members. In addition, this law provided authority for limiting the number of drugs that will be covered in any therapeutic class. Cost reduction initiatives and other provisions of this law and future laws could decrease the coverage and price that we will receive for any approved products. While the MMA only applies to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own payment rates. Therefore, any limitations in reimbursement that results from the MMA may result in reductions in payments from private payors.

Since 2003, there have been several other legislative and regulatory changes to the coverage and reimbursement landscape for pharmaceuticals. In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, collectively, the "Affordable Care Act" or "ACA," was enacted in 2010 and made significant changes to the United States' healthcare system. The ACA and any revisions or replacements of that Act, any substitute legislation, and other changes in the law or regulatory framework could have a material adverse effect on our business.

Among the provisions of the ACA of importance to our potential product candidates are:

- an annual, nondeductible fee on any entity that manufactures, or imports specified branded prescription drugs and biological products apportioned among these entities according to their market share in certain government healthcare programs;
- an increase in the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program to 23.1% and 13.0% of the average manufacturer price for branded and generic drugs, respectively;
- expansion of healthcare fraud and abuse laws, including the federal False Claims Act and the federal Anti-Kickback Statute, new government investigative powers and enhanced penalties for non-compliance;
- a new Medicare Part D coverage gap discount program, in which manufacturers must agree to offer point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for a manufacturer's outpatient drugs to be covered under Medicare Part D;
- extension of a manufacturer's Medicaid rebate liability to covered drugs dispensed to individuals who are enrolled in Medicaid managed care organizations;
- expansion of eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals and by adding new mandatory eligibility categories for certain individuals with income at or below 138% of the federal poverty level, thereby potentially increasing a manufacturer's Medicaid rebate liability;
- expansion of the entities eligible for discounts under the 340B Drug Pricing Program;
- new requirements under the federal Open Payments program and its implementing regulations;
- a new requirement to annually report drug samples that manufacturers and distributors provide to physicians;
- a new regulatory pathway for the approval of biosimilar biological products, all of which will impact existing government healthcare programs and will result in the development of new programs; and
- a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research.

The Supreme Court upheld the ACA in the main challenge to the constitutionality of the law in 2012. Specifically, the Supreme Court held that the individual mandate and corresponding penalty was constitutional because it would be considered a tax by the federal government. The Supreme Court also upheld federal subsidies for purchasers of insurance through federally facilitated exchanges in a decision released in June 2015.

At the end of 2017, Congress passed the Tax Cuts and Jobs Act, which repealed the penalty for individuals who fail to maintain minimum essential health coverage as required by the ACA. Following this legislation, Texas and 19 other states filed a lawsuit alleging that the ACA is unconstitutional as the individual mandate was repealed, undermining the legal basis for the Supreme Court's prior decision. On December 14, 2018, a Texas federal district court judge issued a ruling declaring that the ACA in its entirety is unconstitutional. Upon appeal, the Fifth Circuit upheld the district court's ruling that the individual mandate is unconstitutional. However, the Fifth Circuit remanded the case back to the district court to conduct a more thorough assessment of the constitutionality of the entire ACA despite the individual mandate being unconstitutional. The Supreme Court agreed to hear the case on appeal from the Fifth Circuit on March 2, 2020 and held oral arguments on November 10, 2020. While this lawsuit has no immediate legal effect on the ACA and its provisions, this lawsuit is ongoing and the outcome may have a significant impact on our business.

The Bipartisan Budget Act of 2018, the "BBA," which set government spending levels for Fiscal Years 2018 and 2019, revised certain provisions of the ACA. Specifically, beginning in 2019, the BBA increased manufacturer point-of-sale discounts off negotiated prices of applicable brand drugs in the Medicare Part D coverage gap from 50% to 70%, ultimately increasing the liability for brand drug manufacturers. Further, this mandatory manufacturer discount applied to biosimilars beginning in 2019.

The 116th Congress explored legislation intended to address the cost of prescription drugs. Notably, the major committees of jurisdiction in the Senate (Finance Committee, Health, Education, Labor and Pensions Committee, and Judiciary Committee), marked up legislation intended to address various elements of the prescription drug supply chain. Proposals include a significant overhaul of the Medicare Part D benefit design, addressing patent "loopholes", and efforts to cap the increase in drug prices. The House Energy and Commerce Committee approved drug-related legislation intended to increase transparency of drug prices and also curb anti-competitive behavior in the pharmaceutical supply chain. In addition, the House Ways & Means Committee approved legislation intended to improve drug price transparency, including for drug manufacturers to justify certain price increases. The 117th Congress convened on January 3, 2021 and could reintroduce many of the bills targeting drug prices. While we cannot predict what proposals may ultimately become law, the elements under consideration could significantly change the landscape in which the pharmaceutical market operates.

The Senate Committee on Health, Education, Labor, and Pensions (HELP) advanced the Lower Health Care Costs Act of 2019. Among other things, the bill is intended to reduce costs in the United States health sector. The bill revises certain requirements to expedite the approval of generics and biosimilars. It also limits prices that pharmacy benefit managers may charge health insurers or enrollees for prescription drugs. Although this bill still needs to pass the full Senate and House of Representatives, it is worth noting the wide-ranging effects it could have on the health care sector.

On December 12, 2019, the House of Representatives passed broad legislation (H.R. 3, the *Elijah E. Cummings Lower Drug Costs Now Act*) that would, among other provisions, require HHS to negotiate drug prices and impose price caps and restructure the Medicare Part D benefit, imposing more financial responsibility on certain drug manufacturers. Failure by a manufacturer to reach an agreement with HHS on the negotiated price could result in significant penalties for prescription drug manufacturers. In addition, S. 2543, *the Prescription Drug Pricing Reduction Act* would also, among other provisions, restructure the Medicare Part D benefit, but it would not authorize direct negotiation by the federal government. While we cannot predict what proposals may ultimately become law, the elements under consideration could significantly change the landscape in which the pharmaceutical market operates.

The Trump Administration took several regulatory steps to redirect ACA implementation. The HHS finalized a Medicare hospital payment reduction for Part B drugs acquired through the 340B Drug Pricing Program.

Under the Trump Administration, HHS finalized several proposals aimed at lowering drug prices for Medicare beneficiaries and increasing price transparency. For example, the Trump Administration issued an interim final rule on November 27, 2020 implementing a "Most Favored Nation" payment model for Part B drugs that applies international reference pricing to determine reimbursement for certain drugs paid by Medicare Part B. The interim final rule was enjoined by federal courts prior to its implementation date of January 1, 2021, and the lawsuit is ongoing. In addition, HHS, in conjunction with the FDA, finalized four pharmaceutical importation pathways in September 2020: (1) regulations establishing importation of pharmaceuticals from Canada by wholesalers and pharmacists; (2) FDA guidance permitting manufacturers to import their own pharmaceuticals that were originally intended for marketing in other countries; (3) a request for proposals from private sector entities to import prescription drugs for personal use under existing statutory authority; and (4) a request for proposals from private sector entities to reimport insulin under existing statutory authority. Further, on November 11, 2020, the Trump Administration issued a final rule that changes the permissible structure of drug rebates and discounts between drug manufacturers and third-party payors (including pharmacy benefit managers that negotiate drug prices on behalf of such third-party payors). This final rule, often referred to as the "Rebate Rule," could have significant direct and indirect impacts on drug pricing in both government and commercial markets. With respect to price transparency, the Trump Administration promulgated regulations that require hospitals and third-party payors to disclose prices of items and services, which may impact negotiated rates in the commercial market.

On January 20, 2021, Joe Biden was inaugurated as the 46th president of the United States. As a presidential candidate, Mr. Biden indicated support for several policies aimed at lowering drug prices, including government price negotiation, drug importation, international reference pricing, and price increase controls. The Biden Administration may continue, modify, or repeal many of the drug pricing policies proposed and finalized by the Trump Administration. While we cannot predict which policies the Biden Administration may support and enforce, the policies finalized in the months prior to the beginning of Mr. Biden's term, if continued, could significantly change the landscape in which the pharmaceutical market operates and significantly impact our ability to effectively market and sell our products.

There likely will continue to be legislative and regulatory proposals at the federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare products and services. We cannot predict the initiatives that may be adopted in the future. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may adversely affect:

- the demand for any products for which we may obtain regulatory approval;
- our ability to set a price that we believe is fair for our products;
- our ability to generate revenues and achieve or maintain profitability;
- the level of taxes that we are required to pay; and
- the availability of capital.

In addition, governments may impose price controls, which may adversely affect our future profitability In January 2020, President Trump signed into law the U.S.-Mexico-Canada (USMCA) trade deal into law. As enacted, there are no commitments with respect to biological product intellectual property rights or data protection, which may create an unfavorable environment across these three countries.

We expect that the ACA, as well as other healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and additional downward pressure on the payment that we receive for any approved drug. Any reduction in reimbursement from Medicare or other government healthcare programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability, or commercialize our drugs.

Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We cannot be sure whether additional legislative changes will be enacted, or whether FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals, if any, of our product candidate, may be. In addition, increased scrutiny by the U.S. Congress of the FDA's approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post-marketing conditions and other requirements.

Risks Pertaining to our Business Strategy, Structure and Organization

We have entered, and will likely in the future enter, into certain collaborations or divestitures which may cause a reduction in our business' size and scope, market share and opportunities in certain markets, or our ability to compete in certain markets and therapeutic categories. We have also entered into several arrangements under which we have agreed to contingent dispositions of partner companies and/or their assets. The failure to consummate any such transaction may impair the value of such companies and/or assets, and we may not be able to identify or execute alternative arrangements on favorable terms, if at all.

We have entered into several partnerships and/or contingent sales of our assets and subsidiaries, including an equity investment and contingent sale between Avenue and InvaGen, an equity investment and contingent option transaction between Caelum and Alexion Pharmaceuticals, Inc. and a development funding and contingent asset purchase between Cyprium and Sentynl Therapeutics, Inc. Each of these transactions has been time-consuming and has diverted management's attention. As a result of these contingent sales, as with other similar transactions that we may complete, we may experience a reduction in the size or scope of our business, our market share in particular markets, our opportunities with respect to certain markets, products or therapeutic categories or our ability to compete in certain markets and therapeutic categories. For example, in connection with execution of the Stock Purchase and Merger Agreement between Avenue and InvaGen, dated as of November 12, 2018 (the "Avenue SPMA"), we signed a Restrictive Covenant Agreement, which prohibits us from, directly or indirectly, engaging in the business of hospital administered pain management anywhere in the world other than Canada, Central America or South America for a period of five years after the earlier of the termination of the Avenue SPMA or consummation of the Merger Transaction (as defined in the Avenue SPMA).

In addition, in connection with any transaction involving a (contingent or non-contingent) sale of one of our assets or subsidiaries, we may surrender our ability to realize long-term value from such asset or subsidiary, in the form of foregone royalties, milestone payments, sublicensing revenue or otherwise, in exchange for upfront and/or other payments. In the event, for instance, that a product candidate underpinning any such asset or subsidiary is granted FDA approval for commercialization following the execution of documentation governing the sale by us of such asset or subsidiary, the transferee of such asset or subsidiary may realize tremendous value from commercializing such product, which we would have realized for ourselves had we not executed such sale transaction and been able to achieve applicable approvals independently.

Should we seek to enter into collaborations or divestitures with respect to other assets or subsidiaries, we may be unable to consummate such arrangements on satisfactory or commercially reasonable terms within our anticipated timelines. In addition, our ability to identify, enter into and/or consummate collaborations and/or divestitures may be limited by competition we face from other companies in pursuing similar transactions in the biotechnology and pharmaceutical industries. Any collaboration or divestiture we pursue, whether we are able to complete it or not, may be complex, time consuming and expensive, may divert from management's attention, may have a negative impact on our customer relationships, cause us to incur costs associated with maintaining the business of the targeted collaboration or divestiture during the transaction process and also to incur costs of closing and disposing the affected business or transferring the operations of the business to other facilities. In addition, if such transactions are not completed for any reason, the market price of our common stock may reflect a market assumption that such transactions will occur, and a failure to complete such transactions could result in a negative perception by the market of us generally and a decline in the market price of our common stock.

As a result of certain developments and assertions by its partner, InvaGen, Avenue may not consummate the second closing of its merger.

On November 12, 2018, Avenue entered into a Stock Purchase and Merger Agreement (the "Avenue SPMA") with InvaGen Pharmaceuticals Inc. ("InvaGen"), and Madison Pharmaceuticals Inc. (the "Merger Sub"), under which Avenue would be sold to InvaGen in a two-stage transaction. The first stage of the strategic transaction between InvaGen and Avenue closed in February 2019. InvaGen acquired approximately 5.8 million shares of Avenue's common stock at $6.00 per share for total gross consideration of $35.0 million, representing a 33.3% stake in Avenue's capital stock on a fully diluted basis (the Stock Purchase Transaction"). At the second stage closing, InvaGen would acquire the remaining shares of Avenue's common stock, for $180 million, pursuant to a reverse triangular merger (the "Merger Transaction').

Consummation of the Merger Transaction is conditioned upon, among other things, U.S. Federal Drug Administration ("FDA") approval of IV Tramadol, its labeling and scheduling, and the absence of certain other restrictions in effect with respect to IV Tramadol. Pursuant to the Avenue SPMA, if FDA approval of IV Tramadol was not obtained on or before April 30, 2021, InvaGen would not be subject to the mandatory closing obligations set forth in the Avenue SPMA with respect to the Merger Transaction. As of the date of this report, Avenue has not received approval from the FDA for IV Tramadol. As a result, InvaGen is no longer subject to the mandatory closing obligations under the Avenue SPMA, but retains an option to complete the Merger Transaction until October 31, 2021, and also retains the option to terminate the Avenue SPMA.

In the event that InvaGen does not exercise its right to terminate the Avenue SPMA, certain restrictions relating to Avenue's ability to raise capital and explore strategic alternatives, among other things, could exist through October 31, 2021, the time at which Avenue can choose to terminate the Avenue SPMA. In the event of termination of the Avenue SPMA, InvaGen will retain certain other rights pursuant to the Stockholder's Agreement entered into on November 12, 2018 between Avenue and InvaGen. These rights exist as long as InvaGen maintains at least 75% of the common shares acquired in the Stock Purchase Transaction, and include, among other things, the right to restrict Avenue from certain equity issuances and changes to Avenue's capital stock without obtaining InvaGen's prior written consent.

Subject to the terms and conditions described in the Avenue SPMA, InvaGen may also (in its sole discretion) provide interim financing to Avenue in an amount of up to $7.0 million during the time period between the Stock Purchase Transaction (which occurred on February 8, 2019) and the Merger Transaction. Any amounts drawn on the interim financing would be deducted from the aggregate consideration payable to the Avenue stockholders by virtue of the Merger Transaction. There have been no amounts drawn upon this interim financing as of March 31, 2021.

Over the past several months, Avenue has communicated with InvaGen relating to InvaGen's assertions that Material Adverse Effects (as defined in the Avenue SPMA) have occurred due to the impact of the COVID-19 pandemic on potential commercialization and projected sales of IV Tramadol. Additionally, in connection with the resubmission of Avenue's NDA in February 2021, InvaGen communicated to Avenue that it believes the proposed label for IV Tramadol would also constitute a Material Adverse Effect (as defined in the Avenue SPMA) on the purported basis that the proposed label under certain circumstances would make the product commercially unviable. InvaGen has communicated to Avenue its desire to consider all options on the proposed merger, including the option to not consummate the merger. Since Avenue did not receive FDA approval for IV Tramadol by April 30, 2021, these assertions have no impact as to whether InvaGen is obligated to close the Avenue SPMA, because, as discussed above, InvaGen no longer has such an obligation. As a result, the possible timing and likelihood of the completion of the merger are uncertain.There can be no assurance that the Merger Transaction will be completed on the expected terms, anticipated schedule, or at all. It is also possible InvaGen could attempt to pursue monetary claims against Avenue and/or Fortress.

Avenue is not yet generating revenue, has incurred substantial operating losses since its inception and expects to continue to incur significant operating losses for the foreseeable future as it executes on its product development plan and may never become profitable. As of March 31, 2021, Avenue had an accumulated deficit of $74.3 million.

On October 12, 2020, Avenue announced that it had received a Complete Response Letter ("CRL") from the FDA regarding the Company's NDA for IV Tramadol. The CRL cited deficiencies related to the terminal sterilization validation and stated that IV Tramadol, intended to treat patients in acute pain who require an opioid, is not safe for the intended patient population. On February 12, 2021, Avenue resubmitted its NDA to the FDA for IV Tramadol. The NDA resubmission follows the receipt of official minutes from a Type A meeting with the FDA. The resubmission included revised language relating to the proposed product label and a report relating to terminal sterilization validation. The FDA assigned a Prescription Drug User Fee Act goal date of April 12, 2021 and informed Avenue that it had not yet completed its review of the NDA resubmission. Avenue's ability to potentially commercialize IV Tramadol, and the timing of any potential commercialization, are dependent on the FDA's review of Avenue's resubmission of its NDA for IV Tramadol, whether or not the FDA ultimately approves IV Tramadol, and potentially on whether or not Avenue procures additional capital.

As of March 31, 2021, Avenue had cash and cash equivalents of $1.8 million. In the event that IV Tramadol is approved by the FDA, this triggers an obligation by Avenue to make $5.0 million in contractual milestone payments, for which Avenue currently does not have sufficient funding. In the event that IV Tramadol is not approved by the FDA, Avenue believes that its cash and cash equivalents should be sufficient to fund its operating expenses only through the end of the second quarter of 2021. Avenue will need to secure additional funds through equity or debt offerings, or other potential sources. Avenue cannot be certain that additional funding will be available on acceptable terms, or at all. These factors individually and collectively raise substantial doubt about Avenue's ability to continue as a going concern within one year from the date of this report.

In light of the foregoing, it may be necessary at some point for Avenue to seek protection under Chapter 11 of the United States Bankruptcy Code, which could have a material adverse impact on Avenue's business, financial condition, operations and could place its shareholders at significant risk of losing all of their investment. In any such Chapter 11 proceeding, Avenue may seek to restructure its obligations or commence an orderly wind-down of its operations and sale of its assets, in either event, holders of equity interests could receive or retain little or no recovery. We also note that the process of exploring refinancing or restructuring alternatives, including those under Chapter 11, may be disruptive to Avenue's business and operations.

We act, and are likely to continue acting, as guarantor and/or indemnitor of the obligations, actions or inactions of certain of our subsidiaries and affiliated companies. We have also entered into certain arrangements with our subsidiaries and third parties pursuant to which a substantial number of shares of our common stock may be issued. Depending on the terms of such arrangements, we may be contractually obligated to pay substantial amounts to third parties, or issue a substantially dilutive number of shares of our common stock, based on the actions or inactions of our subsidiaries and/or affiliates.

We act, and are likely to continue acting, in as indemnitor of potential losses or liabilities that may be experienced by one or more of our affiliated companies and/or their partners or investors. For instance, under that certain Indemnification Agreement, dated as of November 12, 2018 (the "Indemnification Agreement"), we indemnify InvaGen and its affiliates for losses they may sustain in connection with inaccuracies that may appear in the representations and warranties that Avenue made to InvaGen in the Avenue SPMA, as such representations and warranties were given as of the dates of signing and first closing, and as may be required to be given as of the second stage closing under the Avenue SPMA as well. The maximum amount of indemnification we may have to provide under the Indemnification Agreement is $35.0 million, and such obligation terminates upon the consummation of the Merger Transaction (as defined in the Avenue SPMA). In the event of payment by us of any such indemnification amount, we would be able to recoup such amounts (other than our pro rata share of the indemnification as a shareholder in Avenue) from the Merger Transaction proceeds, but if the Merger Transaction never occurs, we would have no means of recouping such previously-paid indemnification amounts. If we become obligated to pay all or a portion of such indemnification amounts (regardless of whether or not we are partially reimbursed out of the proceeds of the Merger Transaction), our business and the market value of our common stock and/or debt securities may be materially adversely impacted.

Our future growth depends in part on our ability to identify and acquire or in-license products and product candidates, and if we are unable to do so, or to integrate acquired products into our operations, we may have limited growth opportunities.

An important part of our business strategy is to continue to develop a pipeline of product candidates by acquiring or in-licensing products, businesses or technologies. Future in-licenses or acquisitions, however, may entail numerous operational and financial risks, including, but not necessarily limited to:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- difficulty or inability to secure financing to fund development activities for such acquired or in-licensed technologies in the current economic environment;
- incurrence of substantial debt or dilutive issuances of securities to pay for acquisitions;
- higher than expected acquisition and integration costs;
- increased amortization expenses;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.

We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. In particular, we may compete with larger biopharmaceutical companies and other competitors in our efforts to establish new collaborations and in-licensing opportunities. These competitors may have access to greater financial resources than us and/or may have greater expertise in identifying and evaluating new opportunities. Moreover, we may devote resources to potential acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts.

Certain of our officers and directors serve in similar roles at our partners, affiliates, related parties and/or other entities with which we transact business or in which we hold significant minority ownership positions, which could result in conflicts of interests relating to ongoing and future relationships and transactions with these parties.

We share directors and/or officers with certain of our partners, and other entities with which we transact business or in which we hold significant minority ownership positions, and such arrangements could create conflicts of interest in the future, including with respect to the allocation of corporate opportunities. While we believe that we have put in place policies and procedures to identify and mitigate such conflicts, and that any existing agreements that may give rise to such conflicts and any such policies or procedures were negotiated at arm's length in conformity with fiduciary duties, such conflicts of interest may nonetheless arise. The existence and consequences of such potential conflicts could expose us to lost profits, claims by our investors and creditors, and harm to our results of operations.

Certain of our executives, directors and principal stockholders, whose interests may be adverse to those of our other stockholders, can control our direction and policies.

Certain of our executive officers, directors and stockholders own nearly or more than 10% of our outstanding common stock and, together with their affiliates and related persons, beneficially own a significant percentage of our capital stock. If these stockholders were to choose to act together, they would be able to influence our management and affairs and the outcome of matters submitted to our stockholders for approval, including the election of directors and any sale, merger, consolidation, or sale of all or substantially all of our assets. This concentration of voting power could delay or prevent an acquisition of our company on terms that other stockholders may desire. In addition, this concentration of ownership might adversely affect the market price of our common stock by:

- delaying, deferring or preventing a change of control of us;
- impeding a merger, consolidation, takeover or other business combination involving us; or
- discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control of us.

If we acquire, or enter into joint ventures with or obtain a controlling interest in companies in the future, our operating results and the value of our Securities may be adversely affected, thereby diluting stockholder value, disrupting our business and/or diminishing the value of our holdings in our partner companies.

As part of our growth strategy, we might acquire, enter into joint ventures with, or obtain significant ownership stakes in other companies. Acquisitions of, joint ventures with and investments in other companies involve numerous risks, including, but not necessarily limited to:

- risk of entering new markets in which we have little to no experience;
- diversion of financial and managerial resources from existing operations;
- successfully negotiating a proposed acquisition or investment timely and at a price or on terms and conditions favorable to us;
- the impact of regulatory reviews on a proposed acquisition or investment;
- the outcome of any legal proceedings that may be instituted with respect to the proposed acquisitions or investment;
- with respect to an acquisition, difficulties in integrating operations, technologies, services and personnel; and
- potential inability to maintain relationships with customers of the companies we may acquire or invest in.

If we fail to properly evaluate potential acquisitions, joint ventures or other transaction opportunities, we might not achieve the anticipated benefits of any such transaction, we might incur higher costs than anticipated, and management resources and attention might be diverted from other necessary or valuable activities.

Risks Pertaining to Reliance on Third Parties

We rely predominantly on third parties to manufacture the majority of our preclinical and clinical pharmaceutical supplies and we expect to continue to rely heavily on such third parties and other contractors to produce commercial supplies of our products. Further, we rely solely on third parties to manufacture Journey's commercialized products. Such dependence on third-party suppliers could adversely impact our businesses.

We depend heavily on third party manufacturers for product supply. If our contract manufacturers cannot successfully manufacture material that conforms to applicable specifications and FDA regulatory requirements, we will not be able to secure and/or maintain FDA approval for those products. Our third-party suppliers will be required to maintain compliance with CGMPs and will be subject to inspections by the FDA and comparable agencies and authorities in other jurisdictions to confirm such compliance. In the event that the FDA or such other authorities determine that our third-party suppliers have not complied with CGMPs or comparable regulations, the relevant clinical trials could be terminated or subjected to a clinical hold until such time as we are able to obtain appropriate replacement material and/or applicable compliance, and commercial product could be unfit for sale, or if distributed, could be recalled from the market. Any delay, interruption or other issues that arise in the manufacture, testing, packaging, labeling, storage, or distribution of our products as a result of a failure of the facilities or operations of our third-party suppliers to comply with regulatory requirements or pass any regulatory agency inspection could significantly impair our ability to develop and commercialize our products and product candidates. In addition, several of our currently commercialized products, sold through our partner company Journey, are produced by a single manufacturer, and, although we closely monitor inventory prophylactically, disruptions to such supply arrangements could adversely affect our ability to meet product demand and therefore diminish revenues.

We also rely on third-party manufacturers to purchase from third-party suppliers the raw materials and equipment necessary to produce product candidates for anticipated clinical trials. There are a small number of suppliers for certain capital equipment and raw materials that are used to manufacture those products. We do not have direct control over the process or timing of the acquisition of these raw materials by our third-party manufacturers. Moreover, we currently do not have any agreements for the commercial production of these raw materials since such agreements are entered into by our third-party manufacturers and their qualified suppliers. Any significant delay in the supply of raw material components related to an ongoing clinical trial could considerably delay completion of our clinical trials, product testing and potential regulatory approval.

We do not expect to have the resources or capacity to engage in our own commercial manufacturing of our product candidates, if they received marketing approval, and would likely continue to be heavily dependent upon third-party manufacturers. Our dependence on third parties to manufacture and supply clinical trial materials, as well as our planned dependence on third party manufacturers for any products that may be approved, may adversely affect our ability to develop and commercialize products in a timely or cost-effective manner, or at all.

In addition, because of the sometimes-limited number of third parties who specialize in the development, manufacture and/or supply of our clinical and preclinical materials, we are often compelled to accept contractual terms that we deem less than desirable, including without limitation as pertains representations and warranties, supply disruptions/failures, covenants and liability/indemnification. Especially as pertains liability and indemnification provisions, because of the frequent disparities in negotiating leverage, we are often compelled to agree to low caps on counterparty liability and/or indemnification language that could result in outsized liability to us in situations where we have zero or relatively little culpability.

We rely heavily on third parties for the development and manufacturing of products and product candidates.

Certain of our partner companies, on whose successes we largely rely, are early-stage biopharmaceutical companies with limited operating histories. To date, we have engaged primarily in intellectual property acquisitions, and evaluative and R&D activities and have not generated any revenues from product sales (except through Journey). We have incurred significant net losses since our inception. As of December 31, 2020, we had an accumulated deficit of approximately $482.8 million. We may need to rely on third parties for activities critical to the product candidate development process, including but not necessarily limited to:

- identifying and evaluating product candidates;

- negotiating, drafting and entering into licensing and other arrangements with product development partners; and
- continuing to undertake pre-clinical development and designing and executing clinical trials.

We have also not demonstrated the ability to perform the functions necessary for the successful commercialization of any of our pre-market product candidates, should any of them be approved for marketing. If we were to have any such product candidates approved, the successful commercialization of such products would be dependent on us performing or contracting with third parties for performance, of a variety of critical functions, including, but not necessarily limited to:

- advising and participating in regulatory approval processes;
- formulating and manufacturing products for clinical development programs and commercial sale; and
- conducting sales and marketing activities.

Our operations have been limited to acquiring, developing and securing the proprietary rights for, and undertaking pre-clinical development and clinical trials of, product candidates, both at the Fortress level and via our partner companies. These operations provide a limited basis for our stockholders and prospective investors to assess our ability to develop and commercialize potential product candidates, as well as for you to assess the advisability of investing in our securities.

We rely on third parties to conduct clinical trials. If these third parties do not meet agreed-upon deadlines or otherwise conduct the trials as required, our clinical development programs could be delayed or unsuccessful, and we may not be able to obtain regulatory approval for or commercialize our product candidates when expected or at all.

We rely on third-party contract research organizations and site management organizations to conduct most of our preclinical studies and all of our clinical trials for our product candidates. We expect to continue to rely on third parties, such as contract research organizations, site management organizations, clinical data management organizations, medical institutions and clinical investigators, to conduct some of our preclinical studies and all of our clinical trials. These CROs, investigators, and other third parties will and do play a significant role in the conduct of our trials and the subsequent collection and analysis of data from the clinical trials.

There is no guarantee that any CROs, investigators or other third parties upon which we rely for administration and conduct of our clinical trials will devote adequate time and resources to such trials or perform as contractually required. If any of these third parties fails to meet expected deadlines or fails to adhere to our clinical protocols or otherwise perform in a substandard manner, our clinical trials may be extended, delayed or terminated. If any of the clinical trial sites terminates for any reason, we may lose follow-up information on patients enrolled in our ongoing clinical trials unless the care of those patients is transferred to another qualified clinical trial site. In addition, principal investigators for our clinical trials may serve as scientific advisers or consultants to us from time to time and receive cash or equity compensation in connection with such services. If these relationships and any related compensation result in perceived or actual conflicts of interest, the integrity of the data generated at the applicable clinical trial site, or the FDA's willingness to accept such data, may be jeopardized.

Our reliance on these third parties for research and development activities will reduce our control over these activities but will not relieve us of our responsibilities or potential liability. For example, we will remain responsible for ensuring that each of our preclinical studies and clinical trials are conducted in accordance with the general investigational plan and protocols for the trial and for ensuring that our preclinical studies are conducted in accordance with good laboratory practice ("GLP") as appropriate. Moreover, the FDA requires us to comply with standards, commonly referred to as good clinical practices ("GCPs") for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Regulatory authorities enforce these requirements through periodic inspections of trial sponsors, clinical investigators and trial sites. If we or any of our clinical research organizations fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may refuse to accept such data, or require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that, upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials complies with GCP regulations. In addition, our clinical trials must be conducted with products produced under CGMP in strict conformity to CGMP regulations. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

We also are required to register ongoing clinical trials and post the results of completed clinical trials on a government-sponsored database, ClinicalTrials.gov, within specified timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions.

If any of our relationships with these third-party contract research organizations or site management organizations terminates, we may not be able to enter into arrangements with alternative contract research organizations or site management organizations or to do so on commercially reasonable terms. Switching or adding additional contract research organizations or site management organizations involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new contract research organization or site management organization commences work. As a result, delays could occur, which could compromise our ability to meet our desired development timelines. Though we carefully manage our relationships with our contract research organizations or site management organizations, there can be no assurance that we will not encounter similar challenges or delays in the future.

We rely on clinical and pre-clinical data and results obtained by third parties that could ultimately prove to be inaccurate or unreliable.

As part of the strategy we implement to mitigate development risk, we seek to develop product candidates with well-studied mechanisms of action, and we intend to utilize biomarkers to assess potential clinical efficacy early in the development process. This strategy necessarily relies upon clinical and pre-clinical data and other results produced or obtained by third parties, which may ultimately prove to be inaccurate or unreliable. If the third-party data and results we rely upon prove to be inaccurate, unreliable or not applicable to our product candidates, we could make inaccurate assumptions and/or conclusions about our product candidates, and our research and development efforts could be compromised or called into question during the review of any marketing applications that we submit.

Collaborative relationships with third parties could cause us to expend significant resources and/or incur substantial business risk with no assurance of financial return.

We anticipate substantial reliance on strategic collaborations for marketing and commercializing our existing product candidates and we may rely even more on strategic collaborations for R&D of other product candidates. We may sell product offerings through strategic partnerships with pharmaceutical and biotechnology companies. If we are unable to establish or manage such strategic collaborations on terms favorable to us in the future, our revenue and drug development may be limited.

If we enter into R&D collaborations during the early phases of drug development, success will, in part, depend on the performance of research collaborators. We may not directly control the amount or timing of resources devoted by research collaborators to activities related to product candidates. Research collaborators may not commit sufficient resources to our R&D programs. If any research collaborator fails to commit sufficient resources, the preclinical or clinical development programs related to the collaboration could be delayed or terminated. Also, collaborators may pursue existing or other development-stage products or alternative technologies in preference to those being developed in collaboration with us. Finally, if we fail to make required milestone or royalty payments to collaborators or to observe other obligations in agreements with them, the collaborators may have the right to terminate or stop performance of those agreements.

Establishing strategic collaborations is difficult and time-consuming. Our discussions with potential collaborators may not lead to the establishment of collaborations on favorable terms, if at all. Potential collaborators may reject collaboration proposals based upon their assessment of our financial, regulatory or intellectual property positions. Even if we successfully establish new collaborations, these relationships may never result in the successful development or commercialization of product candidates or the generation of sales revenue. To the extent that we enter into collaborative arrangements, the related product revenues that might follow are likely to be lower than if we directly marketed and sold products. Such collaborators may also consider alternative product candidates or technologies for similar indications that may be available to collaborate on, and such collaborations could be more attractive than the one with us for any future product candidate.

Management of our relationships with collaborators will require:

- significant time and effort from our management team;
- coordination of our marketing and R&D programs with the respective marketing and R&D priorities of our collaborators; and
- effective allocation of our resources to multiple projects.

Risks Pertaining to Intellectual Property and Potential Disputes with Licensors Thereof

If we are unable to obtain and maintain sufficient patent protection for our technology and products, our competitors could develop and commercialize technology and products similar or identical to ours, and our ability to successfully commercialize our technology and products may be impaired.

Our success depends, in large part, on our ability to obtain patent protection for product candidates and their formulations and uses. The patent application process is subject to numerous risks and uncertainties, and there can be no assurance that we or our partners will be successful in obtaining patents or what the scope of an issued patent may ultimately be. These risks and uncertainties include, but are not necessarily limited to, the following:

- patent applications may not result in any patents being issued, or the scope of issued patents may not extend to competitive product candidates and their formulations and uses developed or produced by others;
- our competitors, many of which have substantially greater resources than we or our partners do, and many of which have made significant investments in competing technologies, may seek, or may already have obtained, patents that may limit or interfere with our abilities to make, use, and sell potential product candidates, file new patent applications, or may affect any pending patent applications that we may have;
- there may be significant pressure on the U.S. government and other international governmental bodies to limit the scope of patent protection both inside and outside the United States for disease treatments that prove successful as a matter of public policy regarding worldwide health concerns; and
- countries other than the United States may have patent laws less favorable to patentees than those upheld by U.S. courts, allowing foreign competitors a better opportunity to create, develop and market competing products.

In addition, patents that may be issued or in-licensed may be challenged, invalidated, modified, revoked, circumvented, found to be unenforceable, or otherwise may not provide any competitive advantage. Moreover, we may be subject to a third-party pre-issuance submission of prior art to the US Patent and Trademark Office ("PTO"), or become involved in opposition, derivation, reexamination, *inter partes* review, post-grant review or interference proceedings challenging our patent rights or the patent rights of others. The costs of these proceedings could be substantial, and it is possible that our efforts to establish priority of invention would be unsuccessful, resulting in a material adverse effect on our US patent positions. An adverse determination in any such submission, patent office trial, proceeding or litigation could reduce the scope of, render unenforceable, or invalidate, our patent rights, allow third parties to commercialize our technologies or products and compete directly with us, without payment to us, or result in our inability to manufacture or commercialize products without infringing third-party patent rights. In addition, if the breadth or strength of protection provided by our patents and patent applications is threatened, it could dissuade companies from collaborating with us to license, develop or commercialize current or future product candidates. Third parties are often responsible for maintaining patent protection for our product candidates, at our and their expense. If that party fails to appropriately prosecute and maintain patent protection for a product candidate, our abilities to develop and commercialize products may be adversely affected, and we may not be able to prevent competitors from making, using and selling competing products. Such a failure to properly protect intellectual property rights relating to any of our product candidates could have a material adverse effect on our financial condition and results of operations.

In addition, U.S. patent laws may change, which could prevent or limit us from filing patent applications or patent claims to protect products and/or technologies or limit the exclusivity periods that are available to patent holders, as well as affect the validity, enforceability, or scope of issued patents.

We and our licensors also rely on trade secrets and proprietary know-how to protect product candidates. Although we have taken steps to protect our and their trade secrets and unpatented know-how, including entering into confidentiality and non-use agreements with third parties, and proprietary information and invention assignment agreements with employees, consultants and advisers, third parties may still come upon this same or similar information independently. Despite these efforts, any of these parties may also breach the agreements and may unintentionally or willfully disclose our or our licensors' proprietary information, including our trade secrets, and we may not be able to identify such breaches or obtain adequate remedies. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. Moreover, if any of our or our licensors' trade secrets were to be lawfully obtained or independently developed by a competitor, we and our licensors would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our or our licensors' trade secrets were to be disclosed to or independently developed by a competitor, our competitive positions would be harmed.

The patent prosecution process is expensive and time-consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. It is also possible that we will fail to identify any patentable aspects of our research and development output and methodology, and, even if we do, an opportunity to obtain patent protection may have passed. Given the uncertain and time-consuming process of filing patent applications and prosecuting them, it is possible that our product(s) or process(es) originally covered by the scope of the patent application may have changed or been modified, leaving our product(s) or process(es) without patent protection. If our licensors or we fail to obtain or maintain patent protection or trade secret protection for one or more product candidates or any future product candidate we may license or acquire, third parties may be able to leverage our proprietary information and products without risk of infringement, which could impair our ability to compete in the market and adversely affect our ability to generate revenues and achieve profitability. Moreover, should we enter into other collaborations we may be required to consult with or cede control to collaborators regarding the prosecution, maintenance and enforcement of licensed patents. Therefore, these patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions and has in recent years been the subject of much litigation. In addition, no consistent policy regarding the breadth of claims allowed in pharmaceutical or biotechnology patents has emerged to date in the US. The patent situation outside the US is even more uncertain. The laws of foreign countries may not protect our rights to the same extent as the laws of the US, and we may fail to seek or obtain patent protection in all major markets. For example, European patent law restricts the patentability of methods of treatment of the human body more than US law does. We might also become involved in derivation proceedings in the event that a third party misappropriates one or more of our inventions and files their own patent application directed to such one or more inventions. The costs of these proceedings could be substantial, and it is possible that our efforts to establish priority of invention (or that a third party derived an invention from us) would be unsuccessful, resulting in a material adverse effect on our US patent position. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain. Our pending and future patent applications may not result in patents being issued which protect our technology or products, in whole or in part, or which effectively prevent others from commercializing competitive technologies and products. Changes in either the patent laws or interpretation of the patent laws in the US and other countries may diminish the value of our patents or narrow the scope of our patent protection. For example, the federal courts of the US have taken an increasingly dim view of the patent eligibility of certain subject matter, such as naturally occurring nucleic acid sequences, amino acid sequences and certain methods of utilizing same, which include their detection in a biological sample and diagnostic conclusions arising from their detection. Such subject matter, which had long been a staple of the biotechnology and biopharmaceutical industry to protect their discoveries, is now considered, with few exceptions, ineligible in the first instance for protection under the patent laws of the US. Accordingly, we cannot predict the breadth of claims that may be allowed and remain enforceable in our patents or in those licensed from a third party.

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. On September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to United States patent law. These include changes to transition from a "first-to-invent" system to a "first inventor-to-file" system and to the way issued patents are challenged. The formation of the Patent Trial and Appeal Board now provides a less burdensome, quicker and less expensive process for challenging issued patents. The PTO recently developed new regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first inventor-to-file provisions, only became effective on March 16, 2013. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

Even if our patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our owned or licensed patents by developing similar or alternative technologies or products in a non-infringing manner.

We also may rely on the regulatory period of market exclusivity for any of our biologic product candidates that are successfully developed and approved for commercialization. Although this period in the United States is generally 12 years from the date of marketing approval (depending on the nature of the specific product), there is a risk that the U.S. Congress could amend laws to significantly shorten this exclusivity period. Once any regulatory period of exclusivity expires, depending on the status of our patent coverage and the nature of the product, we may not be able to prevent others from marketing products that are biosimilar to or interchangeable with our products, which would materially adversely affect our business.

If we or our licensors are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in that litigation would have a material adverse effect on our business.

Our success also depends on our ability, and the abilities of any of our respective current or future collaborators, to develop, manufacture, market and sell product candidates without infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing products, some of which may be directed at claims that overlap with the subject matter of our or our licensors' intellectual property. Because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that our product candidates or proprietary technologies may infringe. Similarly, there may be issued patents relevant to our product candidates of which we or our licensors are not aware. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the US and other jurisdictions are typically not published until 18 months after a first filing, or in some cases not at all. Therefore, we cannot know with certainty whether we or such licensors were the first to make the inventions claimed in patents or pending patent applications that we own or licensed, or that we and our licensors were the first to file for patent protection of such inventions. In the event that a third party has also filed a US patent application relating to our product candidates or a similar invention, depending upon the priority dates claimed by the competing parties, we may have to participate in interference proceedings declared by the PTO to determine priority of invention in the US. The costs of these proceedings could be substantial, and it is possible that our efforts to establish priority of invention would be unsuccessful, resulting in a material adverse effect on our U.S. patent position. As a result, the issuance, scope, validity, enforceability and commercial value of our or any of our licensors' patent rights are highly uncertain.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and biopharmaceutical industries generally. If a third party claims that we or any of our licensors, suppliers or collaborators infringe the third party's intellectual property rights, we may have to, among other things:

- obtain additional licenses, which may not be available on commercially reasonable terms, if at all;
- abandon an infringing product candidate or redesign products or processes to avoid infringement, which may demand substantial funds, time and resources and which may result in inferior or less desirable processes and/or products;
- pay substantial damages, including the possibility of treble damages and attorneys' fees, if a court decides that the product or proprietary technology at issue infringes on or violates the third party's rights;
- pay substantial royalties, fees and/or grant cross-licenses to our product candidates; and/or

- defend litigation or administrative proceedings which may be costly regardless of outcome, and which could result in a substantial diversion of financial and management resources.

We may be involved in lawsuits to protect or enforce our patents or the patents of licensors, which could be expensive, time consuming and unsuccessful.

Competitors may infringe our or our licensors' patents. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time-consuming. Any claims we assert against accused infringers could provoke these parties to assert counterclaims against us alleging invalidity of our or our licensors' patents or that we infringe their patents; or provoke those parties to petition the PTO to institute *inter partes* review against the asserted patents, which may lead to a finding that all or some of the claims of the patent are invalid. In addition, in a patent infringement proceeding, a court may decide that a patent of ours or our licensor's is invalid or unenforceable, in whole or in part, construe the patent's claims narrowly or refuse to stop the other party from using the technology at issue on the grounds that our or our licensors' patents do not cover the technology in question. An adverse result in any litigation or defense proceedings could put one or more of our patents at risk of being invalidated, found to be unenforceable, or interpreted narrowly and could likewise put pending patent applications at risk of not issuing. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation.

We in-license from third parties the intellectual property needed to develop and commercialize products and product candidates. As such, any dispute with the licensors or non-performance of such license agreements may adversely affect our ability to develop and commercialize the applicable product candidates.

The patents, patent applications and other intellectual property rights underpinning the vast majority of our existing product candidates were in-licensed from third parties. Under the terms of such license agreements, the licensors generally have the right to terminate such agreements in the event of a material breach. The licenses require us to make annual, milestone or other payments prior to commercialization of any product, and our ability to make these payments depends on the ability to generate cash in the future. These license agreements also generally require the use of diligent and reasonable efforts to develop and commercialize product candidates.

If there is any conflict, dispute, disagreement or issue of non-performance between us or one of our partners, on the one hand, and the respective licensing partner, on the other hand, regarding the rights or obligations under the license agreements, including any conflict, dispute or disagreement arising from a failure to satisfy payment obligations under such agreements, the ability to develop and commercialize the affected product candidate may be adversely affected.

The types of disputes that may arise between us and the third parties from whom we license intellectual property include, but are not necessarily limited to:

- the scope of rights granted under such license agreements and other interpretation-related issues;
- the extent to which our technologies and processes infringe on intellectual property of the licensor that is not subject to such license agreements;
- the scope and interpretation of the representations and warranties made to us by our licensors, including those pertaining to the licensors' right title and interest in the licensed technology and the licensors' right to grant the licenses contemplated by such agreements;
- the sublicensing of patent and other rights under our license agreements and/or collaborative development relationships, and the rights and obligations associated with such sublicensing, including whether or not a given transaction constitutes a sublicense under such license agreement;
- the diligence and development obligations under license agreements (which may include specific diligence milestones) and what activities or achievements satisfy those diligence obligations;
- whether or not the milestones associated with certain milestone payment obligations have been achieved or satisfied;
- the applicability or scope of indemnification claims or obligations under such license agreements;

- the permissibility and advisability of, and strategy regarding, the pursuit of potential third-party infringers of the intellectual property that is the subject of such license agreements;
- the calculation of royalty, milestone, sublicense revenue and other payment obligations under such license agreements;
- the extent to which rights, if any, are retained by licensors under such license agreements;
- whether or not a material breach has occurred under such license agreements and the extent to which such breach, if deemed to have occurred, is or can be cured within applicable cure periods, if any;
- disputes regarding patent filing and prosecution decisions, as well as payment obligations regarding past and ongoing patent expenses;
- intellectual property rights resulting from the joint creation or use of intellectual property (including improvements made to licensed intellectual property) by our and our partners' licensors and us and our partners; and
- the priority of invention of patented technology.

In addition, the agreements under which we currently license intellectual property or technology from third parties are complex, and certain provisions in such agreements may be susceptible to multiple interpretations or may conflict in such a way that puts us in breach of one or more agreements, which would make us susceptible to lengthy and expensive disputes with one or more of such third-party licensing partners. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the relevant agreements, either of which could have a material adverse effect on our business, financial condition, results of operations and prospects. Moreover, if disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on commercially acceptable terms, we may be unable to successfully develop and commercialize the affected product candidates, which could have a material adverse effect on our business, financial conditions, results of operations and prospects.

Risks Pertaining to the Commercialization of Product Candidates

If any of our product candidates are successfully developed but do not achieve broad market acceptance among physicians, patients, healthcare payors and the medical community, the revenues that any such product candidates generate from sales will be limited.

Even if our product candidates receive regulatory approval, they may not gain market acceptance among physicians, patients, healthcare payors and the medical community. Coverage and reimbursement of our product candidates by third-party payors, including government payors, generally would also be necessary for commercial success. The degree of market acceptance of any approved products would depend on a number of factors, including, but not necessarily limited to:

- the efficacy and safety as demonstrated in clinical trials;
- the timing of market introduction of such product candidate as well as competitive products;
- the clinical indications for which the product is approved;
- acceptance by physicians, major operators of hospitals and clinics and patients of the product as a safe and effective treatment;
- the potential and perceived advantages of product candidates over alternative treatments;
- the safety of product candidates in a broader patient group (i.e., based on actual use);
- the availability, cost and benefits of treatment, in relation to alternative treatments;
- the availability of adequate reimbursement and pricing by third parties and government authorities;

- changes in regulatory requirements by government authorities for our product candidates;
- the product labeling or product insert required by the FDA or regulatory authority in other countries, including any contradictions, warnings, drug interactions, or other precautions;
- changes in the standard of care for the targeted indications for our product candidate or future product candidates, which could reduce the marketing impact of any labeling or marketing claims that we could make following FDA approval;
- relative convenience and ease of administration;
- the prevalence and severity of side effects and adverse events;
- the effectiveness of our sales and marketing efforts; and
- unfavorable publicity relating to the product.

If any product candidate is approved but does not achieve an adequate level of acceptance by physicians, hospitals, healthcare payors and patients, we may not generate sufficient revenue from these products and in turn we may not become or remain profitable. In addition, our efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources and may never be successful.

Even if approved, any product candidates that we may develop and market may be later withdrawn from the market or subject to promotional limitations.

We may not be able to obtain the desired labeling claims or scheduling classifications necessary or desirable for the promotion of our marketed products (or our product candidates if approved). We may also be required to undertake post-marketing clinical trials. If the results of such post-marketing studies are not satisfactory or if adverse events or other safety issues arise after approval while our products are on the market, the FDA or a comparable regulatory authority in another jurisdiction may withdraw marketing authorization or may condition continued marketing on commitments from us that may be expensive and/or time consuming to complete. In addition, if manufacturing problems occur, regulatory approval may be impacted or withdrawn and reformulation of our products, additional clinical trials, changes in labeling of our products and additional marketing applications may be required. Any reformulation or labeling changes may limit the marketability of such products if approved.

We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability for one or more of our product candidates or a future product candidate we may license or acquire and may have to limit their commercialization.

The use of one or more of our product candidates and any future product candidate we may license or acquire in clinical trials and the sale of any products for which we obtain marketing approval expose us to the risk of product liability claims. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during clinical testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. Product liability claims might be brought against us by consumers, health care providers or others using, administering or selling our products. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- withdrawal of clinical trial participants;
- suspension or termination of clinical trial sites or entire trial programs;
- decreased demand for any product candidates or products that we may develop;
- initiation of investigations by regulators;
- impairment of our business reputation;

- costs of related litigation;
- substantial monetary awards to patients or other claimants;
- loss of revenues;
- reduced resources of our management to pursue our business strategy; and
- the inability to commercialize our product candidate or future product candidates.

Our partner company Journey has acquired an isotretinoin product and will begin marketing that product under the Accutane® brand name in Q2 2021. Isotretinoin has a black box warning for use in pregnant women. Isotretinoin also has warnings for side effects related to psychiatric disorders and inflammatory bowel disease, among others. Historically, isotretinoin has been the subject of significant product liability claims, mainly related to irritable bowel disease . Currently, there is no significant isotretinoin product liability litigation. The federal multi-district litigation ("MDL") court dismissed all remaining federal isotretinoin cases in 2014 after ruling that the warning label on the drug was adequate. The MDL dissolved in 2015, which effectively put an end to federal lawsuits. Cases continued in New Jersey state court until 2017, when the trial court judge dismissed the remaining the isotretinoin product liability cases. Thus, should a product liability claim against Journey be brought related to its isotretinoin product, we have substantial defenses. However, it is not feasible to predict the ultimate outcome of any litigation and the Company could in the future be required to pay significant amounts as a result of settlement or judgments should such new product liability claims be brought.

We will obtain limited product liability insurance coverage for all of our upcoming clinical trials. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. When needed we intend to expand our insurance coverage to include the sale of commercial products if we obtain marketing approval for one or more of our product candidates in development, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

Additionally, we have entered into various agreements under which we indemnify third parties for certain claims relating to product candidates. These indemnification obligations may require us to pay significant sums of money for claims that are covered by these indemnifications.

Any product for which we obtain marketing approval could be subject to restrictions or withdrawal from the market and we may be subject to penalties if we fail to comply with regulatory requirements or if we experience unanticipated problems with products, when and if any of them are approved.

Any product for which we obtain marketing approval, along with the authorized manufacturing facilities, processes and equipment, post-approval clinical data, labeling, advertising and promotional activities for such product, will remain subject to ongoing regulatory requirements governing drug or biological products, as well as review by the FDA and comparable regulatory authorities. These requirements include submissions of safety and other post-marketing information and reports, registration requirements, CGMP requirements relating to quality control, quality assurance and corresponding maintenance of records and documents, requirements regarding the distribution of samples to physicians and recordkeeping, and requirements regarding company presentations and interactions with healthcare professionals. Even if we obtain regulatory approval for a product, the approval may be subject to limitations on the indicated uses for which the product may be marketed or subject to conditions of approval, or contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product. We also may be subject to state laws and registration requirements covering the distribution of drug products. Later discovery of previously unknown problems with products, manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in actions such as:

- restrictions on product manufacturing, distribution or use;
- restrictions on the labeling or marketing of a product;
- requirements to conduct post-marketing studies or clinical trials;

- warning or untitled letters;
- recalls or other withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- fines;
- suspension or withdrawal of marketing or regulatory approvals;
- refusal to permit the import or export of products;
- product seizure or detentions;
- injunctions or the imposition of civil or criminal penalties; and
- adverse publicity.

If we or our suppliers, third-party contractors, clinical investigators or collaborators are slow to adapt, or are unable to adapt, to changes in existing regulatory requirements or adoption of new regulatory requirements or policies, we or our collaborators may be subject to the actions listed above, including losing marketing approval for products when and if any of them are approved, resulting in decreased revenue from milestones, product sales or royalties.

We will need to obtain FDA approval of any proposed product brand names, and any failure or delay associated with such approval may adversely impact our business.

A pharmaceutical product cannot be marketed in the U.S. or other countries until the relevant governmental authority has completed a rigorous and extensive regulatory review process, including approval of a brand name. Any brand names we intend to use for our product candidates in the U.S. will require approval from the FDA regardless of whether we have secured a formal trademark registration from the PTO. The FDA typically conducts a review of proposed product brand names, including an evaluation of potential for confusion with other product names. The FDA may also object to a product brand name if it believes the name inappropriately implies medical claims. If the FDA objects to any of our proposed product brand names, we may be required to adopt an alternative brand name for our product candidates. If we adopt an alternative brand name, we would lose the benefit of our existing trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product brand name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

Risks Pertaining to Legislation and Regulation Affecting the Biopharmaceutical and Other Industries

We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad.

We cannot predict the likelihood, nature or extent of how government regulation that may arise from future legislation or administrative or executive action taken by the U.S. presidential administration may impact our business and industry. In particular, the former U.S. President took several executive actions, specifically through rulemaking and guidance, that could impact the pharmaceutical business and industry. Shortly after taking office in January 2021, President Biden announced that his Administration would be freezing a number of the prior Administration's drug pricing reforms, while others remain subject to both executive orders or regulatory changes issued by the Department of Health and Human Services. A few of the major administrative actions include:

- On October 30, 2019, the Trump Administration issued an advanced notice of proposed rulemaking ("ANPRM") entitled,*International Pricing Index Model for Medicare Part B Drugs*. This ANPRM was intended to solicit feedback on a potential proposal to align United States drug prices in the Medicare Part B program with international prices. It also solicited public feedback on a policy that would allowing private-sector vendors to negotiate prices, take title to drugs, and improve competition for hospital and physician business. Although this is only a notice for a potential rule, it signals the Administration's desire to regulatorily influence the United States drug pricing system that could adversely affect the industry.

- On November 15, 2019, CMS issued a proposed rule entitled, *Transparency in Coverage* and finalized the *Calendar Year ("CY") 2020 Outpatient Prospective Payment System ("OPPS") & Ambulatory Surgical Center Price Transparency Requirements for Hospitals to Make Standard Charges Rule*. Together the rules would increase price transparency through health plans and in hospitals. The affects may influence consumer purchasing habits in the health care sector as a whole. Although the transparency provisions are not yet in effect and the hospital price transparency requirements are subject to litigation, there could be implications for the industry related to drug pricing if or when it is enacted.

- On November 18, 2019, CMS issued a proposed rule entitled, *Medicaid Fiscal Accountability Regulation ("MFAR")*. The proposed rule would significantly impact states' ability to finance their Medicaid programs. If finalized, the MFAR could force states to restructure their Medicaid financing that could disincentivize or change state prescription drug purchasing behavior that would adversely impact the industry.

- On December 18, 2019, the FDA issued a proposed rule entitled, *Importation of Prescription Drugs*. The proposed rule would allow the importation of certain prescription drugs from Canada. If finalized, states or other non-federal government entities would be able to submit importation program proposals to FDA for review and authorization. This proposed rule could also influence pricing practices in the United States.

- On January 30, 2020, CMS issued a state waiver option entitled, *Health Adult Opportunity ("HAO")*. The HAO would allow states to restructure benefits and coverage policies for their Medicaid programs. The HAO will provide states administrative flexibilities in exchange for a capped federal share. The cap on the federal share is commonly referred to as a "block grant." Importantly, the HAO allows states to set formularies that align with Essential Health Benefit requirements while still requiring manufacturers to participate in the Medicaid Rebate Program. Depending on utilization of the HAO by states, it could impact the industry – especially if states elect to use a formulary.

- On December 2, 2020, the Centers for Medicare & Medicaid Services ("CMS") issued a final rule entitled, *Modernizing and Clarifying the Physician Self-Referral Regulations* and on the same day the HHS Office of Inspector General finalized a similar rule, entitled *Revisions to Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary penalty Rules Regarding Beneficiary Inducements.* The rules are an effort to reform regulations dealing with anti-kickback and self-referral laws. These rules allow certain financial arrangements that would otherwise violate anti-kickback and self-referral laws for providers that are participating in value-based payment arrangements. The rule could impact drug purchasing behavior to ensure providers are within their budget and/or restructure existing payment structures between providers and manufacturers.

As with any change in the Executive Office, and particularly with respect to changes from a Republican Administration under former President Trump to a Democratic Administration under President Biden, we expect there to be significant changes to existing rules, regulations and policies, the enactment of new Executive Orders and other immediate or iterative political, legislative and administrative changes, affecting the pharmaceutical industry. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States, or based on similar governmental changes in other countries.

Our current and future relationships with customers and third-party payors in the United States and elsewhere may be subject, directly or indirectly, to applicable anti-kickback, fraud and abuse, false claims, transparency, health information privacy and security and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens and diminished profits and future earnings.

Healthcare providers, physicians and third-party payors in the U.S. and elsewhere will play a primary role in the recommendation and prescription of any product candidates for which we obtain marketing approval. Our future arrangements with third-party payors and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act, which may constrain the business or financial arrangements and relationships through which we sell, market and distribute any product candidates for which we obtain marketing approval. In addition, we may be subject to transparency laws and patient privacy regulation by the federal and state governments and by governments in foreign jurisdictions in which we conduct our business. The applicable federal, state and foreign healthcare laws and regulations that may affect our ability to operate include, but are not necessarily limited to:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal and state healthcare programs, such as Medicare and Medicaid;

- federal civil and criminal false claims laws and civil monetary penalty laws, including the federal False Claims Act, which impose criminal and civil penalties, including civil whistleblower or qui tam actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, including the Medicare and Medicaid programs, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government; the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, and their respective implementing regulations, which impose obligations on covered healthcare providers, health plans, and healthcare clearinghouses, as well as their business associates that create, receive, maintain or transmit individually identifiable health information for or on behalf of a covered entity, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;

- the federal Open Payments program, which requires manufacturers of certain drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, with specific exceptions, to report annually to the Centers for Medicare & Medicaid Services, or CMS, information related to "payments or other transfers of value" made to "covered recipients," which include physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors, and teaching hospitals) and applicable manufacturers. Applicable group purchasing organizations also are required to report annually to CMS the ownership and investment interests held by the physicians and their immediate family members. The SUPPORT for Patients and Communities Act added to the definition of covered recipient practitioners including physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists and certified nurse-midwives effective in 2022. Data collection began on August 1, 2013 with requirements for manufacturers to submit reports to CMS by March 31, 2014 and 90 days after the end of each subsequent calendar year. Disclosure of such information was made by CMS on a publicly available website beginning in September 2014; and

- analogous state and foreign laws and regulations, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers; state and foreign laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers; state and foreign laws that require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, fines, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations, which could have a material adverse effect on our businesses. If any of the physicians or other healthcare providers or entities with whom we expect to do business, including our collaborators, is found not to be in compliance with applicable laws, it may be subject to criminal, civil or administrative sanctions, including exclusions from participation in government healthcare programs, which could also materially affect our businesses.

As we continue to execute our growth strategy, we may be subject to further government regulation which could adversely affect our financial results, including without limitation the Investment Company Act of 1940.

If we engage in business combinations and other transactions that result in holding minority or non-control investment interests in a number of entities, we may become subject to regulation under the Investment Company Act of 1940, as amended (the "Investment Company Act"). If we do become subject to the Investment Company Act, we would be required to register as an investment company and could be expected to incur significant registration and compliance costs in the future.

General Risks

Major public health issues, and specifically the pandemic caused by the coronavirus COVID-19 outbreak, could have an adverse effect on the clinical trials of our partner companies, and as a result, have an adverse impact on our financial condition and results of operations and other aspects of our business.

In December 2019, a novel strain of coronavirus which causes a disease referred to as COVID-19, was first detected in Wuhan, China, and has since spread worldwide. On March 11, 2020, the World Health Organization declared that the rapidly spreading COVID-19 outbreak had evolved into a pandemic. In response to the pandemic, many governments around the world are implementing a variety of control measures to reduce the spread of COVID-19, including travel restrictions and bans, instructions to residents to practice social distancing, quarantine advisories, shelter-in-place orders and required closures of non-essential businesses.

The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains, and created significant volatility and disruption of financial markets. The extent to which the COVID-19 pandemic impacts our business and operating results will depend on future developments that are highly uncertain and cannot be accurately predicted, including new information that may emerge concerning the virus and the actions to contain it or treat its impact, among others.

Some factors from the COVID-19 outbreak that may delay or otherwise adversely affect our or our partner companies' clinical trial programs, as well as adversely impact our business generally, include:

- delays or difficulties in clinical site initiation, including difficulties in recruiting clinical sites, and delays enrolling patients in our clinical trials or increased rates of patients withdrawing from our clinical trials following enrollment as a result of contracting COVID-19, being forced to quarantine, or not otherwise being able to complete study assessments, particularly for older patients or others with a higher risk of contracting COVID-19;

- missed study visits or study procedures which could lead to an abundance of protocol deviations that have the potential to interfere with the interpretability of trial results;

- impacts to clinical results, including an increased number of observed adverse events, as a result of participants enrolled in our clinical trials contracting COVID-19;

- diversion of healthcare resources, including clinical trial investigators and staff, away from the conduct of clinical trials to focus on pandemic concerns which could result in delays to our partner companies' clinical trials;

- limitations on travel, including limitations on domestic and international travel, and government-imposed quarantines or restrictions imposed by key third parties that could interrupt key trial activities, such as clinical trial site initiations and monitoring;

- interruption of, or delays in receiving, supplies of our product candidates from our contract manufacturing organizations due to staffing shortages, or production slowdowns or stoppages;

- disruptions and delays caused by potential workplace, laboratory and office closures and an increased reliance on employees working from home across the healthcare system; and

- disruptions in or delays to regulatory approvals, inspections, reviews or other regulatory activities, including review of NDAs and approvals of protocol changes or amendments to SPAs, as a result of the spread of COVID-19 affecting the operations of the FDA or other regulatory authorities.

The disruptions discussed above and other consequences of COVID-19 pandemic could result in missed study visits or study procedures in our clinical trials, which could lead to an abundance of protocol deviations that impact the interpretability of the trial results. A significant number of deviations may call into question whether the execution of a clinical trial was consistent with the protocol, which is of particular importance where study designs were agreed to as part of a Special Protocol Assessment (SPA). In extreme cases, significant deviations from the protocol may be considered a violation of a SPA and result in potential rescindment of a SPA agreement.

We and our partner companies currently rely on third parties for certain functions or services in support of our clinical trials and key areas of our operations. These third parties include contract research organizations (CROs), medical institutions and clinical investigators, contract manufacturing organizations, suppliers, and external business partners supporting our preparations for commercialization. If these third parties themselves are adversely impacted by restrictions resulting from the COVID-19 outbreak, we will likely experience delays and/or realize additional costs. As a result, our or our partner companies' efforts to obtain regulatory approvals for, and to commercialize, our or our partner companies' product candidates may be delayed or disrupted.

In addition, as a result of government directives on social distancing and to protect the health of our workforce, we have asked our office-based employees to work remotely and have restricted domestic and international travel indefinitely.

We restricted on-site staff to only those personnel and contractors who must perform essential activities that must be completed on-site. Third parties on which we rely may also increase their use of remote working arrangements in response to COVID-19. Our increased reliance on personnel working remotely may negatively impact productivity, including our ability to monitor clinical trials, prepare regulatory applications, and conduct data analysis, or disrupt, delay, or otherwise adversely impact our business. In addition, remote working could increase our cybersecurity risk, create data accessibility concerns, and make us more susceptible to communication disruptions, any of which could adversely impact our business operations or delay necessary interactions with local and federal regulators, ethics committees, manufacturing sites, research or clinical trial sites and other important agencies and contractors.

The ability of the Company's employees and consultants to work may be significantly impacted by the coronavirus.

The Company's employees and consultants are being affected by the COVID-19 pandemic. Substantially all of our office and management personnel are working remotely, and the Company may need to enact further precautionary measures to help minimize the risk of our employees being exposed to the coronavirus. COVID-19 may also compromise the ability of independent contractors who perform consulting services for us to deliver services or deliverables in a satisfactory or timely manner. Further, our management team is focused on mitigating the adverse effects of the COVID-19 pandemic, which has required and will continue to require a large investment of time and resources, thereby diverting their attention from other priorities that existed prior to the outbreak of the pandemic. If these conditions worsen, or last for an extended period of time, the Company's ability to manage its business may be impaired, and operational risks, cybersecurity risks and other risks facing the Company even prior to the pandemic may be elevated.

We may not be able to hire or retain key officers or employees needed to implement our business strategy and develop products and businesses.

Our success depends on the continued contributions of our executive officers, financial, scientific, and technical personnel and consultants, and on our ability to attract additional personnel as we continue to implement growth strategies and acquire and invest in companies with varied businesses. During our operating history, many essential responsibilities have been assigned to a relatively small number of individuals. However, as we continue to implement our growth strategy, the demands on our key employees will expand, and we will need to recruit additional qualified employees. The competition for such qualified personnel is intense, and the loss of services of certain key personnel, or our inability to attract additional personnel to fill critical positions, could adversely affect our business.

We currently depend heavily upon the efforts and abilities of our management team and the management teams of our partners. The loss or unavailability of the services of any of these individuals could have a material adverse effect on our business, prospects, financial condition and results. In addition, we have not obtained, do not own, and are not the beneficiary of key-person life insurance for any of our key personnel. We only maintain a limited amount of directors' and officers' liability insurance coverage. There can be no assurance that this coverage will be sufficient to cover the costs of the events that may occur, in which case, there could be a substantial impact on our ability to continue operations.

Our employees, consultants, or third-party partners may engage in misconduct or other improper activities, including but not necessarily limited to noncompliance with regulatory standards and requirements or internal procedures, policies or agreements to which such employees, consultants and partners are subject, any of which could have a material adverse effect on our business.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees, consultants, or third-party partners could include intentional failures to comply with FDA regulations, provide accurate information to the FDA, comply with CGMPs, comply with federal and state healthcare fraud and abuse laws and regulations, report financial information or data accurately, comply with internal procedures, policies or agreements to which such employees, consultants or partners are subject, or disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee, consultant, or third-party misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation, as well as civil and criminal liability. The precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines or other civil and/or criminal sanctions.

We receive a large amount of proprietary information from potential or existing licensors of intellectual property and potential acquisition target companies, all pursuant to confidentiality agreements. The confidentiality and proprietary invention assignment agreements that we have in place with each of our employees and consultants prohibit the unauthorized disclosure of such information, but such employees or consultants may nonetheless disclose such information through negligence or willful misconduct. Any such unauthorized disclosures could subject us to monetary damages and/or injunctive or equitable relief. The notes, analyses and memoranda that we have generated based on such information are also valuable to our businesses, and the unauthorized disclosure or misappropriation of such materials by our employees and consultants could significantly harm our strategic initiatives – especially if such disclosures are made to our competitor companies.

We may be subject to claims that our employees and/or consultants have wrongfully used or disclosed to us alleged trade secrets of their former employers or other clients.

As is common in the biopharmaceutical industry, we rely on employees and consultants to assist in the development of product candidates, many of whom were previously employed at, or may have previously been or are currently providing consulting services to, other biopharmaceutical companies, including our competitors or potential competitors. We may become subject to claims related to whether these individuals have inadvertently or otherwise used, disclosed or misappropriated trade secrets or other proprietary information of their former employers or their former or current clients. Litigation may be necessary to defend against these claims. Even if we are successful in defending these claims, litigation could result in substantial costs and be a distraction to management and/or the employees or consultants that are implicated.

The market price of our securities may be volatile and may fluctuate in a way that is disproportionate to our operating performance.

The stock prices of our securities may experience substantial volatility as a result of a number of factors, including, but not necessarily limited to:

- announcements we make regarding our current product candidates, acquisition of potential new product candidates and companies and/or in-licensing through multiple partners/affiliates;
- sales or potential sales of substantial amounts of our Common Stock;
- issuance of debt or other securities;
- our delay or failure in initiating or completing pre-clinical or clinical trials or unsatisfactory results of any of these trials;
- announcements about us or about our competitors, including clinical trial results, regulatory approvals or new product introductions;

- developments concerning our licensors and/or product manufacturers;
- litigation and other developments relating to our patents or other proprietary rights or those of our competitors;
- conditions in the pharmaceutical or biotechnology industries;
- governmental regulation and legislation;
- unstable regional political and economic conditions;
- variations in our anticipated or actual operating results; and
- change in securities analysts' estimates of our performance, or our failure to meet analysts' expectations.

Many of these factors are beyond our control. The stock markets in general, and the market for pharmaceutical and biotechnological companies in particular, have historically experienced extreme price and volume fluctuations. These fluctuations often have been unrelated or disproportionate to the operating performance of these companies. These broad market and industry factors could reduce the market prices of our securities, regardless of our actual operating performance.

Sales of a substantial number of shares of our Common Stock, or the perception that such sales may occur, may adversely impact the price of our Common Stock.

Almost all of the 100.8 million outstanding shares of our Common Stock, inclusive of outstanding equity awards, as of December 31, 2020 are available for sale in the public market, either pursuant to Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"), or an effective registration statement. In addition, pursuant to our current shelf registration statement on Form S-3, from time to time we may issue and sell shares of our Common Stock or Preferred Stock having an aggregate offering price of up to $26.7 million as of December 31, 2020. Any sale of a substantial number of shares of our Common Stock or our Preferred Stock could cause a drop in the trading price of our Common Stock or Preferred Stock on the Nasdaq Stock Market.

We may not be able to manage our anticipated growth, which may in turn adversely impact our business.

We will need to continue to expend capital on improving our infrastructure to address our anticipated growth. Acquisitions of companies or products could place a strain on our management, and administrative, operational and financial systems. In addition, we may need to hire, train, and manage more employees, focusing on their integration with us and corporate culture. Integration and management issues associated with increased acquisitions may require a disproportionate amount of our management's time and attention and distract our management from other activities related to running our business.

A catastrophic disaster could damage our facilities beyond insurance limits or cause us to lose key data, which could cause us to curtail or cease operations.

We are vulnerable to damage and/or loss of vital data from natural disasters, such as earthquakes, tornadoes, power loss, fire, health epidemics and pandemics, floods and similar events, as well as from accidental loss or destruction. If any disaster were to occur, our ability to operate our businesses could be seriously impaired. We have property, liability and business interruption insurance that may not be adequate to cover losses resulting from disasters or other similar significant business interruptions, and we do not plan to purchase additional insurance to cover such losses due to the cost of obtaining such coverage. Any significant losses that are not recoverable under our insurance policies could seriously impair our business, financial condition and prospects. Any of the aforementioned circumstances, including without limitation the COVID-19 virus, may also impede our employees' and consultants' abilities to provide services in-person and/or in a timely manner; hinder our ability to raise funds to finance our operations on favorable terms or at all; and trigger effectiveness of "force majeure" clauses under agreements with respect to which we receive goods and services, or under which we are obligated to achieve developmental milestones on certain timeframes. Disputes with third parties over the applicability of such "force majeure" clauses, or the enforceability of developmental milestones and related extension mechanisms in light of such business interruptions, may arise and may become expensive and time-consuming.

Our ability to use our pre-change NOLs and other pre-change tax attributes to offset post-change taxable income or taxes may be subject to limitation.

We may, from time to time, carry net operating loss carryforwards ("NOLs") as deferred tax assets on our balance sheet. Under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an "ownership change" (generally defined as a greater than 50-percentage-point cumulative change (by value) in the equity ownership of certain stockholders over a rolling three-year period), the corporation's ability to use its pre-change NOLs and other pre-change tax attributes to offset its post-change taxable income or taxes may be limited. We may experience ownership changes in the future as a result of shifts in our stock ownership, some of which changes are outside our control. As a result, our ability to use our pre-change NOLs and other pre-change tax attributes to offset post-change taxable income or taxes may be subject to limitation.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could harm our business.

We, and/or third parties on our behalf, may use hazardous materials, including chemicals and biological agents and compounds that could be dangerous to human health and safety or the environment. Our operations may also produce hazardous waste products. Federal, state and local laws and regulations govern the use, generation, manufacture, storage, handling and disposal of these materials and wastes. Compliance with applicable environmental laws and regulations may be expensive, and current or future environmental laws and regulations may impair our product development efforts. In addition, we cannot entirely eliminate the risk of accidental injury or contamination from these materials or wastes. We do not carry specific biological or hazardous waste insurance coverage, and our property and casualty and general liability insurance policies specifically exclude coverage for damages and fines arising from biological or hazardous waste exposure or contamination. Accordingly, in the event of contamination or injury, we could be held liable for damages or penalized with fines in an amount exceeding our respective resources, and clinical trials or regulatory approvals could be suspended.

Although we maintain workers' compensation insurance to cover costs and expenses incurred due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted in connection with the storage or disposal of biological or hazardous materials.

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations may impair our research, development or production efforts. Failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

We have never paid and currently do not intend to pay cash dividends in the near future, except for the dividend we pay on our Series A Preferred Stock. As a result, capital appreciation, if any, will be the sole source of gain for our Common Stockholders.

We have never paid cash dividends on our Common Stock, or made stock dividends, except for the dividend we pay on shares of our Series A Preferred Stock, and we currently intend to retain future earnings, if any, to fund the development and growth of our businesses, and retain our stock positions. In addition, the terms of existing and future debt agreements may preclude us from paying cash or stock dividends. Equally, each of our partners is governed by its own board of directors with individual governance and decision-making regimes and mandates to oversee such entities in accordance with their respective fiduciary duties. As a result, we alone cannot determine the acts that could maximize value to you of such partners in which we maintain ownership positions, such as declaring cash or stock dividends. As a result, capital appreciation, if any, of our Common Stock will be the sole source of gain for our Common Stockholders for the foreseeable future.

Changes in funding for the FDA and other government agencies could hinder their ability to hire and retain key leadership and other personnel, or otherwise prevent new products and services from being developed or commercialized in a timely manner, which could negatively impact our business or the business of our partners.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, ability to hire and retain key personnel, ability to accept the payment of user fees, and statutory, regulatory, and policy changes. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of other government agencies that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for new drugs to be reviewed and/or approved by necessary government agencies, which would adversely affect our business or the business of our partners. For example, over the last several years, including for 35 days beginning on December 22, 2018, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough nonessential FDA employees and stop routine activities. If a prolonged government shutdown occurs, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

If the timing of FDA's review and approval of new products is delayed, the timing of our or our partners' development process may be delayed, which could result in delayed milestone revenues and materially harm our operations or business.

The COVID-19 pandemic has caused considerable disruptions at FDA, namely with respect to diverting FDA's attention and resources to facilitate vaccine development and ensure rapid review and emergency use authorization of vaccines intended to prevent COVID-19. Back in March, Dr. Janet Woodcock, the Director of FDA's Center for Drug Evaluation and Research, temporarily stepped away from her role to focus on the therapeutic aspects of Operation Warp Speed, a major reorganization intended to better align FDA's activities with the national effort to develop COVID-19 countermeasures. Dr. Woodcock later named Acting Commissioner of FDA on January 20, 2021. These changes to leadership, enhanced focus on COVID-19 countermeasures, and the reorganization and rededication or critical resources, both at FDA and within similar governmental authorities across the world, are likely to impact the ability of new products and services from being developed or commercialized in a timely manner.

We will continue to incur significant increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives. Also, if we fail to maintain proper and effective internal control over financial reporting in the future, our ability to produce accurate and timely financial statements could be impaired, which could harm our operating results, investors' views of us and, as a result, the value of our Securities.

As a public company, we incur significant legal, accounting and other expenses under the Sarbanes-Oxley Act ("SOX"), as well as rules subsequently implemented by the SEC, and the rules of the Nasdaq Stock Exchange. These rules impose various requirements on public companies, including requiring establishment and maintenance of effective disclosure and financial controls and appropriate corporate governance practices. Our management and other personnel have devoted and will continue to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations increase our legal and financial compliance costs and make some activities more time-consuming and costly. For example, these rules and regulations make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors, our board committees or as executive officers.

SOX requires, among other things, that we maintain effective internal controls for financial reporting and disclosure controls and procedures. As a result, we are required to periodically perform an evaluation of our internal controls over financial reporting to allow management to report on the effectiveness of those controls, as required by Section 404 of SOX. These efforts to comply with Section 404 and related regulations have required, and continue to require, the commitment of significant financial and managerial resources. While we anticipate maintaining the integrity of our internal controls over financial reporting and all other aspects of Section 404, we cannot be certain that a material weakness will not be identified when we test the effectiveness of our control systems in the future. If a material weakness is identified, we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources, costly litigation or a loss of public confidence in our internal controls, which could have an adverse effect on the market price of our stock.

Provisions in our certificate of incorporation, our bylaws and Delaware law might discourage, delay or prevent a change in control of our Company or changes in our management and, therefore, depress the trading price of our Common Stock or other Securities.

Provisions of our certificate of incorporation, our bylaws and Delaware law may have the effect of deterring unsolicited takeovers and/or delaying or preventing a change in control of our Company or changes in our management, including transactions in which our stockholders might otherwise receive a premium for their shares over then-current market prices. In addition, these provisions may limit the ability of stockholders to approve transactions that they may deem to be in their best interests. These provisions include:

- the inability of stockholders to call special meetings; and
- the ability of our Board of Directors to designate the terms of and issue new series of preferred stock without stockholder approval, which could include the right to approve an acquisition or other change in our control or could be used to institute a rights plan, also known as a poison pill, that would work to dilute the stock ownership of a potential hostile acquirer, likely preventing acquisitions that have not been approved by our Board of Directors.

In addition, the Delaware General Corporation Law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns, or within the last three years has owned, 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

The existence of the foregoing provisions and anti-takeover measures could limit the price that investors might be willing to pay in the future for shares of our Common Stock. They could also deter potential acquirers of our Company, thereby reducing the likelihood that you would receive a premium for your ownership of our Securities through an acquisition.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit Index

Exhibit Number	Exhibit Title
10.1	Credit Agreement entered into by and among Fortress Biotech, Inc., the lenders from time to time party thereto, and Oaktree Fund Administration, LLC on August 27, 2020. (*+)
10.2	Asset Purchase Agreement entered into by and between Sentynl Therapeutics, Inc. and Cyprium Therapeutics, Inc. dated as of February 23, 2021. (*+)
10.3	Asset Purchase Agreement entered into by and between Journey Medical Corporation and Dermira, Inc. dated as of March 31, 2021. (*+)
31.1	Certification of Chairman, President and Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of the Chairman, President and Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document.(*)
101.SCH	Inline XBRL Taxonomy Extension Schema Document.(*)
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.(*)
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.(*)
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.(*)
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.(*)
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.
\+ Certain confidential portions of this exhibit have been omitted pursuant to Item 601(b) of Regulation S-K.

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.

May 17, 2021

FORTRESS BIOTECH, INC.

By: /s/ Lindsay A. Rosenwald, M.D.
Lindsay A. Rosenwald, M.D., Chairman, President and Chief Executive Officer (Principal Executive Officer)

May 17, 2021

By: /s/ Robyn M. Hunter
Robyn M. Hunter Chief Financial Officer (Principal Financial Officer)

Certain identified information has been excluded from the document because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Exhibit 10.1

CREDIT AGREEMENT

dated as of August 27, 2020

by and among

FORTRESS BIOTECH, INC.,
as the Borrower,

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SCHEDULES AND EXHIBITS

CREDIT AGREEMENT

CREDIT AGREEMENT, dated as of August 27, 2020 (this "***Agreement***"), among **FORTRESS BIOTECH, INC.**, a Delaware corporation (the "***Borrower***"), the lenders from time to time party hereto (each a "***Lender***" and collectively, the "***Lenders***"), and **OAKTREE FUND ADMINISTRATION, LLC**, as administrative agent for the Lenders (in such capacity, the "***Administrative Agent***").

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders provide a senior secured term loan facility to the Borrower in an aggregate principal amount of $60,000,000 to be extended on the Closing Date; and

WHEREAS, the Lenders are willing, on the terms and subject to the conditions set forth herein, to provide such senior secured term loan facility.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1.
DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

"***Account Control Agreement Completion Date***" has the meaning set forth in **Section 8.16(a)**.

"***Acquisition***" means any transaction, or any series of related transactions, by which any Person (for purposes of this definition, an "***acquirer***") directly or indirectly, by means of amalgamation, merger, purchase of assets, purchase of Equity Interests, or otherwise, (i) acquires all or substantially all of the assets of any other Person, (ii) acquires an entire business line or unit or division of any other Person, (iii) with respect to any other Person that is managed or governed by a Board, acquires control of Equity Interests of such other Person representing more than fifty percent (50%) of the ordinary voting power (determined on a fully-diluted basis) for the election of directors of such Person's Board, or (iv) acquires control of more than fifty percent (50%) of the Equity Interests in any other Person (determined on a fully-diluted basis) that is not managed by a Board.

"***Administrative Agent***" has the meaning set forth in the preamble hereto.

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

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

"***Anti-Terrorism Laws***" means any laws relating to terrorism or money laundering, including, without limitation, (i) the Money Laundering Control Act of 1986 (e.g., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act of 1970 (e.g., 31 U.S.C. §§ 5311 – 5330), as amended by the Patriot Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), or (vi) any similar laws enacted in the United States, European Union or any other jurisdictions in which the parties to this agreement operate, and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war.

"***Applicable Prepayment Percentage***" means 20.0%.

"***Arm's Length Transaction***" means, with respect to any transaction, the terms of such transaction shall not be less favorable to the Borrower or any of its Subsidiaries than commercially reasonable terms that would be obtained in a transaction with a Person that is an unrelated third party.

"***Asset Sale***" has the meaning set forth in **Section 9.09**.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an assignee of such Lender substantially in the form of **Exhibit E**, or such other form as is acceptable to the Administrative Agent.

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

"***Bail-In Legislation***" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"***Bankruptcy Code***" means Title 11 of the United States Code entitled "Bankruptcy."

"***Beneficial Ownership Certification***" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"***Beneficial Ownership Regulation***" means 31 C.F.R. § 1010.230.

"***Benefit Plan***" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which the Borrower or any Subsidiary thereof incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Board***" means, with respect to any Person, the board of directors or equivalent management or oversight body of such Person or any committee thereof authorized to act on behalf of such board (or equivalent body).

"***Board Observer***" has the meaning set forth in **Section 8.13(b)**.

"***Borrower***" has the meaning set forth in the preamble hereto.

"***Borrower Party***" has the meaning set forth in **Section 13.03(b)**.

"***Borrowing***" means the borrowing of the Loans on the Closing Date.

"***Borrowing Notice***" means a written notice substantially in the form of **Exhibit B**.

"***Business Day***" means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City.

"***Capital Lease Obligations***" means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal property, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"***Casualty Event***" means the damage, destruction or condemnation, as the case may be, of property of the Borrower or any of its Subsidiaries in excess of $2,000,000.

"***CFC***" means a Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"***CFC Holding Company***" means any Domestic Subsidiary that owns no material assets (directly or indirectly) other than Equity Interests, or Equity Interests and debt, of one or more CFCs or Domestic Subsidiaries that are themselves CFC Holding Companies.

"***Change of Control***" means an event or series of events (i) as a result of which any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Act, but excluding any of such person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such Plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all Equity Interests that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "***option right***")), directly or indirectly, of thirty-five percent (35%) or more of the Equity Interests of the Borrower entitled to vote for members of the Board of the Borrower on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or (ii) as a result of which, during any period of twelve (12) consecutive months, a majority of the members of the Board of the Borrower cease to be composed of individuals (x) who were members of such

Board on the first day of such period, (y) whose election or nomination to such Board was approved by individuals referred to in **clause (x)** above constituting at the time of such election or nomination at least a majority of such Board or equivalent governing body or (z) whose election or nomination to such Board was approved by individuals referred to in **clauses (x)** and **(y)** above constituting at the time of such election or nomination at least a majority of such Board; or (iii) that results in the sale of all or substantially all of the assets or businesses of the Borrower and its Subsidiaries, taken as a whole.

"***Claims***" means (and includes) any claim, demand, complaint, grievance, action, application, suit, cause of action, order, charge, indictment, prosecution, judgement or other similar process, whether in respect of assessments or reassessments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

"***Closing Date***" means the date on which the conditions precedent specified in **Section 6.01** are satisfied (or waived in accordance with **Section 13.04**) and on which the Loans are to be made to the Borrower.

"***Closing Date Equity Interests***" has the meaning set forth in **Section 9.19**.

"***Code***" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"***Collateral***" means any real, personal and mixed property (including Equity Interests), whether tangible or intangible, in which Liens are granted or purported to be granted to the Administrative Agent as security for the Obligations under any Loan Document on or after the Closing Date, including future acquired or created assets or property (or collectively, all such real, personal and mixed property, as the context may require).

"***Commitment***" means, with respect to each Lender, the obligation of such Lender to make Loans to the Borrower on the Closing Date in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender's name on **Schedule 1** under the caption "Commitment", as such Schedule may be amended from time to time pursuant to an Assignment and Assumption or otherwise. The aggregate amount of Commitments on the date of this Agreement equals $60,000,000.

"***Compliance Certificate***" has the meaning set forth in **Section 8.01(c)**.

"***Connection Income Taxes***" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"***Contracts***" means any contract, license, lease, agreement, obligation, promise, undertaking, understanding, arrangement, document, commitment, entitlement or engagement under which a Person has, or will have, any liability or contingent liability (in each case, whether

written or oral, express or implied, and whether in respect of monetary or payment obligations, performance obligations or otherwise).

"***Control***" means, in respect of a particular Person, the possession by one or more other Persons, directly or indirectly, of the power to direct or cause the direction of the management or policies of such particular Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"***Controlled Account***" has the meaning set forth in **Section 8.15(a)**.

"***Copyright***" means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof and all other rights whatsoever accruing thereunder or pertaining thereto throughout the world.

"***Cyprium***" means Cyprium Therapeutics, Inc.

"***Cyprium Financing***" has the meaning set forth on **Schedule 7.18**.

"***Default***" means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

"***Default Rate***" has the meaning set forth in **Section 3.02(b)**.

"***Designated Jurisdiction***" means any country or territory to the extent that such country or territory is the subject of country- or territory-wide Sanctions.

"***Disqualified Equity Interests***" means, with respect to any Person, any Equity Interest of such Person that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), including pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (iii) provides for the scheduled payments of dividends or other distributions in cash or other securities that would constitute Disqualified Equity Interests, or (iv) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Maturity Date.

"***Division***" has the meaning set forth in **Section 1.04**.

"***Dollars***" and "***$***" means lawful money of the United States of America.

"***Domestic Subsidiary***" means any Subsidiary that is a corporation, limited liability company, partnership or similar business entity incorporated, formed or organized under the laws of the United States, any state of the United States or the District of Columbia.

"***DOSPA***" has the meaning set forth in Section 8.16(e).

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

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

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

"***Eligible Transferee***" means and includes (i) any commercial bank, (ii) any insurance company, (iii) any finance company, (iv) any financial institution, (v) any Person that is a bona fide debt fund primarily engaged in the making, purchasing, holding or other investing in commercial loans, notes, bonds or similar extensions of credit or securities in the Ordinary Course, (vi) with respect to any Lender, any of its Affiliates or such Lender's or Affiliate's managed funds or accounts, and (vii) any other "accredited investor" (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes.

"***Environmental Claims***" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, information request, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment, arising out of a violation of Environmental Law or any Hazardous Materials Activity.

"***Environmental Law***" means all laws (including common law and any federal, state, provincial or local governmental law), rule, regulation, order, writ, judgment, notice, requirement, binding agreement, injunction or decree, whether U.S. or non-U.S., relating in any way to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) to the extent related to Hazardous Materials Activity, occupational safety and health, industrial hygiene, land use, natural resources or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

"***Environmental Liability***" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (iii) exposure to any Hazardous Materials,

(iv) the release or threatened release of any Hazardous Materials into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Equity Interests***" means, with respect to any Person (for purposes of this defined term, an "***issuer***"), all shares of, interests or participations in, or other equivalents in respect of such issuer's capital stock, including all membership interests, partnership interests or equivalent, and all debt or other securities directly or indirectly exchangeable, exercisable or otherwise convertible into, such issuer's capital stock, whether now outstanding or issued after the Closing Date, and in each case, however designated and whether voting or non-voting.

"***Equivalent Amount***" means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination.

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

"***ERISA Affiliate***" means, collectively, the Borrower, any Subsidiary thereof, and any Person under common control, or treated as a single employer, with the Borrower or any Subsidiary thereof, within the meaning of Section 414(b) or (c) of the Code and solely for purposes of Section 412 of the Code and Section 302 of ERISA, Section 414 (m) or (o) of the Code.

"***ERISA Event***" means (i) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events for which the 30-day notice requirement has been waived; (ii) a withdrawal by the Borrower or any ERISA Affiliate thereof from a Title IV Plan during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA or the termination of any Title IV Plan with at least two or more contributing sponsors that are not ERISA Affiliates resulting in liability under Section 4064 of ERISA; (iii) the withdrawal of the Borrower or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by the Borrower or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is insolvent pursuant to Section 4245 of ERISA; (iv) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (v) the imposition of liability on the Borrower or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vi) the failure by the Borrower or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (vii) the determination that any Title IV Plan is considered an at-risk plan

or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (viii) the imposition of any liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate thereof; (ix) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Title IV Plan; or (x) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of the Borrower or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 302(f) or 303(k) of ERISA or to Section 401(a)(29) or 430(k) of the Code.

"***ERISA Funding Rules***" means the rules regarding minimum required contributions (including any installment payment thereof) to Title IV Plans, as set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

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

"***Event of Default***" has the meaning set forth in **Section 11.01**.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"***Exchange Rate***" means, as of any date, the rate at which any currency may be exchanged into another currency, as set forth on the relevant Bloomberg screen at or about 11:00 a.m. (Eastern time) on such date. In the event that such rate does not appear on the Bloomberg screen, the "Exchange Rate" shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably designated by the Administrative Agent.

"***Excluded Taxes***" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case, (x) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivisions thereof) or (y) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (1) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under **Section 5.04**) or (2) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 5.03**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient's failure to comply with **Section 5.03(f)**, and (iv) any U.S. federal withholding Taxes imposed under FATCA.

"***Facility***" means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased or operated by the Borrower or any of its Subsidiaries.

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

"***Federal Funds Effective Rate***" means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depositary institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three (3) major banks of recognized standing selected by it; and provided further, that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"***Fee Letter***" means the Fee Letter, dated as of the date of this Agreement, among the Borrower, the Lenders and the Administrative Agent.

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

"***Foreign Subsidiary***" means any Subsidiary that is not a Domestic Subsidiary.

"***Funding Date Certificate***" means a certificate substantially in the form of Exhibit H.

"***GAAP***" means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. All references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the financial statements delivered pursuant to **Section 6.01(f)(i)**.

"***Governmental Approval***" means any consent, authorization, approval, order, license, franchise, permit, certification, accreditation, registration, clearance or exemption that is issued or granted by or from (or pursuant to any act of) any Governmental Authority, including any application or submission related to any of the foregoing.

"***Governmental Authority***" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision

thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any state, territory, county, city or other political subdivision of any country, in each case whether U.S. or non-U.S.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided , that the term Guarantee shall not include (x) endorsements for collection or deposit and (y) guarantees of operating leases, in each case, in the ordinary course of business.

"***Hazardous Material***" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or would reasonably be expected to pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"***Hazardous Materials Activity***" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, recycling, disposition or handling of any Hazardous Materials, and any investigation, monitoring, corrective action or response action with respect to any of the foregoing.

"***Hedging Agreement***" means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

"***Immaterial Subsidiary***" means any Subsidiary of the Borrower that (i) individually constitutes or holds less than five percent (5%) of the Borrower's consolidated total assets or generates less than five percent (5%) of the Borrower's consolidated total revenue, and (ii) when taken together with all then existing Immaterial Subsidiaries, such Subsidiary and such Immaterial Subsidiaries, in the aggregate, would constitute or hold less than fifteen percent (15%) of the Borrower's consolidated total assets or generate less than fifteen percent (15%) of the Borrower's consolidated total revenue, in each case as pursuant to the most recent fiscal

period for which financial statements were required to have been delivered pursuant to **Sections 8.01(a)** or **(b)**.

"***Indebtedness***" of any Person means, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (iii) all obligations of such Person upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business and not overdue by more than ninety (90) days), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (vii) all Guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (x) obligations under any Hedging Agreement, currency swaps, forwards, futures or derivatives transactions, (xi) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (xii) all guaranteed minimum payments of such Person under any license or other agreements, (xiii) any Disqualified Equity Interests of such Person, and (xiv) all other obligations required to be classified as indebtedness of such Person under GAAP; provided that, notwithstanding the foregoing, Indebtedness shall not include accrued expenses, deferred rent, deferred taxes, deferred compensation or customary obligations under employment agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"***Indemnified Party***" has the meaning set forth in **Section 13.03(b)**.

"***Indemnified Taxes***" means (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any Obligation and (ii) to the extent not otherwise described in **clause (i)**, Other Taxes.

"***Information Certificate***" means the Information Certificate delivered pursuant to **Section 6.01(c)**.

"***Insolvency Proceeding***" means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person's creditors generally or any substantial portion of such Person's creditors, in each case undertaken under U.S. federal, state or foreign law, including the Bankruptcy Code.

"***Intellectual Property***" means, collectively, all rights, priorities and privileges relating to intellectual property, whether arising under the laws of the U.S. or any other jurisdiction or political subdivision thereof (including any multinational laws or otherwise), including all inventions (whether patentable or unpatentable and whether or not reduced to practice) and discoveries, and all improvements thereto, and all know-how, confidential or proprietary information, trade secrets, data, Patents, Trademarks, Copyrights and internet domain names, together with all common law rights and moral rights therein, and all goodwill associated therewith, and all rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"***Interest Rate***" means 11.0% per annum, as may be increased pursuant to **Section 3.02(b)**.

"***Invention***" means any novel, inventive or useful art, apparatus, method, process, machine (including any article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

"***Investment***" means, for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) of any debt or Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (ii) the making of any deposit with, or advance, loan, assumption of debt or other extension of credit to, or capital contribution in any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding ninety (90) days arising in connection with the sale of inventory or supplies by such Person in the Ordinary Course; or (iii) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person. The amount of an Investment will be determined at the time the Investment is made without giving effect to any subsequent changes in value.

"***IRS***" means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

"***JMC***" means Journey Medical Corporation, a Delaware corporation.

"***Law***" means, collectively, all U.S. or non-U.S. federal, state, provincial, territorial, municipal or local statute, treaty, rule, guideline, regulation, ordinance, code or administrative or judicial precedent or authority, including any interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"***Lenders***" has the meaning set forth in the preamble hereto.

"***Lien***" means (a) any mortgage, lien, pledge, hypothecation, charge, security interest, or other encumbrance of any kind or character whatsoever, whether or not filed, recorded or otherwise perfected under applicable law, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any other encumbrance on title to real property, any option or other agreement to sell, or give a security interest in, such asset and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes of any jurisdiction)) or any preferential arrangement that has the practical effect of creating a security interest and (b) in the case of Equity Interests, any purchase option, call or similar right of a third party with respect to such Equity Interests.

"***Loan***" means each loan advanced by a Lender pursuant to **Section 2.01**.

"***Loan Documents***" means, collectively, this Agreement, the Notes, the Security Documents, the Warrant, the Fee Letter and any subordination agreement, intercreditor agreement or other present or future document, instrument, agreement or certificate delivered to the Administrative Agent (for itself or for the benefit of any other Secured Party) in connection with this Agreement or any of the other Loan Documents, in each case, as amended or otherwise modified.

"***Loss***" means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

"***Majority Lenders***" means, at any time, Lenders having at such time in excess of fifty percent (50%) of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect.

"***Margin Stock***" means "margin stock" within the meaning of Regulations U and X.

"***Material Adverse Change***" and "***Material Adverse Effect***" mean a material adverse change in or effect on (i) the business, financial performance, operations, condition of the assets or liabilities of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of the Borrower to perform its obligations under the Loan Documents, as and when due, or (iii) the legality, validity, binding effect or enforceability of the Loan Documents or the rights, remedies and benefits available to, or conferred upon, the Administrative Agent or the Secured Parties under any of the Loan Documents.

"***Material Agreement***" means any Contract required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act of 1933 or Securities Exchange Act of 1934, as may be amended. For the avoidance of doubt, employment and management contracts shall not be Material Agreements.

"***Material Indebtedness***" means, at any time, any Indebtedness of the Borrower or any Subsidiary thereof, the outstanding principal amount of which, individually or in the aggregate, exceeds $5,000,000 (or the Equivalent Amount in other currencies).

"***Material Subsidiary***" means any Subsidiary of the Borrower that is not an Immaterial Subsidiary and in which the Borrower owns more than fifty percent (50%) of the outstanding Equity Interests.

"***Maturity Date***" means August 27, 2025.

"***Maximum Rate***" has the meaning set forth in **Section 13.17.**

"***Minimum Liquidity Amount***" means (i) from the Closing Date to but not including the earliest date following the Closing Date on which the Borrower consummates a Permitted Acquisition, $20,000,000 and (ii) from the earliest date following the Closing Date on which the Borrower consummates a Permitted Acquisition, $25,000,000; provided that, notwithstanding the foregoing, the Minimum Liquidity Amount shall be permanently reduced to $15,000,000 on the first date on which the outstanding principal amount of the Loans is less than $40,000,000.

"***Minimum Revenue Covenant***" has the meaning set forth in **Section 10.02**.

"***Minimum Revenue Cure Right***" has the meaning set forth in **Section 11.04(a)**.

"***Monetization Event***" means the occurrence of any of the following events: (i) an Asset Sale (other than a Qualifying Avenue Sale or a Qualifying [*] Sale), (ii) the sale of any priority review voucher by Cyprium; (iii) the sale of any priority review voucher by Mustang Bio, Inc.; and (iv) the receipt by the Borrower of any dividend or other distribution (other than royalty payments received based on customary revenue or sales payments, but excluding any such payments relating to milestones or regulatory developments) in cash from any of its Subsidiaries in excess of $5,000,000 other than in connection with an event referred to in clauses (i) through (iii) above, a Qualifying Avenue Sale or a Qualifying [*] Sale.

"***Multiemployer Plan***" means any multiemployer plan, as defined in Section 400l(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

"***Net Proceeds***" means, (i) with respect to any Casualty Event experienced or suffered by the Borrower or any of its Subsidiaries, the amount of cash proceeds received (directly or indirectly) from time to time by or on behalf of such Person after deducting therefrom only (x) costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; and (ii) with respect to any Monetization Event, Qualifying Avenue Sale or Qualifying [*] Sale the amount of total consideration (including but not limited to consideration in the form of cash and Equity Interests) received (directly or indirectly) from time to time (including any contingent consideration, including but not limited to milestone payments and royalty payments) by or on behalf of such Person after deducting therefrom only (x) costs and expenses related thereto incurred by the Borrower or such Subsidiary in connection

therewith, and (y) Taxes (including transfer Taxes or net income Taxes) paid or payable in connection therewith; provided that, in each case of **clauses (i)** and **(ii)** , costs and expenses shall only be deducted to the extent, that the amounts so deducted are (x) actually paid to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries and (y) properly attributable to such Casualty Event, Asset Sale or other Monetization Event, as the case may be.

"***Note***" means a promissory note, in substantially the form of **Exhibit A** hereto, executed and delivered by the Borrower to any Lender in accordance with **Section 2.03**.

"***Notice of Intent to Cure Revenue Covenant***" has the meaning set forth in **Section 11.04(b)**.

"***NY UCC***" means the UCC as in effect from time to time in New York.

"***Oaktree Lender***" means any Lender that is an Affiliate or managed fund or account of Oaktree Capital Management, L.P.

"***Obligations***" means, with respect to the Borrower, all amounts, obligations, liabilities, covenants and duties of every type and description owing by the Borrower to any Secured Party (including all Warrant Obligations) any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, Prepayment Fee, Specified Return Shortfall, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to the Borrower under any Loan Document.

"***OFAC***" has the meaning assigned to such term in the definition of "Anti-Terrorism Laws."

"***Ordinary Course***" means ordinary course of business or ordinary trade activities that are customary for similar businesses in the normal course of their ordinary operations and not while in financial distress.

"***Organic Document***" means, for any Person, such Person's formation documents, including, as applicable, its certificate of incorporation, by-laws, certificate of partnership, partnership agreement, certificate of formation, limited liability agreement, operating agreement and all shareholder agreements, voting trusts and similar arrangements applicable to such Person's Equity Interests, or any equivalent document of any of the foregoing.

"***Other Connection Taxes***" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing

such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.03(g)**).

"***Participant***" has the meaning set forth in **Section 13.05(e)**.

"***Participant Register***" has the meaning set forth in **Section 13.05(e)**.

"***Patents***" means all patents and patent applications, including (i) the Inventions and improvements described and claimed therein, (ii) the reissues, divisions, continuations, renewals, extensions, and continuations in part thereof, and (iii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world.

"***Patriot Act***" has the meaning set forth in **Section 13.19**.

"***Payment Date***" means (i) March 31, June 30, September 30 and December 31 of each year, commencing on the first such date to occur after the Closing Date; and (ii) the Maturity Date.

"***PBGC***" means the United States Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"***Permitted Acquisition***" means any Acquisition by the Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise; provided that:

(a) immediately prior to, and immediately after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to result therefrom;

(b) such Acquisition shall comply in all material respects with all applicable Laws and all applicable Governmental Approvals;

(c) in the case of any Acquisition of Equity Interests of another Person, after giving effect to such Acquisition, all Equity Interests of such other Person acquired by the Borrower or any of its Subsidiaries shall be owned, directly or indirectly, beneficially and of record, by the Borrower or any of its Subsidiaries, and, the Borrower shall satisfy each of the actions set forth in **Section 8.11** as required by such Section;

(d) on a *Pro Forma* Basis after giving effect to such Acquisition, the Borrower shall have at least $25,000,000 in cash in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent;

(e) to the extent that the purchase price for any such Acquisition is paid in cash, the amount thereof does not exceed $10,000,000 (or the Equivalent Amount in other currencies) in any fiscal year;

(f) to the extent that the purchase price for any such Acquisition is paid in Equity Interests, all such Equity Interests shall be Qualified Equity Interests;

(g) promptly upon request by the Administrative Agent in the case of any such Acquisition, the Borrower shall provide to the Administrative Agent (i) at least ten (10) Business Day's prior written notice of any such Acquisition, together with summaries, prepared in reasonable detail, of all due diligence conducted by or on behalf of the Borrower or the applicable Subsidiary, as applicable, prior to such Acquisition, in each case subject to customary confidentiality restrictions, (ii) subject to customary confidentiality restrictions, a copy of the draft purchase agreement related to the proposed Acquisition (and any related documents requested by the Administrative Agent), (iii) pro forma financial statements of the Borrower and its Subsidiaries (as of the last day of the most recently ended fiscal quarter prior to the date of consummation of such Acquisition for which financial statements are required to be delivered pursuant to **Sections 8.01(a)** or **(b)**) after giving effect to such Acquisition, and (iv) subject to customary confidentiality restrictions, any other information reasonably requested (to the extent available), by the Administrative Agent and available to the Borrower; and

(h) neither the Borrower nor any of its Subsidiaries (including any acquired Person) shall, in connection with any such Acquisition, assume or remain liable with respect to (x) any Indebtedness of the related seller or the business, Person or assets acquired, (y) any Lien on any business, Person or assets acquired, except to the extent permitted pursuant to **Section 9.02** or (z) any other liabilities (including Tax, ERISA and environmental liabilities), except to the extent the assumption of such liability could not reasonably be expected to result in a Material Adverse Effect. Any other such Indebtedness, liabilities or Liens not permitted to be assumed, continued or otherwise supported by the Borrower or Subsidiary thereof hereunder shall be paid in full or released within sixty (60) days of the acquisition date.

"***Permitted Cash Equivalent Investments***" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any member states of the European Union or any agency or any state thereof having maturities of not more than one (1) year from the date of acquisition, (ii) commercial paper maturing no more than two hundred seventy (270) days after the date of acquisition thereof and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc., and (iii) funds held in ICS and CDARS programs.

"***Permitted Indebtedness***" means any Indebtedness permitted under **Section 9.01**.

"***Permitted Liens***" means any Liens permitted under **Section 9.02**.

"***Permitted Refinancing***" means, with respect to any Indebtedness permitted to be refinanced, extended, renewed or replaced hereunder, any refinancings, extensions, renewals and replacements of such Indebtedness; provided that such refinancing, extension, renewal or replacement shall not (i) increase the outstanding principal amount of the Indebtedness being refinanced, extended, renewed or replaced, except by an amount equal to accrued interest and a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred in connection therewith, (ii) contain terms relating to outstanding principal amount, amortization, maturity, collateral security (if any) or subordination (if any), or other material terms that, taken as a whole, are less favorable in any material respect to the Borrower and its Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing such existing Indebtedness, (iii) have an applicable interest rate which does not exceed the greater of (A) the rate of interest of the Indebtedness being replaced and (B) the then applicable market interest rate, (iv) contain any new requirement to grant any Lien or to give any Guarantee that was not an existing requirement of such Indebtedness and (v) after giving effect to such refinancing, extension, renewal or replacement, no Default shall have occurred (or could reasonably be expected to occur) as a result thereof.

"***Person***" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

"***Plan***" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"***Prepayment Fee***" means (a) with respect to any prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration, payment of a Revenue Cure Payment or otherwise (other than by mandatory prepayment in connection with a Monetization Event, a Qualifying Avenue Sale or a Qualifying [*] Sale), occurring (i) on or prior to the second anniversary of the Closing Date, an amount equal to the amount of interest that would have been paid on the principal amount of the Loans being so repaid or prepaid for the period from and including the date of such repayment or prepayment to but excluding the date that is the two (2) year anniversary of the Closing Date, *plus* three percent (3%) of the principal amount of the Loans being so repaid or prepaid, (ii) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, an amount equal to three percent (3%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iii) at any time after the third anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date, an amount equal to two percent (2%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid and (iv) if the prepayment is made after the fourth anniversary of the Closing Date, 0% and (b) with respect to any

mandatory prepayment of all or any portion of the Loans in connection with a Monetization Event (which shall not include, for the avoidance of doubt, any Qualifying Avenue Sale or Qualifying [*] Sale), occurring (i) on or prior to the first anniversary of the Closing Date, an amount equal to six percent (6%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (ii) at any time after the first anniversary of the Closing Date but on or prior to the second anniversary of the Closing Date, an amount equal to four and a half percent (4.5%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iii) at any time after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date, an amount equal to three percent (3%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid, (iv) at any time after the third anniversary of the Closing Date but on or prior to the fourth anniversary of the Closing Date, an amount equal to two percent (2%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid and (v) if the prepayment is made after the fourth anniversary of the Closing Date, 0%.

"***Prepayment Price***" has the meaning set forth in **Section 3.03(a)(i)**.

"Private Subsidiary" is any Subsidiary that is not a Public Subsidiary.

"***Pro Forma Basis***" shall mean, with respect to the calculation of any financial ratio, as of any date, that *pro forma* effect will be given to the Transactions, any Permitted Acquisition, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio is being calculated) and all sales, transfers and other dispositions or discontinuance of any subsidiary, line of business or division, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the "Reference Period"), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made, as if each such event occurred on the first day of the Reference Period.

"***Prohibited Payment***" means any bribe, rebate, payoff, influence payment, kickback or other payment or gift of money or anything of value (including meals or entertainment) to any officer, employee or ceremonial office holder of any government or instrumentality thereof, political party or supra-national organization (such as the United Nations), any political candidate, any royal family member or any other person who is connected or associated personally with any of the foregoing that is prohibited under any Law for the purpose of influencing any act or decision of such payee in his official capacity, inducing such payee to do or omit to do any act in violation of his lawful duty, securing any improper advantage or inducing such payee to use his influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality.

"***Proportionate Share***" means, with respect to any Lender, the percentage obtained by dividing (i) the Commitment (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (ii) the sum of the Commitments (or, if the

Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

"Public Subsidiary" is any Subsidiary the Equity Interests of which are traded on any public market or exchange.

"***Qualified Equity Interest***" means, with respect to any Person, any Equity Interest of such Person that is not a Disqualified Equity Interest.

"***Qualified Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Borrower or any ERISA Affiliate thereof or to which the Borrower or any ERISA Affiliate thereof has ever made, or was ever obligated to make, contributions, and (ii) that is intended to be tax qualified under Section 401(a) of the Code.

"***Qualifying Avenue Sale***" has the meaning set forth on Schedule 9.09(b).

"***Qualifying*** [*] ***Sale***" has the meaning set forth on Schedule 9.09(c).

"***Recipient***" means the Administrative Agent or any Lender.

"***Refinanced Indebtedness***" means the Indebtedness incurred under (a) the Amended and Restated Credit Facility Agreement, dated as of March 12, 2018, by and among Borrower, Opus Point Healthcare Innovations Fund, LP and each other lender from time to time party thereto (the "Opus Debt"), (b) those Notes issued pursuant to that certain Confidential Private Placement Memorandum, dated as of January 16, 2018 (the "Venture Debt"), and (c) those Notes issued pursuant to that certain Confidential Private Placement Memorandum, dated as of March 24, 2017 (the "2017 Subordinated Debt").

"***Register***" has the meaning set forth in **Section 13.05(d)**.

"***Regulation T***" means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

"***Regulation X***" means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

"***Reinvestment***" has the meaning set forth in **Section 3.01**.

"***Reinvestment Period***" has the meaning set forth in **Section 3.03(b)**.

"***Related Parties***" has the meaning set forth in **Section 13.16**.

"***Resignation Effective Date***" has the meaning set forth in **Section 12.09**.

"***Responsible Officer***" of any Person means each of the president, chief executive officer, chief financial officer and similar officer of such Person.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, Equity Interests or other property) with respect to any Equity Interests of the Borrower or any of its Subsidiaries, or any payment (whether in cash, Equity Interests or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests of the Borrower or any of its Subsidiaries, any payment of interest, principal or fees in respect of any Indebtedness owed by the Borrower or any of its Subsidiaries to any holder of any Equity Interests of the Borrower or any of its Subsidiaries, or any option, warrant or other right to acquire any such Equity Interests of the Borrower or any of its Subsidiaries.

"***Restrictive Agreement***" means any Contract or other arrangement that prohibits, restricts or imposes any condition upon (i) the ability of the Borrower or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its properties or assets (other than customary provisions in Contracts (including without limitation leases and in-bound licenses of Intellectual Property) restricting the assignment thereof), or (ii) the ability of the Borrower or any of its Subsidiaries to make Restricted Payments with respect to any of their respective Equity Interests or to make or repay loans or advances to the Borrower or any of its Subsidiaries or to Guarantee Indebtedness of the Borrower or any of its Subsidiaries.

"***Revenue***" means, with respect to any Person for any relevant fiscal period, the consolidated total revenues of such Person for such fiscal period, as recognized on the income statement of such Person, determined on a consolidated basis in accordance with GAAP.

"***Revenue Cure Payment***" means, with respect to any fiscal quarter of the Borrower in which the Minimum Revenue Covenant applies, a payment of $6,000,000 in cash.

"***Sanction***" means any international economic or financial sanction or trade embargo imposed, administered or enforced from time to time by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union or its Member States, Her Majesty's Treasury or other relevant sanctions authority where the Borrower is located or conducts business.

"***Secured Parties***" means the Lenders, the Administrative Agent and any of their respective permitted transferees or assigns.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Security Agreement***" means the Security Agreement, delivered pursuant to **Section 6.01(h)**, between the Borrower and the Administrative Agent, granting a security interest in the Borrower's personal property in favor of the Administrative Agent, for the benefit of the Secured Parties.

"***Security Documents***" means, collectively, the Security Agreement, each Short-Form IP Security Agreement, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Secured Parties for purposes of securing the Obligations.

"***Short-Form IP Security Agreements***" means short-form copyright, patent or trademark (as the case may be) security agreements, substantially in the form of Exhibit C, D and E to the Security Agreement, entered into by the Borrower in favor of the Secured Parties, each in form and substance satisfactory to the Administrative Agent (and as amended, modified or replaced from time to time).

"***Solvent***" means, as to any Person as of any date of determination, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (ii) the present fair saleable value of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (iv) such Person is not engaged in a business or transaction, and is not about to engage in a business or transaction, for which such Person's property would constitute an unreasonably small capital. The amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"***Specified Return Shortfall***" has the meaning set forth in the Fee Letter.

"***Subsidiary***" means, with respect to any Person (the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (i) of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, directly or indirectly, or (ii) that is, as of such date, otherwise Controlled, by the parent or one or more direct or indirect subsidiaries of the parent or by the parent and one or more direct or indirect subsidiaries of the parent. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"***Taxes***" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"***Title IV Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the

Borrower or any ERISA Affiliate thereof or to which the Borrower or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Trademarks***" means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including (i) all renewals of trademark and service mark registrations and (ii) all rights whatsoever accruing thereunder or pertaining thereto throughout the world, together, in each case, with the goodwill of the business connected with the use thereof.

"***Transactions***" means (a) the negotiation, preparation, execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the making of the Loans hereunder, and all other transactions contemplated pursuant to this Agreement and the other Loan Documents, including the creation of the Liens pursuant to the Security Documents, (b) the repayment in full and termination of the Refinanced Indebtedness and (c) the payment of all fees and expenses incurred or paid by the Borrower in connection with the foregoing.

"***UCC***" means, with respect to any applicable jurisdictions, the Uniform Commercial Code as in effect in such jurisdiction, as may be modified from time to time.

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

"***U.S. Person***" means a "United States Person" within the meaning of Section 7701(a)(30) of the Code.

"***U.S. Tax Compliance Certificate***" has the meaning set forth in **Section 5.03(f)(ii)(B)(3)**.

"***VWAP***" has the meaning set forth in the Warrant.

"***Warrant***" means that certain Warrant, dated as of the Closing Date and delivered pursuant to **Section 6.01(k)**, evidenced by an instrument substantially the form of **Exhibit F** hereto, as amended, replaced or otherwise modified pursuant to the terms thereof.

"***Warrant Obligations***" means all Obligations of Borrower arising out of, under or in connection with the Warrant.

"***Withdrawal Liability***" means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

"***Withholding Agent***" means the Borrower or the Administrative Agent.

"***Write-Down and Conversion Powers***" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

1.02 Accounting Terms and Principles. Unless otherwise specified, all accounting terms used in each Loan Document shall be interpreted, and all accounting determinations and computations thereunder (including under **Section 10** and any definitions used in such calculations) shall be made, in accordance with GAAP. Unless otherwise expressly provided, all financial covenants and defined financial terms shall be computed on a consolidated basis for the Borrower and its Subsidiaries, in each case without duplication. If the Borrower requests an amendment to any provision hereof to eliminate the effect of (a) any change in GAAP or the application thereof or (b) the issuance of any new accounting rule or guidance or in the application thereof, in each case, occurring after the date of this Agreement, then the Lenders and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change or issuance with the intent of having the respective positions of the Lenders and Borrower after such change or issuance conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such change or issuance has occurred and (ii) the Borrower shall provide to the Lenders a written reconciliation in form and substance reasonably satisfactory to the Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to such change or issuance.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires,

(a) the terms defined in this Agreement include the plural as well as the singular and vice versa;

(b) words importing gender include all genders;

(c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement;

(d) any reference to "this Agreement" refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision;

(e) references to days, months and years refer to calendar days, months and years, respectively;

(f) all references herein to "include" or "including" shall be deemed to be followed by the words "without limitation";

(g) the word "from" when used in connection with a period of time means "from and including" and the word "until" means "to but not including";

(h) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer broadly to any and all assets and properties, whether tangible or

intangible, real or personal, including cash, securities, rights under contractual obligations and permits and any right or interest in any such assets or property;

(i) accounting terms not specifically defined herein (other than "property" and "asset") shall be construed in accordance with GAAP;

(j) the word "will" shall have the same meaning as the word "shall";

(k) where any provision in this Agreement or any other Loan Document refers to an action to be taken by any Person, or an action which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or, to the knowledge of such Person, indirectly; and

(l) references to any Lien granted or created hereunder or pursuant to any other Loan Document securing any Obligations shall deemed to be a Lien for the benefit of the Secured Parties.

Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto permitted by the Loan Documents. Any definition or reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

If any payment required to be made pursuant to the terms and conditions of any Loan Document falls due on a day which is not a Business Day, then such required payment date shall be extended to the immediately following Business Day. For purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries will be deemed to be equal to 100% of the outstanding principal amount thereof or payment obligations with respect thereto at the time of determination thereof.

1.04 Division. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws) (a "**Division**"), if (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

SECTION 2.
THE COMMITMENT AND THE LOANS

2.01 Loans.

(a) On the terms and subject to the conditions of this Agreement, each Lender agrees to make Loans to the Borrower in a principal amount equal to the amount of such Lender's Commitment on the Closing Date.

(b) No amounts paid or prepaid with respect to any Loan may be reborrowed.

(c) Any term or provision hereof (or of any other Loan Document) to the contrary notwithstanding, Loans made to the Borrower will be denominated solely in Dollars and will be repayable solely in Dollars and no other currency.

2.02 Borrowing Procedures. At least one (1) Business Day prior to the Closing Date (or such shorter period agreed by the Administrative Agent), the Borrower shall deliver to the Administrative Agent an irrevocable Borrowing Notice in the form of **Exhibit B** signed by a duly authorized representative of the Borrower (which notice, if received by the Administrative Agent on a day that is not a Business Day or after 10:00 A.M. (Eastern time) on a Business Day, shall be deemed to have been delivered on the next Business Day). Each Borrowing Notice shall be for the full amount of the Commitments and no Borrowing Notice for less than such full amount shall be permitted.

2.03 Notes. If requested by any Lender, the Loan of such Lender shall be evidenced by one or more Notes. The Borrower shall prepare, execute and deliver to the Lender such promissory note(s) substantially in the form attached hereto as **Exhibit A**.

2.04 Use of Proceeds . The Borrower shall use the proceeds of the Loans (i) for repaying the Refinanced Indebtedness and (ii) for working capital and general corporate purposes, including the payment of fees and expenses associated with this Agreement.

SECTION 3.
PAYMENTS OF PRINCIPAL AND INTEREST, ETC.

3.01 Scheduled Repayments and Prepayments Generally; Application. The Borrower hereby promises to pay to the Administrative Agent for the account of each Lender (as such amounts may in each case be reduced from time to time in accordance with **Section 3.03**) on the Maturity Date, all outstanding Obligations in full (together with accrued and unpaid interest and any other accrued and unpaid charges thereon and all other obligations due and payable by the Borrower under this Agreement, including any Specified Return Shortfall). Except as otherwise provided in this Agreement, each payment (including each repayment and prepayment) by the Borrower (other than fees payable pursuant to the Fee Letter) will be deemed to be made ratably in accordance with the Lenders' Proportionate Shares. On any date occurring prior to the Maturity Date that payment or prepayment in full of the Loans hereunder occurs, the Borrower shall pay in full all outstanding Obligations, which shall include the Prepayment Fee, if applicable, and any Specified Return Shortfall.

3.02 Interest.

(a) **Interest Generally**. The outstanding principal amount of the Loans shall accrue interest from the date made to repayment (whether by acceleration or otherwise and whether voluntary or mandatory) at the Interest Rate.

(b) **Default Interest**. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the Interest Rate shall increase automatically by two and a half percent (2.5%) *per annum* (the Interest Rate, as increased pursuant to this **Section 3.02(b)**, being the "***Default Rate***"). If any Obligation (other than Warrant Obligations but including, without limitation, fees, costs and expenses payable hereunder) is not paid when due (giving effect to any applicable grace period) under any applicable Loan Document, the amount thereof shall accrue interest at the Default Rate.

(c) **Interest Payment Dates**. Accrued interest on the Loans shall be payable in arrears on each Payment Date in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); provided that interest payable at the Default Rate shall also be payable in cash from time to time on demand by the Administrative Agent.

3.03 Prepayments.

(a) **Optional Prepayments**.

(i) Subject to prior written notice pursuant to **clause (ii)** below, the Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Business Day for an amount equal to the sum of (A) the aggregate principal amount of the Loans being prepaid, (B) any accrued but unpaid interest on the principal amount of the Loans being prepaid, (C) any applicable Prepayment Fee and (D) if applicable, other unpaid amounts then due and owing pursuant to this Agreement and the other Loan Documents (such aggregate amount, the "***Prepayment Price***"); provided that each partial prepayment of principal of Loans shall be in an aggregate amount at least equal to $5,000,000 and integral multiples of $1,000,000 in excess thereof.

(ii) A notice of optional prepayment shall be effective only if received by the Administrative Agent not later than 2:00 p.m. (Eastern time) on a date not less than three (3) (nor more than five (5)) Business Days prior to the proposed prepayment date. Each notice of optional prepayment shall specify the proposed prepayment date, the Prepayment Price, the principal amount to be prepaid and any conditions to prepayment (if applicable).

(b) **Mandatory Prepayments for Casualty Events and Monetization Events**. Within five (5) Business Days following Borrower's receipt of Net Proceeds from any Casualty Event or Monetization Event (other than an Asset Sale permitted pursuant to **Sections 9.09(a)**, **(b)**, **(c)**, **(d)** or **(h)** or any Asset Sale related to the Equity Interests in, or assets of, [*] that is not a Qualifying [*] Sale), the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) the Applicable Prepayment Percentage of the Net Proceeds received by the Borrower with respect to such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, as the case may be, (ii) any accrued but

unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee; provided that, so long as no Default has occurred and is continuing or shall result therefrom, if, within five (5) Business Days following Borrower's receipt of Net Proceeds from any such Casualty Event or Monetization Event as a result of which the Borrower receives Net Proceeds in an aggregate amount less than $5,000,000, a Responsible Officer of the Borrower delivers to the Administrative Agent a notice to the effect that the Borrower intends to apply the Net Proceeds from such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, to reinvest in the business of the Borrower (a "***Reinvestment***"), then such Net Proceeds of such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event may be applied for such purpose in lieu of such mandatory prepayment to the extent such Net Proceeds of such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event are actually applied for such purpose; provided, further, that, in the event that Net Proceeds have not been so applied within three hundred sixty-five (365) days (the "***Reinvestment Period*** ") following the occurrence of such Casualty Event or Monetization Event, the Borrower shall no later than the end of such period make a mandatory prepayment of the Loans in an aggregate amount equal to the sum of (i) the Applicable Prepayment Percentage of the unused balance of such Net Proceeds received by the Borrower with respect to such Monetization Event or insurance proceeds or condemnation awards in respect of such Casualty Event, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee; provided, further, that other than as provided in **clause (d)** below, Borrower shall not be required to prepay more than $10 million of principal amount of the Loans in the aggregate with respect to any Asset Sale(s) and/or other Monetization Event(s) related to the Equity Interests in, or assets of, any individual Subsidiary.

(c) **Mandatory Prepayments for Debt Issuances**. Immediately upon receipt by the Borrower or any of its Subsidiaries of proceeds from any issuance, incurrence or assumption of Indebtedness other than Indebtedness permitted by **Section 9.01**, on or after the Closing Date, the Borrower shall prepay the Loans and other Obligations in an amount equal to 100% of the cash proceeds received, *plus* the Prepayment Fee, if applicable.

(d) **Other Mandatory Prepayments**. Within five (5) Business Days following Borrower's receipt of Net Proceeds from any Qualifying Avenue Sale or Qualifying [*] Sale, the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) the Net Proceeds received by the Borrower with respect to such Qualifying Avenue Sale or Qualifying [*] Sale, as the case may be; provided Borrower shall not be required to prepay more than $7.5 million of principal amount of the Loans under this **clause (d)** from any Qualifying Avenue Sale or more than $12.5 million of principal amount of the Loans under this **clause (d)** from any Qualifying [*] Sale, (ii) any accrued but unpaid interest on any principal amount of the Loans being prepaid and (iii) an amount equal to six percent (6%) of the aggregate outstanding principal amount of the Loans being so repaid or prepaid. Within five (5) Business Days following Borrower's receipt of Net Proceeds from any Asset Sale related to the Equity Interests in, or assets of, [*] that is not a Qualifying [*] Sale, the Borrower shall make a mandatory prepayment of the Loans in an amount equal to the sum of (i) $15.0 million of principal amount of the Loans, (ii) any accrued but unpaid interest on the principal amount of the Loans being prepaid and (iii) any applicable Prepayment Fee.

(e) **General.** The Borrower shall notify the Administrative Agent not later than 12:00 p.m. (Eastern time) on a date not less than two (2) Business Days (but not more than three (3) Business Days) prior to any mandatory prepayment. Notwithstanding anything in this **Section 3.03** to the contrary, any Lender may elect, by written notice to the Administrative Agent no later than 12:00 p.m. (Eastern time), one (1) Business Day prior to the prepayment date (or such later time as the Administrative Agent may agree), to decline all or any portion of any mandatory prepayment of its Loans pursuant to this **Section 3.03**. Any Lender that fails to deliver such notice to the Administrative Agent in the time frame set forth above shall be deemed to have accepted its share of any mandatory prepayment. The aggregate amount of the prepayment that would have been applied to prepay Loans but was so declined may be retained by the Borrower and used for any general corporate purpose not prohibited by this Agreement. If any Lender declines all or any portion of any mandatory prepayment of its Loans in connection with a Monetization Event, Qualifying Avenue Sale or Qualifying [*] Sale, the Borrower shall grant such Lender warrants in an amount equal to 2.50% of the principal amount of mandatory prepayment so declined, with an exercise price equal to the VWAP of the Borrower's common stock for the period beginning on the trading day that is 30 days prior to the issuance date and ending on the last trading day immediately preceding the issuance date. For the avoidance of doubt, the issuance of any warrants pursuant to this **clause (e)** shall not be deemed to be a prepayment and shall not reduce the Borrower's obligations to make any mandatory prepayment required under **clause (b)** or **clause (d)** above with respect to any Monetization Event, Qualifying Avenue Sale or Qualifying [*] Sale occurring after the issuance of such warrants.

(f) **Prepayment Fee**. Without limiting the foregoing, whenever the Prepayment Fee is in effect and payable pursuant to the terms hereof or any other Loan Document, such Prepayment Fee shall be payable on each prepayment of all or any portion of the Loans, whether by optional or mandatory prepayment, acceleration or otherwise (other than any prepayment pursuant to **Section 5.02**).

(g) **Partial Prepayments**. Prepayments shall be accompanied by accrued interest to the extent required by **Section 3.02**.

SECTION 4.
PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally** . Each payment of principal, interest and other amounts to be made by the Borrower under this Agreement or any other Loan Document shall be made (i) in Dollars, in immediately available funds, without deduction, set off or counterclaim, to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the deposit account of the Administrative Agent designated by the Administrative Agent by notice to the Borrower, and (ii) not later than 2:00 p.m. (Eastern time) on the date on which such payment is due (each such payment made after such time on such due date may in the Administrative Agent's discretion be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments**. Notwithstanding anything herein to the contrary, following the occurrence and continuance of an Event of Default, all payments shall be applied as follows:

(A) first, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, expenses or other amounts (including fees and disbursements and other charges of counsel payable under **Section 13.03**) payable to the Administrative Agent in its capacity as such;

(B) second, to the payment of that portion of the Obligations constituting unpaid fees, indemnities, costs, expenses and other amounts (other than principal and interest, but including fees and disbursements and other charges of counsel payable under **Section 13.03** and any Prepayment Fees) payable to the Lenders arising under the Loan Documents (other than the Warrant), ratably among them in proportion to the respective amounts described in this **clause (B)** payable to them;

(C) third, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (C)** payable to them;

(D) fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this **clause (D)** payable to them;

(E) fifth, in reduction of any other Obligation then due and owing, ratably among the Administrative Agent and the Lenders based upon the respective aggregate amount of all such Obligations owing to them in accordance with the respective amounts thereof then due and payable; and

(F) sixth, the balance, if any, after all Obligations have been indefeasibly paid in full, to the Borrower or such other Person as may be lawfully entitled to or directed by the Borrower to receive the remainder.

(c) **Non-Business Days**. If the due date of any payment under this Agreement (whether in respect of principal, interest, fees, costs or otherwise) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day and, in the case of any payment accruing interest, interest thereon shall continue to accrue and be payable for the period of such extension; provided that if such next succeeding Business Day would fall after the Maturity Date, payment shall be made on the immediately preceding Business Day.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and actual days elapsed during the period for which payable. Interest is calculated from and including the date of the Borrowing of each Loan to, but excluding, the date of repayment or prepayment of such Loan.

4.03 Set-Off.

(a) **Set-Off Generally**. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent, each of the Lenders and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Administrative Agent, any Lender and any of their Affiliates to or for the credit or the account of the Borrower against any and all of the Obligations, whether or not such Person shall have made any demand and although such obligations may be unmatured. Any Person exercising rights of set off hereunder agrees promptly to notify the Borrower after any such set-off and application; provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Administrative Agent, the Lenders and each of their Affiliates under this **Section 4.03** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required**. Nothing contained in **Section 4.03(a)** shall require the Administrative Agent, any Lender or any of their Affiliates to exercise any such right or shall affect the right of such Persons to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower.

(c) **Payments Set Aside.** To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent, any Lender or any Affiliate of the foregoing exercises its right of setoff pursuant to this **Section 4.03**, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such Lender or such Affiliate in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Effective Rate from time to time in effect.

SECTION 5.
YIELD PROTECTION, TAXES, ETC.

5.01 Additional Costs.

(a) **Change in Law Generally**. If, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law, or any change in any Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or

administration thereof, or compliance by the Administrative Agent or any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall (i) impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office), (ii) impose on a Lender (or its lending office) any other condition (other than Taxes) affecting the Loans or the Commitment, or (iii) subject any Lender to any Taxes on its Loan, Commitment or other obligations, or its deposits, reserves, other liabilities or capital (if any) attributable thereto (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, by an amount reasonably deemed by such Lender in good faith to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements**. If a Lender shall have determined that, on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), the adoption of any Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then the Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender**. Each Lender promptly will notify the Borrower of any event of which it has knowledge, occurring after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement), which will entitle such Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of such Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on the Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

(e) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to this **Section 5.1** shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this **Section 5.1** for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender **Section 5.1** notifies the Borrower of the event giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the event giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) the adoption of or any change in any Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify the Borrower thereof, following which if such Law shall so mandate, the Loans shall be prepaid by the Borrower on or before such date as shall be mandated by such Law in an amount equal to the Prepayment Price (notwithstanding anything herein to the contrary, without any Prepayment Fee) applicable on such prepayment date in accordance with **Section 3.03(a)**.

5.03 Taxes. For purposes of this **Section 5.03**, the term "applicable Law" includes FATCA.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by any applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Laws and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5.03**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower**. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent or each Lender, timely reimburse it for the payment of any Other Taxes.

(c) **Evidence of Payments**. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this **Section 5.03** , the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) **Indemnification by the Borrower**. The Borrower shall reimburse and indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5.03**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(e) **Indemnification by the Lender** . Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), and (ii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this **Section 5.03(e)**.

(f) **Status of Lenders**.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that, other than in the case of U.S. federal withholding Taxes, such Lender has received written notice from the Borrower advising it of the availability of such exemption or reduction and containing all

applicable documentation. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Law as reasonably requested by the Borrower as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two (2) sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.03(f)(ii)(A), (ii)(B),** and **(ii)(D)**) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit C-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, or a "controlled foreign corporation" related to the Borrower as described in Section 881(c)(3)(C) of the Code (a "***U.S. Tax Compliance Certificate***") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E as applicable (or successor forms); or

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

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this **clause (D)**, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) The Administrative Agent (including any successor Administrative Agent) shall deliver to Borrower on or prior to the date on which it becomes an Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed copies of IRS Form W-9 certifying that it is exempt from U.S. federal backup withholding tax.

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

(g) **Treatment of Certain Tax Benefits**. If any party to this Agreement determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5** (including by the payment of additional amounts pursuant to this **Section 5**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this **Section 5.03(g)** (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(g)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(g)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This **Section 5.03(g)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Each party hereto hereby acknowledges and agrees that the Loans made on the Closing Date are part of an investment unit within the meaning of Section 1273(c)(2) of the Code, which includes the Warrant. For federal income tax purposes, pursuant to Treasury Regulations § 1.1273-2(h), the Borrower, the Administrative Agent and the Lenders acknowledge that the "issue price" of the Loans is 97% of the stated principal amount of the Loans minus the fair market value and purchase price of the Warrants (as determined in accordance with the terms of the Warrants) . Each of the Borrower, the Administrative Agent and the Lenders agree to use the foregoing issue price, fair market value and purchase price for U.S. federal income tax purposes with respect to the transactions contemplated hereby (unless otherwise required by a final determination by the IRS or a court of competent jurisdiction).

5.04 Mitigation Obligations. (a) If the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or **Section 5.03** , then such Lender shall (at the request of the Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

(b) If any Lender requests compensation under **Section 5.01**, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 5.03** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (a) of this **Section 5.04**, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 13.05**), all of its interests, rights (other than its existing rights to payments pursuant to **Section 5.01** or **Section 5.03**) and obligations under this Agreement and the related Loan Documents to an Eligible Transferee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(ii) in the case of any such assignment resulting from a claim for compensation under **Section 5.01** or payments required to be made pursuant to **Section 5.03**, such assignment will result in a reduction in such compensation or payments thereafter; and

(iii) such assignment does not conflict with applicable Law;

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

5.05 Survival. Each party's obligations under this **Section 5** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Loan Document.

SECTION 6.
CONDITIONS

6.01 Conditions to the Borrowing of the Loans. The obligation of each Lender to make its Loans shall be subject to the delivery of a Borrowing Notice as required pursuant to **Section 2.02**, and the prior or concurrent satisfaction or waiver of each of the conditions precedent set forth below in this **Section 6.01**.

(a) **Loan Documents**. The Administrative Agent shall have received each Loan Document required to be executed by the Borrower on the Closing Date and delivered by the Borrower (which may be delivered by facsimile or other electronic means for the purposes of satisfying this clause (a) on the Closing Date) and such Loan Documents shall be in form and substance satisfactory to the Administrative Agent and the Lenders and their respective counsels.

(b) **Secretary's Certificate, Etc.** The Administrative Agent shall have received from the Borrower (x) a copy of a good standing certificate, dated a date reasonably close to the Closing Date and (y) a certificate, dated as of the Closing Date, duly executed and delivered by the Borrower's Responsible Officer, as to:

(i) resolutions of the Borrower's Board then in full force and effect authorizing the execution, delivery and performance of each Loan Document to be executed by the Borrower and the Transactions;

(ii) the incumbency and signatures of Responsible Officers authorized to execute and deliver each Loan Document to be executed by the Borrower; and

(iii) the full force and validity of each Organic Document of the Borrower and copies thereof;

upon which certificates shall be in form and substance reasonably satisfactory to the Administrative Agent and upon which the Administrative Agent and the Lenders may conclusively rely until they shall have received a further certificate of the Responsible Officer of any such Person cancelling or amending the prior certificate of such Person.

(c) **Information Certificate**. The Administrative Agent shall have received a fully completed Information Certificate in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of the Borrower. All documents and agreements required to be appended to the Information Certificate, shall be in form and substance reasonably satisfactory to the Administrative Agent, shall have been executed and delivered by the requisite parties and shall be in full force and effect.

(d) **Funding Date Certificate**. The Administrative Agent shall have received a Funding Date Certificate, dated as of the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent, duly executed and delivered by a Responsible Officer of the Borrower.

(e) **Delivery of Notes**. The Administrative Agent shall have received a Note to the extent requested by any Lender pursuant to **Section 2.03** for the Loans duly executed and delivered by a Responsible Officer of the Borrower.

(f) **Financial Information, Etc.** The Administrative Agent shall have received:

(i) audited consolidated financial statements of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2019; and

(ii) unaudited consolidated balance sheets of the Borrower and its Subsidiaries for the fiscal quarters ended March 31, 2020 and June 30, 2020, together with the related consolidated statement of operations, shareholder's equity and cash flows for such fiscal quarters.

(g) **Solvency**. The Administrative Agent shall have received a solvency certificate, substantially in the form of **Exhibit G**, duly executed and delivered by the chief financial officer of the Borrower, dated as of the Closing Date, in form and substance reasonably satisfactory to the Administrative Agent.

(h) **Security Documents**. The Administrative Agent shall have received executed counterparts of a Security Agreement, in form and substance reasonably acceptable to the Administrative Agent, dated as of the Closing Date, duly executed and delivered by the Borrower, together with all documents (including share certificates, transfers and stock transfer forms, notices or any other instruments) required to be delivered or filed under the Security Documents and evidence satisfactory to it that arrangements have been made with respect to all registrations, notices or actions required under the Security Documents to be effected, given or made in order to establish a valid and perfected first priority security interest in the Collateral in accordance with the terms of the Security Documents, including:

(i) delivery of all certificates (in the case of Equity Interests that are certificated securities (as defined in the UCC)) evidencing the issued and outstanding capital securities owned by the Borrower that are required to be pledged and so delivered under the Security Agreement, which certificates in each case shall be accompanied by undated instruments of transfer duly executed in blank, or, in the case of Equity Interests that are uncertificated securities (as defined in the UCC), confirmation and evidence reasonably satisfactory to the Administrative Agent and the Lenders that the security interest required to be pledged therein under the Security Agreement has been transferred to and perfected by the Administrative Agent and the Lenders in accordance with Articles 8 and 9 of the NY UCC and all laws otherwise applicable to the perfection of the pledge of such Equity Interests;

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

(iii) UCC-3 termination statements, if any, necessary to release all Liens and other rights of any Person in any collateral described in the Security Agreement previously granted by any Person.

(i) **Lien Searches**. The Administrative Agent shall be satisfied with Lien searches regarding the Borrower made as of a date reasonably close to the Closing Date.

(j) **Warrant**. The Administrative Agent shall have received an executed counterpart of the Warrant.

(k) **Insurance**. The Administrative Agent shall have received certified copies of the insurance policies (or binders in respect thereof), from one or more insurance companies satisfactory to the Administrative Agent, evidencing coverage required to be maintained pursuant to each Loan Document.

(l) **Opinions of Counsel**. The Administrative Agent shall have received an opinion, dated as of the Closing Date and addressed to the Administrative Agent and the Lenders, from independent legal counsel to the Borrower, in form and substance reasonably acceptable to the Administrative Agent.

(m) **Fee Letter**. The Administrative Agent shall have received an executed counterpart of the Fee Letter, duly executed and delivered by the Borrower.

(n) **Closing Fees, Expenses, Etc** . Each of the Administrative Agent and each Lender shall have received for its own account, (i) the upfront fee as set forth in the Fee Letter, which shall be paid by way of the Administrative Agent retaining such amount from the proceeds of the Loan and (ii) all fees, costs and expenses due and payable to it pursuant to the Fee Letter and **Section 13.03**, including all reasonable closing costs and fees and all unpaid reasonable expenses of the Administrative Agent and the Lenders incurred in connection with the Transactions (including the Administrative Agent's and the Lenders' legal fees and expenses) in each case, to the extent invoiced (or as to which a good faith estimate has been provided to the Borrower) at least two (2) Business Days prior to the Closing Date.

(o) **Material Adverse Change**. Since December 31, 2019, no event, circumstance or change has occurred that has caused or could reasonably be expected to cause, either individually or in the aggregate, a Material Adverse Change, both before and after giving effect to the Loans to be made on the Closing Date.

(p) **Know Your Customer**. The Administrative Agent shall have received, a duly executed W-9 (or other applicable tax form) of the Borrower, and, as applicable, all documentation and other information required by bank regulatory authorities under applicable "know your customer" and Anti-Terrorism Laws, including, without limitation, the Patriot Act.

(q) **No Default**. No event shall have occurred or be continuing or would result from the making of the Loans that would constitute a Default or Event of Default.

(r) **Representations and Warranties**. The representations and warranties contained in this Agreement and in the other Loan Documents delivered pursuant to 6.01*(*a) shall be true and correct in all material respects (unless such representations are already qualified by reference to materiality, Material Adverse Effect or similar language, in which case such representations and warranties shall be true and correct in all respects) on and as of the Closing Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all respects on and as of such earlier date.

(s) **Payoff of Existing Indebtedness**. The Opus Debt and 2017 Subordinated Debt (other than contingent obligations (including indemnification obligations) that by their terms are to survive the termination of the relevant loan documentation and debt instruments evidencing the Opus Debt and 2017 Subordinated Debt, as applicable) shall have been (or substantially concurrently with the making of the Loans on the Closing Date shall be) repaid or satisfied and

discharged, and in connection therewith all guarantees and liens shall have been released, on or prior to the Closing Date.

(t) **Beneficial Ownership Certificate**. To the extent requested by any Lender or the Administrative Agent, the Borrower shall have provided to such Lender and the Administrative Agent all documentation and other information so requested, including a duly executed W-9 of the Borrower (or such other applicable tax form), in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, and if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification, in each case prior to the Closing Date.

SECTION 7.
REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Administrative Agent and each Lender on the Closing Date, and any other date such representation and warranty is required to be made under the Loan Documents, as set forth below:

7.01 Power and Authority . The Borrower and each of its Subsidiaries (i) is duly organized and validly existing under the laws of its jurisdiction of organization, (ii) has all requisite corporate or other power, and has all Governmental Approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted, except to the extent that failure to have the same could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (iii) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary except where failure so to qualify could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (iv) has full power, authority and legal right to enter into and perform its obligations under each of the Loan Documents and to borrow the Loans hereunder.

7.02 Authorization; Enforceability . Each Transaction is within the Borrower's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational action including, if required, approval by all necessary holders of Equity Interests. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each of the other Loan Documents when executed and delivered by the Borrower will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (ii) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts . None of the execution, delivery and performance by the Borrower of the Loan Documents or the consummation by the Borrower of the Transactions (i) requires any Governmental Approval of, registration or filing with, or any other action by, any Governmental Authority or any other Person, except for (x) such as have been obtained or made and are in full force and effect and (y) filings and recordings in respect of

perfecting or recording the Liens created pursuant to the Security Documents, (ii) will violate (1) any Law, (2) any Organic Document of the Borrower or any of its Subsidiaries or (3) any order of any Governmental Authority, that in the case of **clause (ii)(1)** or **clause (ii)(3)**, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (iii) will violate or result in a default under any Material Agreement binding upon the Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or (iv) will result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of the Borrower or any of its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements**. The Borrower has heretofore furnished to the Administrative Agent (who shall forward to the Lenders) certain consolidated financial statements as provided for in **Section 6.01(f)**. Such financial statements, and all other financial statements delivered by the Borrower pursuant to this Agreement present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements of the type described in **Section 8.01(a)**. Neither the Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements.

(b) **No Material Adverse Change**. Since December 31, 2019, no event, circumstance or change has occurred that has caused or could reasonably be expected to cause, individually or in the aggregate, a Material Adverse Change.

7.05 Properties.

(a) **Property Generally**. The Borrower and each of its Subsidiaries has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal property material to its business, subject only to Permitted Liens and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property**.

(i) The Borrower is the sole and exclusive beneficial owner of all right, title and interest in and to all Intellectual Property that is owned or purported to be owned by the Borrower, free and clear of any Liens or Claims other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)(i)**:

(A) to the knowledge of the Borrower, the operation and conduct of the business of the Borrower or any of its Subsidiaries, including the use of their respective material Intellectual Property in such Person's Ordinary Course does not violate, infringe or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person in a manner that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect;

(B) Except as has not resulted in and would not be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries has received any notice from, or Claim by, any Person that the operation and conduct of the business of the Borrower or any of its Subsidiaries (including their respective use of material Intellectual Property) infringes upon, violates or constitutes a misappropriation of, any Intellectual Property of any other Person in any material respect;

(C) the Borrower does not have knowledge that any material Intellectual Property is being infringed, violated, or misappropriated by any other Person in a manner that has resulted in, or is reasonably expected to result in, a Material Adverse Effect;

(D) except as would not reasonably be expected to result in a Material Adverse Effect, the Borrower owns or has a valid and enforceable license or right to use all material Intellectual Property used in or necessary for the conduct of its business as conducted as of the date hereof; and

(E) all current and former employees and contractors that have developed material Intellectual Property for or on behalf of the Borrower or any of its Subsidiaries have executed written confidentiality and invention assignment Contracts with the Borrower or such Subsidiary, as applicable, that irrevocably and presently assign to the Borrower or such Subsidiary, as applicable, or its designee all rights of such employees and contractors to any such material Intellectual Property, except as would vest initially in the Borrower or its Subsidiary by operation of Law.

7.06 No Actions or Proceedings.

(a) **Litigation** . There is no litigation, investigation or proceeding pending or, to the knowledge of the Borrower or any of its Subsidiaries threatened in writing, with respect to the Borrower or any such Subsidiaries by or before any Governmental Authority or arbitrator that, (i) if adversely determined, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (ii) involves this Agreement or any other Loan Document.

(b) **Environmental Matters**. Except with respect to any matters that (either individually or in the aggregate) could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received any Environmental Claim, or has knowledge that any is threatened, (iv) has entered into any agreement in which the Borrower or any of its Subsidiaries has assumed or undertaken responsibility or obligations of any other person with respect to any Environmental Liability or (v) has knowledge of any basis for any other Environmental Liability.

(c) **Labor Matters** . Neither the Borrower nor any of its Subsidiaries has engaged in unfair labor practices as defined in 29 U.S.C. § §152(8) and 158 of the National Labor Relations Act and there are no pending or threatened in writing labor actions, disputes, grievances,

arbitration proceedings, or similar Claims or actions involving the employees of the Borrower or any of its Subsidiaries, in each case that could reasonably be expected to have a Material Adverse Effect. There are no strike or work stoppages in existence or threatened in writing against the Borrower and to the knowledge of the Borrower, no union organizing activity is taking place. There are no collective bargaining agreements covering employees of the Borrower or any of its Subsidiaries.

7.07 Compliance with Laws and Agreements . The Borrower is in compliance with (i) all Laws binding on it and orders of any Governmental Authority applicable to it, its operations or its property and (ii) and all obligations binding upon it, its operations or its property pursuant to any Contract, in each case except for such failures to comply which would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

7.08 Taxes. Except as set forth on **Schedule 7.08** , the Borrower and its Subsidiaries have timely filed or caused to be filed all tax returns and reports required to have been filed and have paid or caused to be paid all taxes required to have been paid by it, except (a) taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

7.09 Full Disclosure. None of the reports, financial statements, certificates or other written information furnished by or on behalf of the Borrower or any of its Subsidiaries to the Administrative Agent (on behalf of itself and the Lenders) in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time, and it being understood that such projected financial information and all other forward looking information are not to be viewed as facts and that actual results during the period or periods covered thereby may differ from such projected results and that the differences may be material.

7.10 Investment Company Act and Margin Stock Regulation.

(a) **Investment Company Act**. Neither the Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

(b) **Margin Stock**. The Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and the Borrower and its Subsidiaries do not own or hold any Margin Stock, with the exception of Equity Interests held by the Borrower in Avenue Therapeutics, Inc., Checkpoint Therapeutics, Inc. and Mustang Bio, Inc..

The Borrowing of the Loans by the Borrower, and the use of the proceeds thereof, will not violate Regulation U or X.

7.11 Solvency. The Borrower is and, immediately after giving effect to the making of the Loans, the use of proceeds thereof, and the consummation of the Transactions, will be, Solvent.

7.12 Subsidiaries. Set forth on **Schedule 7.12** is a complete and correct list of all direct and indirect Subsidiaries of the Borrower. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by the Borrower in each such Subsidiary thereof on an issued and outstanding basis is as shown in said **Schedule 7.12**.

7.13 Indebtedness and Liens. Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness of the Borrower and each of its Subsidiaries outstanding as of the Closing Date. Set forth on **Schedule 7.13(b)** is a complete and correct list of all Liens granted by the Borrower and each of its Subsidiaries with respect to their respective property and outstanding as of the Closing Date.

7.14 Material Agreements. Except as set forth on **Schedule 7.14**, neither the Borrower nor any Subsidiary is in material default under any Material Agreement, nor does the Borrower have any knowledge of (i) any Claim against it or any of its Subsidiaries for any material breach of any such Material Agreement or (ii) any material default by any party to any such Material Agreement.

7.15 Restrictive Agreements . Except as set forth in **Schedule 7.15** , as of the Closing Date, neither the Borrower nor any of its Subsidiaries is subject to any Restrictive Agreement, except (i) those permitted under **Section 9.11**, (ii) restrictions and conditions imposed by Law or by this Agreement, (iii) any stockholder agreement, charter, by-laws, or other organizational documents of the Borrower or any of its Subsidiaries as in effect on the date hereof and (iv) limitations associated with Permitted Liens.

7.16 Real Property. **Schedule 7.16** correctly sets forth all real property that is owned or leased by the Borrower, indicating in each case whether the respective property is owned or leased, the identity of the owner and lessee (if applicable) and the location of the respective property. Except as set forth in **Schedule 7.16**, the Borrower does not own or lease (as tenant thereof) any real property as of the Closing Date.

7.17 Pension Matters . To Borrower's knowledge, each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Laws so qualifies. Except for those that could not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Laws, (y) there are no existing or pending (or to the knowledge of the Borrower or any of its Subsidiaries, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which the Borrower or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event has

occurred. The Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least sixty percent (60%), and neither the Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below sixty percent (60%) as of the most recent valuation date. As of the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate has incurred any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Transactions with Affiliates . Except as set forth on **Schedule 7.18** and for Arm's Length Transactions, neither the Borrower nor any of its Subsidiaries has entered into, renewed, extended or been a part to, any transaction (including the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate.

7.19 OFAC; Anti-Terrorism Laws.

(a) Neither the Borrower nor any of its Subsidiaries is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Terrorism Laws.

(b) Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers, or employees (i) is currently the target of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction in violation of Sanctions, or (iii) is or has been (within the previous five (5) years) engaged in any transaction with, or for the benefit of, any Person who is now or was then the target of Sanctions or who is located, organized or residing in any Designated Jurisdiction, in violation of Sanctions. No Loan, nor the proceeds from any Loan, has been or will be used, directly or, to the knowledge of the Borrower, indirectly, to lend, contribute or provide to, or has been or will be otherwise made available for the purpose of funding, any activity or business in any Designated Jurisdiction in violation of Sanctions or for the purpose of funding any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, in violation of Sanctions, or in any other manner that will result in any violation by any party to this Agreement of Sanctions.

7.20 Anti-Corruption . Neither the Borrower nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any of their respective directors, officers or employees, directly or, to the knowledge of the Borrower, indirectly, has (i) materially violated or is in material violation of any applicable anti-corruption Law, or (ii) made, offered to make, promised to make or authorized the payment or giving of, directly or, to the knowledge of the Borrower, indirectly, any Prohibited Payment.

7.21 Priority of Obligations. The Obligations constitute unsubordinated obligations of the Borrower, and except for any obligations which have priority under applicable Law, rank at least pari passu in right of payment with all other unsubordinated Indebtedness of the Borrower.

SECTION 8.
AFFIRMATIVE COVENANTS

The Borrower covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made) including the Prepayment Fee, if applicable, have been indefeasibly paid in full in cash:

8.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent:

(a) as soon as available and in any event within forty-five (45) days after the end of the first three (3) fiscal quarters of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal quarter and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such fiscal quarter, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with (iii) a certificate of a Responsible Officer of the Borrower stating that (x) such financial statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as at such date and (y) the results of operations of the Borrower and its Subsidiaries for the period ended on such date have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; provided that documents required to be furnished pursuant to this Section **8.01(a)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR" (with the related certificate separately delivered);

(b) as soon as available and in any event within ninety (90) days after the end of each fiscal year (i) the consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal year and (ii) the related consolidated statements of income, shareholders' equity and cash flows of the Borrower and its Subsidiaries for such fiscal year, in each case prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of BDO USA, LLP or another firm of independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or emphasis of matter of going concern footnote or any qualification or exception as to the scope of such audit; provided that documents required to be furnished pursuant to this Section **8.01(b)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(c) together with the financial statements required pursuant to **8.01(a)** and **(b)**, a compliance certificate signed by the chief financial or accounting Responsible Officer of the Borrower as of the end of the applicable accounting period (which delivery may be by electronic communication including fax or email and shall be deemed to be an original, authentic counterpart thereof for all purposes) substantially in the form of **Exhibit D** (a "***Compliance Certificate***") including (i) details of any issues that are material that are raised by auditors and any occurrence or existence of any event, circumstance, act or omission that would cause any representation or warranty contained in **Section 7.07** to be incorrect in any material respect (or in any respect if such representation or warranty is qualified by materiality or by reference to Material Adverse Effect or Material Adverse Change) if such representation or warranty were to be made at the time of delivery of a Compliance Certificate and (ii) for any fiscal period when the Minimum Revenue Covenant is in effect, a certification that the Borrower is in compliance with the Minimum Revenue Covenant as of the last day of such period.;

(d) after being prepared by the Borrower and approved by its Board, and promptly following the Administrative Agent's request therefor, a consolidated financial forecast for the Borrower and its Subsidiaries for the fiscal year to which such forecast relates; provided that, for each fiscal year, on or before the sixtieth (60th) day following the beginning of such fiscal year, the Borrower shall prepare, and its Board shall approve such consolidated financial forecast for such fiscal year, and the Borrower shall notify the Administrative Agent promptly after the Board has given such approval;

(e) promptly after the same are released, copies of all press releases; provided that documents required to be furnished pursuant to this Section **8.01(e)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(f) promptly, and in any event within five (5) Business Days after receipt thereof by the Borrower, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which the Borrower may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of the Borrower; provided that documents required to be furnished pursuant to this Section **8.01(f)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(g) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Borrower and its Subsidiaries, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or its Subsidiaries may file or be required to file with any securities regulator or exchange to the authority of which the Borrower or such Subsidiary, as applicable, may become subject from time to time; provided that documents required to be furnished pursuant to this Section **8.01(g)** shall be deemed furnished on the date that such documents are publicly available on "EDGAR";

(h) the information regarding insurance maintained by the Borrower and its Subsidiaries as required under **Section 8.05**;

(i) together with the delivery of the Compliance Certificate, evidence satisfactory to the Administrative Agent, based upon the Borrower's bank account statements that the Borrower has met its minimum liquidity requirement set out in **Section 10.01**; and

(j) such other information respecting the businesses, financial performance, operations condition of the assets or liabilities of the Borrower (including with respect to the Collateral), taken as a whole, as the Administrative Agent may from time to time reasonably request.

8.02 Notices of Material Events . The Borrower will furnish to the Administrative Agent written notice of the following (x) with respect to **clause (a)** below within three (3) Business Days and (y) with respect to **clause (b)** through **(j)** below, within five (5) Business Days:

(a) the occurrence of any Default or Event of Default;

(b) the occurrence of any event with respect to the property or assets of the Borrower or any of its Subsidiaries resulting in an actual loss in excess of insurance or for which the insurer has denied coverage, in an aggregate amount of $2,000,000 (or the Equivalent Amount in other currencies) or more;

(c) (i) any proposed acquisition of stock, assets or property by the Borrower or any of its Subsidiaries that could reasonably be expected to result in material Environmental Liability, and (ii) any spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material by the Borrower or any of its Subsidiaries required to be reported to any Governmental Authority and that could reasonably be expected to result in material Environmental Liability;

(d) the assertion of any Claim under any Environmental Law by any Person against, or with respect to the activities of, the Borrower or any of its Subsidiaries and any alleged liability or non-compliance with any Environmental Laws or any permits, licenses or authorizations issued pursuant to Environmental Laws which could reasonably be expected to involve damages in excess of $2,000,000 (or the Equivalent Amount in other currencies) other than any such Claim or alleged violation that, if adversely determined, could not (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect;

(e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any of its Affiliates that could reasonably be expected to result in a Material Adverse Effect;

(f) (i) the intention of any ERISA Affiliate to file any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) the filing by any ERISA Affiliate of a request for a minimum funding waiver under Section 412 of the Code with respect to any Title IV Plan, in writing and in reasonable detail (including a description of any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto);

(g) any material change in accounting policies or financial reporting practices by the Borrower or any of its Subsidiaries;

(h) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving the Borrower;

(i) any change to the Borrower's or any of its Subsidiaries' ownership of any Controlled Account, by delivering the Administrative Agent a notice setting forth a complete and correct list of all such accounts as of the date of such change; and

(j) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto. Nothing in this **Section 8.02** is intended to waive, consent to or otherwise permit any action or omission that is otherwise prohibited by this Agreement or any other Loan Document.

8.03 Existence. The Borrower shall, and shall cause each of its Subsidiaries to, preserve, renew and maintain in full force and effect its legal existence; provided that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations . The Borrower will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of the Borrower or any of its Subsidiaries, except (A) to the extent such Taxes, fees, assessments or governmental charges or levies or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP or (B) to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect, and (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien.

8.05 Insurance . The Borrower will, and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses. Upon the request of the Administrative Agent, the Borrower shall furnish the Administrative Agent from time to time with (i) material information as to the insurance carried by it and, if so requested, copies of all such insurance policies and (ii) a certificate from the Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid and that such policies are in full force and effect. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Secured Parties to

renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case, the Borrower will be responsible for the reasonable and documented cost of such insurance (to be payable on demand). The amount of any such reasonable and documented expenses shall accrue interest at the Default Rate if not paid on demand and shall constitute "Obligations."

8.06 Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct (in all material respects) entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and for so long as JMC is a Subsidiary will cause JMC to, permit any representatives designated by the Administrative Agent or the Lenders, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition (financial or otherwise) with its officers and independent accountants, during normal business hours (but not more often than twice per year unless an Event of Default has occurred and is continuing) as the Administrative Agent or the Lenders may request; provided that such representative shall use its commercially reasonable efforts to minimize disruption to the business and affairs of the Borrower or JMC, as applicable, as a result of any such visit, inspection, examination or discussion. Notwithstanding anything to the contrary contained herein, neither the Borrower nor JMC will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) that constitutes trade secrets or proprietary information, (ii) in respect of which disclosure to any Lender (or their respective representatives or contractors) is prohibited by any applicable Law or any binding agreement with a third party (so long as such agreement is not entered into in contemplation of this Agreement) or (iii) that is subject to attorney-client or similar privilege, which could reasonably be expected to be lost or forfeited if disclosed to the Administrative Agent or any Lender. The Borrower shall pay all reasonable and documented costs of all such inspections.

8.07 Compliance with Laws and Other Obligations . The Borrower will, and will cause each of its Subsidiaries to, (i) comply with all Laws (including Anti-Terrorism Laws, Sanctions and Environmental Laws) applicable to it and its business activities, (ii) comply in all material respects with all Governmental Approvals applicable to it and its business activities and (iii) maintain in full force and effect, remain in compliance with, and perform all obligations under all Material Agreement to which it is a party, except, in the case of **clause (i)** and **(iii)** above, where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The Borrower shall maintain in effect and enforce policies and procedures reasonably designed to promote compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Terrorism Laws and Sanctions.

8.08 Maintenance of Properties, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its assets and properties, necessary or useful in the conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from

casualty or condemnation excepted and except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

8.09 Licenses. The Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

8.10 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.04**. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.11 Further Assurances.

(a) Subject to **clauses (b)** and **(c)** below:

(i) the Borrower will take such action from time to time as shall reasonably be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement and the Security Agreement; and

(ii) without limiting the generality of the foregoing, the Borrower will take such action from time to time (including delivering shares of stock together with undated transfer powers executed in blank, applicable control agreements and other instruments) as shall be reasonably requested by the Administrative Agent to create, in favor of the Secured Parties, perfected security interests and Liens in substantially all of the personal property (other than Excluded Assets (as defined in the Security Agreement)) of the Borrower as collateral security for the Obligations; provided that any such security interest or Lien shall be subject to the relevant requirements of the Security Documents; provided, further that, without limiting the right of the Administrative Agent to require a Lien or security interest in any newly acquired or created Subsidiary or asset, upon the prior written request of the Borrower, the Borrower and the Administrative Agent shall consult, in good faith, as to whether the cost of obtaining a Lien or security interest thereon would be unreasonably excessive relative to the benefit thereof.

(b) **CFCs, etc**. Any term or provision of this **Section 8.11** to the contrary notwithstanding, the Borrower shall not be required to pledge (or cause to be pledged) to the Administrative Agent, for the benefit of the Secured Parties, Equity Interests of any Subsidiary representing, in the aggregate, more than sixty-five percent (65%) of the Equity Interests of any CFC or CFC Holding Company; provided, that the above restrictions shall apply only to the extent the Borrower reasonably determines (after consultation with the Administrative Agent) that the failure to impose such restrictions could reasonably be expected to generate a current or future income inclusion, or other adverse tax consequence, to the Borrower or any of its Subsidiaries (as determined in good faith from time to time).

(c) **Limitations on Certain Obligations**. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Borrower shall not be required to

enter into or obtain any mortgage, deed of trust, leasehold mortgage or any similar agreement in respect to any fee interest or leasehold interest in real property.

8.12 Termination of Non-Permitted Liens. In the event that the Borrower shall become aware of, or be notified by the Administrative Agent or any Lender of the existence of, any outstanding Lien against any assets or property of the Borrower or any of its Private Subsidiaries, which Lien is not a Permitted Lien, the Borrower shall use its commercially reasonable efforts to promptly terminate or cause the termination of such Lien.

8.13 Board Materials; Oaktree Lender Board Observer.

(a) The Borrower shall deliver to the Administrative Agent copies of any agenda and other written materials provided to the board of directors (or any committee thereof) of the Borrower prior to any meeting of the board of directors (or such committee thereof), at or promptly after such materials are furnished to the members of the board of directors (or such committee thereof), (b) copies of all minutes of meetings of the board of directors (or any committee thereof) of the Borrower at or promptly after such minutes are furnished to the members of the board of directors (or such committee thereof), (c) copies of all material written consents duly passed by the board of directors (or any committee thereof) of the Borrower and (d) promptly upon presentation of any regular periodic materials to the board of directors (or any committee thereof) of the Borrower reporting on the current, past or future financial performance and business and operations of the Borrower or any of its Subsidiaries (which shall include, among other things, updates with respect to material events relating to other Material Agreements), copies of such materials shall be delivered to the Administrative Agent; provided that any such material may be redacted by the Borrower to exclude information that directly relates to either the Lenders in their capacities as debt lenders or future debt refinancing transactions.

(b) Upon the request of the Oaktree Lender, the Borrower shall permit a single designee of the Oaktree Lender to be an observer to the board of directors of the Borrower (the "**Board Observer**"). In such capacity, the Board Observer shall be entitled to attend all meetings of the board of directors of the Borrower. The Borrower shall ensure that the Board Observer is invited to each such meeting at the same time as each other member of the board of directors and that such Board Observer receives all board materials at the same time as each other member of the board of directors; provided that any such material may be redacted by the Borrower, and the Borrower may exclude the Board Observer from meetings of the board of directors, in order to prevent the Board Observer from receiving or learning information that directly relates to either the Oaktree Lender in its capacity as a debt lender or future debt refinancing transactions. If appointed, the Board Observer may resign or withdraw at any time, or, at the request of the Oaktree Lender, be replaced by a designee of the Oaktree Lender.

8.14 ERISA Compliance. The Borrower shall comply, and shall cause each of its Subsidiaries to comply, with the provisions of ERISA with respect to any Plans to which the Borrower or such Subsidiary is a party as an employer in all material respects.

8.15 Cash Management. The Borrower shall:

(a) maintain at all times an aggregate amount of cash of the Borrower equal to the Minimum Liquidity Amount in deposit accounts, disbursement accounts, investment accounts (and other similar accounts) and lockboxes with a bank or financial institution within the U.S. that has executed and delivered to the Administrative Agent an account control agreement, in form and substance reasonably acceptable to the Administrative Agent (each such deposit account, disbursement account, investment account (or similar account) and lockbox, a "***Controlled Account***"); each such Controlled Account shall be a cash collateral account, with all cash, checks and other similar items of payment in such account securing payment of the Obligations, and the Borrower shall have granted a Lien to the Administrative Agent, for the benefit of the Secured Parties, over such Controlled Accounts; and

(b) deposit promptly, and in any event no later than five (5) Business Days after the date of receipt thereof, all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all accounts and other rights and interests into Controlled Accounts.

8.16 Post-Closing Obligations.

(a) **Controlled Accounts.** Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion) (the "**Account Control Agreement Completion Date**"), the Administrative Agent shall have received evidence that (i) all deposit accounts, lockboxes, disbursement accounts, investment accounts or other similar accounts of the Borrower located within the U.S. are Controlled Accounts and (ii) such Controlled Accounts are subject to one or more account control agreements, in favor of, and satisfactory in form and substance to, the Administrative Agent that (A) ensures, to the extent necessary under applicable law, the perfection of a first priority security interest in favor of the Administrative Agent on such Controlled Account, (B) provides that, upon written notice from the Administrative Agent, such bank or financial institution shall comply with instructions originated by the Administrative Agent directing disposition of the funds in such Controlled Account without further consent by the Borrower, and (C) may not be terminated without the prior written consent of the Administrative Agent.

(b) **Financial Covenant Compliance**. On the Account Control Agreement Completion Date, the Administrative Agent shall have received written evidence reasonably satisfactory to it that, as of the Account Control Agreement Completion Date, the Borrower is in compliance with **Section 10.01** and **Section 8.15(a)**.

(c) **Insurance**. Within thirty (30) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), all such insurance policies required to be maintained by the Borrower pursuant to the Loan Documents shall name the Administrative Agent (for its benefit and the benefit of the Lenders) loss payee or additional insured, as applicable, and provide that no cancellation of the policies will be made without at least ten (10) days prior written notice to the Administrative Agent and the Administrative Agent shall have received certified copies of such insurance policies (or binders in respect thereof).

(d) **Payoff of Venture Debt**. The Venture Debt (other than contingent obligations (including indemnification obligations) that by their terms are to survive the termination of the relevant loan documentation and debt instruments evidencing the Venture Debt) shall be repaid or satisfied and discharged, and in connection therewith all guarantees and liens shall have been released, as soon as permitted under the terms thereof, and in no event later than September 29, 2020. The Borrower shall provide evidence of the payoff of the Venture Debt to the Administrative Agent, in form and substance satisfactory to the Administrative Agent, promptly after the repayment thereof.

(e) **Stockholder Rights and Other Waivers**. Within sixty (60) days following the Closing Date (or such longer period of time as agreed by the Administrative Agent in its sole discretion), the Administrative Agent shall have received evidence of Borrower's receipt of (i) the waiver by its Subsidiaries and/or the requisite stockholders of its Subsidiaries of any option, right of first refusal, or rights under any stockholders or similar agreement that would prohibit, impair, delay or otherwise affect the pledge of the Pledged Collateral under the Security Agreement, the sale or disposition thereof pursuant thereto or the exercise by the Administrative Agent of rights and remedies thereunder and (ii) the waiver by Alexion Pharmaceuticals, Inc. of the restrictions set forth in Section 9.7 of the Amended and Restated Development, Option and Stock Purchase Agreement (the "***DOSPA***"), dated as of December 31, 2019, by and among Alexion Pharmaceuticals, Inc., Caelum Biosciences, Inc., the Sellers (as defined therein) and the Borrower, in substantially the form agreed to between the Administrative Agent and the Borrower prior to the Closing Date.

SECTION 9.
NEGATIVE COVENANTS

The Borrower covenants and agrees with the Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made), including the Prepayment Fee, if applicable, have been indefeasibly paid in full in cash:

9.01 Indebtedness. The Borrower will not, and will not permit any of its Private Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) the Obligations;

(b) Indebtedness existing on the date hereof and set forth on **Schedule 7.13(a)** and Permitted Refinancings thereof;

(c) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of the Borrower's or such Subsidiary's business in accordance with customary terms and paid within the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(d) Indebtedness consisting of guarantees resulting from the endorsement of negotiable instruments for collection in the ordinary course of business;

(e) Indebtedness in respect of working capital facilities of the Borrower (which Indebtedness is secured by accounts receivable of JMC) in an aggregate outstanding principal amount not to exceed $7,500,000 (or the Equivalent Amount in other currencies) and an all-in-yield not to exceed at any time 7% per annum (provided that, if the interest rate for such Indebtedness is a floating rate, the 7% limitation shall not be deemed to be exceeded solely as a result of an increase in the applicable benchmark rate or the application of the benchmark rate floor, if any, set forth in the documentation governing such Indebtedness, in each case, following the incurrence of such Indebtedness); provided that the documentation governing such Indebtedness shall be in form and substance reasonably satisfactory to the Administrative Agent in its sole discretion;

(f) Indebtedness of any Subsidiary permitted under Section 9.05(f);

(g) other Indebtedness in an aggregate outstanding principal amount not to exceed $5,000,000 (or the Equivalent Amount in other currencies).

9.02 Liens. The Borrower will not, and will not permit any of its Private Subsidiaries to, create, incur, assume or permit to exist any Lien on any property now owned by it or such Private Subsidiary, except:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of the Borrower or any of its Subsidiaries existing on the date hereof and set forth on **Schedule 7.13(b)** and renewals and extensions thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien; provided that (i) no such Lien (including any renewal or extension thereof) shall extend to any other property or asset of the Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and renewals, extensions and replacements thereof in connection with Permitted Refinancings of the Indebtedness being secured by such Lien that do not increase the outstanding principal amount thereof;

(c) Liens imposed by any Law arising in the ordinary course of business, including (but not limited to) carriers', warehousemen's, landlords', and mechanics' liens, liens relating to leasehold improvements and other similar Liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property subject to such Liens and for which adequate reserves have been made if required in accordance with GAAP;

(d) pledges or deposits made in the Ordinary Course in connection with bids, contract leases, appeal bonds, workers' compensation, unemployment insurance or other similar social security legislation;

(e) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(f) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by any Law and Liens consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Borrower or any of its Subsidiaries; and

(g) with respect to any real property, (i) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to all applicable Laws; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in any Law, which, in the aggregate for **clauses (i)**, **(ii)** and **(iii)**, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Borrower or its Subsidiaries;

(h) bankers liens, rights of setoff and similar Liens incurred on deposits made in the Ordinary Course;

(i) Liens on accounts receivable of JMC securing Indebtedness permitted under Section 9.01(e);

(j) Any judgment lien or lien arising from decrees or attachments not constituting an Event of Default;

(k) Liens arising from precautionary UCC financing statement filings regarding operating leases of personal property and consignment arrangements entered into in the Ordinary Course in an Arm's-Length Transaction;

(l) Liens in connection with the financing of insurance premiums; and

(m) other Liens, which secure obligations in an aggregate amount not to exceed $2,500,000 (or the Equivalent Amount in other currencies) at any time outstanding.

Notwithstanding anything in this Agreement to the contrary, the Borrower shall not create, incur, assume or permit to exist any Lien on any Equity Interests owned by it in any other Person, except such as are set forth on **Schedule 9.02**.

9.03 Fundamental Changes and Acquisitions . The Borrower will not, and will not permit any of its Private Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation, (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (iii) sell or issue any Equity Interests (other than common Equity Interests), or (iv) other than

Permitted Acquisitions, make any Acquisition or otherwise acquire any business or substantially all the property from, or Equity Interests of, or be a party to any Acquisition of, any Person, except:

(a) the merger, amalgamation or consolidation of (i) any Subsidiary with or into the Borrower; provided that with respect to any such transaction involving the Borrower, the Borrower must be the surviving or successor entity of such transaction or (ii) any Subsidiary with or into any other Subsidiary;

(b) the sale, lease, transfer or other disposition by any Subsidiary of any or all of its property (upon voluntary liquidation or otherwise) to the Borrower or any other Subsidiary;

(c) the sale, transfer or other disposition of the Equity Interests of any Subsidiary (1) to the Borrower, and (2) in accordance with **Section 9.09**;

(d) the sale or issuance of (i) preferred Equity Interests by the Borrower in an amount in the aggregate no greater than $30,000,000 *minus* the amount of preferred Equity Interests issued pursuant to subclause (ii) and (ii) preferred Equity Interests in connection with the Cyprium Financing in an amount no greater than $8,000,000; and

(e) in connection with any Monetization Event.

9.04 Lines of Business. The Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than the business engaged in on the date hereof by such Persons or a business reasonably related, incidental or complementary thereto or reasonable extensions thereof.

9.05 Investments. The Borrower will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments outstanding on the date hereof and identified in **Schedule 9.05** and any renewals, amendments and replacements thereof that do not increase the amount thereof of any such Investment or require that any additional Investment be made (unless otherwise permitted hereunder);

(b) operating deposit accounts with banks (or similar deposit-taking institutions) that, in the case maintained by the Borrower, are Controlled Accounts;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the Ordinary Course in an Arm's-Length Transaction;

(d) Permitted Cash Equivalent Investments that, in the case maintained by the Borrower, are in Controlled Accounts;

(e) Investments by the Borrower in connection with a Permitted Acquisition;

(f) Investments (i) by the Borrower (x) in any Subsidiary in the form of advances, loans or other extensions of credit, in each case, in the ordinary course of business consistent with past practice, (y) in any Public Subsidiary in the form of capital contributions, or (z) in any Private Subsidiary in the form of capital contributions in an amount not to exceed $20,000,000 in the aggregate; provided, in each case, that at the time of any such Investment, (A) the Borrower shall have, on a *Pro Forma* Basis and after giving effect to any cash interest payments on Indebtedness and dividend payments on preferred equity payable by the Borrower in the ninety (90) days following such Investment, at least $25,000,000 in cash in one or more Controlled Accounts that are free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent and (B) such Investments shall be pledged to the Administrative Agent, and provided, further, that, notwithstanding any of the foregoing or any other provision hereof, any Indebtedness owed to the Borrower by any Subsidiary (or accrued Management Services Agreement fees owed to the Borrower by any Subsidiary) that is incurred in compliance with this Agreement may be subsequently converted into such Subsidiary's common stock in connection with a bona fide, third party common equity financing of such Subsidiary, or (ii) by a Subsidiary in any other Subsidiary;

(g) Investments consisting of prepaid expenses, negotiable instruments held for collection or deposit, security deposits with utilities, landlords and other like Persons and deposits in connection with workers' compensation and similar deposits, in each case, made in the Ordinary Course;

(h) employee loans, travel advances and guarantees in accordance with the Borrower's usual and customary practices with respect thereto (if permitted by applicable Laws) which in the aggregate shall not exceed $1,000,000 outstanding at any time (or the Equivalent Amount in other currencies);

(i) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(j) the increase in value of any Investment otherwise permitted pursuant to this **Section 9.05**;

(k) other Investments (other than Investments by the Borrower in any Subsidiary) in an aggregate amount not to exceed $2,500,000 (or the Equivalent Amount in other currencies);

(l) Investments permitted under **Section 9.03**; and

(m) Investments of any Person in existence at the time such Person becomes a Subsidiary; provided such Investment was not made in connection with or in anticipation of such Person becoming a Subsidiary and any modification, replacement, renewal or extension thereof.

9.06 Restricted Payments. The Borrower will not, and will not permit any of its Private Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment; provided that the following Restricted Payments shall be permitted so long as no Event

of Default has occurred and is continuing or could reasonably be expected to occur or result from such Restricted Payment:

(a) dividends with respect to the Borrower's Equity Interests payable solely in shares of its Qualified Equity Interests (or the equivalent thereof);

(b) the Borrower's purchase, redemption, retirement, or other acquisition of shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests;

(c) dividends or other distributions paid by any Subsidiary to the Borrower and dividends paid by any Subsidiary ratably (or less than ratably) to each other holder of Equity Interests of such Subsidiary (including, without limitation, as part of, or immediately following, a Monetization Event);

(d) any purchase, redemption, retirement or other acquisition of Equity Interests of the Borrower held by officers, directors and employees or former officers, directors or employees (or their transferees, estates, or beneficiaries under their estates) of Borrower and its Subsidiaries not to exceed $1,000,000 (or the Equivalent Amount in other currencies) in any fiscal year;

(e) cashless exercises of options and warrants;

(f) cash payments made by the Borrower to redeem, purchase, repurchase or retire its obligations under warrants issued by it (in the nature of cash payments in lieu of fractional shares) in accordance with the terms thereof;

(g) dividends with respect to shares of the Borrower's 9.375% Series A Cumulative Redeemable Perpetual Preferred Stock outstanding as of the date hereof pursuant to the terms thereof as in effect as of the date hereof;

(h) dividends paid in cash with respect to preferred Equity Interests issued pursuant to **Section 9.03(d)**, in an aggregate amount not to exceed $2,500,000 in any fiscal year;

(i) cash payments made to redeem, purchase, repurchase or retire any preferred Equity Interest in Cyprium issued pursuant to **Section 9.03(d)**, provided that, after giving effect to any such payment, the Borrower shall have on a *Pro Forma* Basis at least $25,000,000 in cash in one or more Controlled Accounts that are free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent; and

(j) other Restricted Payments in an aggregate amount not to exceed $1,000,000 (or the Equivalent Amount in other currencies) in any fiscal year.

Notwithstanding anything in this Agreement to the contrary, (i) the Borrower shall not declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment in the form of Equity Interests owned by the Borrower in any other Person, (ii) any dividends paid in cash with respect to preferred Equity Interests issued pursuant to **Section 9.03(d)** shall only be made

pursuant to **clause (h)** above (and not any other clause of this **Section 9.06**) and (iii) any cash payments made to redeem, purchase, repurchase or retire any Equity Interest in Cyprium issued pursuant to the Cyprium Financing shall only be made pursuant to **clause (i)** above (and not any other clause of this **Section 9.06**).

9.07 Payments of Indebtedness . The Borrower will not, and will not permit any of its Private Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, and (ii) scheduled payments of other Indebtedness to the extent permitted to be incurred pursuant to **Section 9.01**.

9.08 Change in Fiscal Year. The Borrower will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of the Borrower.

9.09 Sales of Assets, Etc. The Borrower will not, and will not permit any of its Private Subsidiaries to, sell, lease or sublease (as lessor or sub-lessor), sale and leaseback, assign, convey, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its businesses, assets or property of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired (including accounts receivable and Equity Interests of Subsidiaries), or forgive, release or compromise any amount owed to the Borrower or any of its Subsidiaries, in each case, in one transaction or series of transactions (any thereof, an "***Asset Sale***"), except:

(a) sales, transfers and other dispositions of receivables in connection with the compromise, settlement or collection thereof in the Ordinary Course;

(b) sales of inventory or licenses of Intellectual Property in the Ordinary Course in an Arm's-Length Transaction;

(c) the forgiveness, release or compromise of any amount owed to the Borrower or any of its Subsidiaries in the Ordinary Course;

(d) dispositions (including by way of abandonment or cancellation) of any equipment and other tangible property that is obsolete or worn out or no longer used or useful in the Business disposed of in the Ordinary Course in an Arm's-Length Transaction;

(e) dispositions resulting from Casualty Events;

(f) in connection with any transaction permitted under **Section 9.03** or **9.05**;

(g) dispositions identified in **Schedule 9.09(a)**;

(h) any Qualifying [*] Sale or Qualifying Avenue Sale; and

(i) so long as no Event of Default has occurred and is continuing, (1) other Asset Sales with a fair market value not in excess of $5,000,000 (or the Equivalent Amount in other

currencies) in the aggregate in any fiscal year, and (2) other Asset Sales by Borrower with a fair market value in excess of $5,000,000 (or the Equivalent Amount in other currencies) in the aggregate in any fiscal year and as to which Borrower has complied with the mandatory prepayment provisions of **Section 3.03(b)**, so long as the consideration for any such Asset Sale is at least equal to the fair market value of the assets being sold and the Borrower has sufficient cash on hand to comply with the mandatory prepayment provisions of **Section 3.03(b)**.

Notwithstanding anything in this Agreement to the contrary, the Borrower shall not sell or otherwise dispose of any Equity Interests owned by it in another Person unless the consideration for such sale or disposition is at least equal to the fair market value of such Equity Interests being sold.

9.10 Transactions with Affiliates . The Borrower will not, and will not permit any of its Private Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction to sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, unless such arrangement or transaction (i) is an Arm's-Length Transaction that is of the kind which would be entered into by a prudent Person in the position of the Borrower with another Person that is not an Affiliate, (ii) is permitted under **Section 9.01, 9.03, 9.05, 9.06, 9.07** or **9.09** , (iii) constitutes customary compensation and indemnification of, and other employment arrangements with, directors, officers, and employees of the Borrower or its Subsidiaries in the ordinary course of business, (iv) constitutes payment of customary fees, reimbursement of expenses, and payment of indemnification to officers and directors and customary payment of insurance premiums on behalf of officers and directors by the Borrower or its Subsidiaries, in each case, in the ordinary course of business or (v) are the transactions set forth on **Schedule 7.18**. Notwithstanding the foregoing or any other provision hereof, the Borrower may, without the Lenders' or Administrative Agent's prior written consent, but with notice to the Administrative Agent, terminate its Founders Agreement or Management Services Agreement with any Private Subsidiary in connection with the offering or potential offering of common stock by such Private Subsidiary.

9.11 Restrictive Agreements . The Borrower will not, and will not permit any of its Private Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by applicable Laws or by the Loan Documents, (ii) Restrictive Agreements listed on **Schedule 7.15** or (iii) limitations associated with Permitted Liens.

9.12 Modifications and Terminations of Organic Documents . The Borrower will not, and will not permit any of its Private Subsidiaries to, waive, amend, terminate, replace or otherwise modify any term or provision of any Organic Document in any way or manner materially adverse to the interests of the Lenders in their capacities as Lenders hereunder.

9.13 Sales and Leasebacks . The Borrower will not, and will not permit any of its Private Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which such Person has sold or transferred or is to

sell or transfer to any other Person and (ii) which the Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.14 Hazardous Material. The Borrower will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. If the Administrative Agent at any time has a reasonable basis to believe that there is any material violation by the Borrower of any Environmental Law or the presence or release of any Hazardous Material which could result in material Environmental Liability, the Borrower shall, and shall cause each Subsidiary to, (i) cause the performance of such environmental audits and testing, and preparation of such environmental reports, at the Borrower's sole cost and expense, as the Administrative Agent may from time to time reasonably request with respect to any parcel of real property subject to a Collateral Document that is a mortgage, deed of trust or similar instrument, which shall be conducted by Persons reasonably acceptable to the Administrative Agent and shall be in form and substance reasonably acceptable to the Administrative Agent, and (ii) permit the Administrative Agent or its representatives to have access to all such real property for the purpose of conducting, at the Borrower's sole cost and expense, such environmental audits and testing as the Administrative Agent shall reasonably deem appropriate.

9.15 Accounting Changes. The Borrower will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.16 Compliance with ERISA . No ERISA Affiliate shall cause or suffer to exist (i) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (ii) any other ERISA Event that could, in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan.

9.17 Restriction of Amendments to Certain Documents. The Borrower will not, nor will it permit any of its Private Subsidiaries to, amend or otherwise modify, or waive any rights under, any other Contract if, in any case, such amendment, modification or waiver could reasonably be expected to be materially adverse to, a Lien on any Collateral securing the Obligations.

9.18 Sanctions; Anti-Corruption Use of Proceeds.

(a) Neither the Borrower or any of its Subsidiaries or their respective agents shall (i) conduct any business or engage in any transaction or dealing with any Sanctioned Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person; (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to any Sanctions; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or

avoiding, or attempts to violate, any of the prohibitions set forth any Sanctions, the Patriot Act or any other Anti-Terrorism Law.

(b) The Borrower will not, directly or, to the knowledge of the Borrower, indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable anti-corruption Law, or (ii) (A) for the purpose of funding any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of country- or territory-wide Sanctions, in violation of Sanctions or (B) in any other manner that would result in a violation of Sanctions by any party to this Agreement.

9.19 Closing Date Equity Interests. The Borrower will not, at any time, cease to directly own the Equity Interests that it owns as of the date hereof as set forth on **Schedule 9.19** (the "**Closing Date Equity Interests**"); provided, however, that the Borrower may sell or otherwise dispose of such Closing Date Equity Interests in a transaction permitted under **Section 9.09** so long as the consideration for such sale or disposition is at least equal to the fair market value of the Closing Date Equity Interests being sold and the Borrower has sufficient cash on hand to comply with the mandatory prepayment provisions of **Section 3.03**.

9.20 Margin Stock. The Borrower shall not, nor shall it permit any of its Subsidiaries to, purchase or carry Margin Stock, with the exception of the Equity Interests held by the Borrower in Avenue Therapeutics, Inc., Checkpoint Therapeutics, Inc., Mustang Bio, Inc. or any Private Subsidiary that becomes a Public Subsidiary from time to time.

SECTION 10.
FINANCIAL COVENANTS

10.01 Minimum Liquidity. The Borrower shall at all times maintain the Minimum Liquidity Amount in cash and, after the Account Control Agreement Completion Date, in one or more Controlled Accounts that is free and clear of all Liens, other than Liens granted hereunder in favor of the Administrative Agent.

10.02 Minimum Revenue . Beginning with the fiscal quarter of the Borrower ending on March 31, 2021, as of the last day of each fiscal quarter of the Borrower, and for so long as JMC is a Subsidiary of Borrower, the Revenue of JMC for the twelve (12) consecutive month period ending on the last day of such fiscal quarter, shall not be less than the corresponding amount set forth opposite such fiscal quarter on Schedule 3 (the "***Minimum Revenue Covenant***").

SECTION 11.
EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an "***Event of Default***":

(a) **Principal or Interest Payment Default**. The Borrower shall fail to pay any principal of or interest on the Loan, when and as the same shall become due and payable, whether at the due date thereof, at a date fixed for prepayment thereof or otherwise.

(b) **Other Payment Defaults**. The Borrower shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) **Representations and Warranties** . Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier.

(d) **Certain Covenants**. The Borrower shall fail to observe or perform any covenant, condition or agreement contained in **8.02**, **8.03** (with respect to the Borrower's existence), **8.10**, **8.11**, **8.13**, **8.15**, **8.16**, **Section 9** or **Section 10**.

(e) **Other Covenants**. The Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a)** , **(b)** or **(d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, such failure shall continue unremedied for a period of thirty (30) or more days.

(f) **Payment Default on Other Indebtedness**. The Borrower or any of its Private Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness.

(g) **Other Defaults on Other Indebtedness** . (i) Any material breach of, or "event of default" or similar event under, any Contract governing any Material Indebtedness shall occur and such breach or "event of default" or similar event shall continue unremedied, uncured or unwaived after the expiration of any grace or cure period thereunder, or (ii) any event or condition occurs (x) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (y) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment,

repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this **Section 11.01(g)** shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness.

(h) **Insolvency, Bankruptcy, Etc**.

(i) The Borrower or any of its Material Subsidiaries becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors.

(ii) The Borrower or any of its Material Subsidiaries commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so).

(iii) The Borrower or any of its Material Subsidiaries institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding.

(iv) The Borrower or any of its Material Subsidiaries applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property.

(v) Any petition is filed, application made or other proceeding instituted against or in respect of the Borrower or any of its Material Subsidiaries:

(A) seeking to adjudicate it as insolvent;

(B) seeking a receiving order against it;

(C) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any Law, whether U.S. or non-U.S., now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(D) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator,

custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property,

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of forty-five (45) days after the institution thereof; provided that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against the Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; provided, further, that if the Borrower or Material Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply.

(vi) Any other event occurs which, under the Laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in this **Section 11.01(h)**.

(i) **Judgments**. One or more judgments for the payment of money in an aggregate amount in excess of $5,000,000 (or the Equivalent Amount in other currencies) (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) shall be rendered against the Borrower or any of its Subsidiaries or any combination thereof and the same shall remain undischarged for a period of forty-five (45) calendar days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(j) **ERISA**. An ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount in excess of $5,000,000 (or the Equivalent Amount in other currencies).

(k) **Change of Control**. A Change of Control shall have occurred.

(l) **[Reserved]**.

(m) **Impairment of Security, Etc.** If any of the following events occurs: (i) Any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens) except due to the action or inaction of the Administrative Agent, (ii) except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason cease to be in full force and effect or (iii) the Borrower shall, directly or indirectly, contest in any manner such effectiveness, validity, binding nature or enforceability of any such Lien or any Loan Document.

11.02 Remedies.

(a) **Defaults Other Than Bankruptcy Defaults**. Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**), and at any time thereafter during the continuance of such event, the Administrative Agent may, by notice to the Borrower, declare the Loans then outstanding to be due and payable

in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations, including any applicable Prepayment Fee, shall become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

(b) **Bankruptcy Defaults**. In case of an Event of Default described in **Section 11.01(h)**, the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, including any applicable Prepayment Fee, shall automatically become due and payable immediately (in the case of the Loans, at the Prepayment Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

11.03 [Reserved].

11.04 Minimum Revenue Covenant Cure.

(a) Notwithstanding anything to the contrary contained in **Section 11.02**, in the event the Borrower fails to comply with the requirements of the Minimum Revenue Covenant, during the period from the end of the relevant fiscal quarter until the expiration of the tenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)**, the Borrower shall have the right to make a Revenue Cure Payment (the "***Minimum Revenue Cure Right***"); provided, that the Borrower may exercise the Minimum Revenue Cure Right on a maximum of two (2) occasions while the Obligations remain outstanding. Upon the Administrative Agent's receipt of the applicable Revenue Cure Payment, the Borrower shall then be in compliance with the requirements of the Minimum Revenue Covenant and the Borrower shall be deemed to have satisfied the requirements of the Minimum Revenue Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Revenue Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement. Any Revenue Cure Payment shall be applied to the prepayment of the Loans.

(b) Upon the Administrative Agent's receipt of a notice from the Borrower that it intends to exercise the Minimum Revenue Cure Right (a "***Notice of Intent to Cure Revenue Covenant***"), until the tenth Business Day subsequent to the date the financial statements are required to be delivered pursuant to **Section 8.01(a)** or **8.01(b)** to which such Notice of Intent to Cure Revenue Covenant relates, neither the Administrative Agent nor any Lender shall exercise the right to accelerate payment of the Loans or terminate the Commitments and neither the Administrative Agent nor any other Lender shall exercise any right to foreclose on or take possession of the Collateral solely on the basis of an allegation of an Event of Default having occurred and being continuing under **Section 11.01(d)** due to failure by the Borrower to comply with the requirements of the Minimum Revenue Covenant for the applicable period but no Lender shall be required to extend any credit pursuant to its Commitment during such period. If within such ten Business Day period, the Oaktree Lender declines the exercise by the Borrower

of the Minimum Revenue Cure Right by written notice to the Administrative Agent and the Borrower to that effect, then the Borrower shall be deemed to have satisfied the requirements of the Minimum Revenue Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Minimum Revenue Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

11.05 Payment of Prepayment Fee and Specified Return Shortfall. Notwithstanding anything in this Agreement to the contrary, the Prepayment Fee and Specified Return Shortfall shall automatically be due and payable at any time the Obligations become due and payable prior to the Maturity Date in accordance with the terms hereof as though such Indebtedness was voluntarily prepaid and shall constitute part of the Obligations, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of notice to Borrower in accordance with **Section 11.02(a)**, or automatically, in accordance with **Section 11.02(b)**), by operation of law or otherwise (including, without limitation, on account of any bankruptcy filing), in view of the impracticability and extreme difficulty of ascertaining the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such acceleration, and by mutual agreement of the parties as to a reasonable estimation and calculation of the lost profits or damages of the Lenders as a result thereof. Any Prepayment Fee payable pursuant to this Agreement and Specified Return Shortfall payable pursuant to the Fee Letter shall be presumed to be the liquidated damages sustained by each Lender as the result of the early termination, acceleration or prepayment and the Borrower agrees that such Prepayment Fee and Specified Return Shortfall are reasonable under the circumstances currently existing. The Prepayment Fee and Specified Return Shortfall shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. THE BORROWER HEREBY WAIVES THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT FEE OR SPECIFIED RETURN SHORTFALL AND ANY DEFENSE TO PAYMENT, WHETHER SUCH DEFENSE MAY BE BASED IN PUBLIC POLICY, AMBIGUITY, OR OTHERWISE. The Borrower, the Administrative Agent and the Lenders acknowledge and agree that any Prepayment Fee and Specified Return Shortfall due and payable in accordance with this Agreement shall not constitute unmatured interest, whether under Section 5.02(b)(3) of the Bankruptcy Code or otherwise. The Borrower further acknowledges and agrees, and waives any argument to the contrary, that payment of such amount does not constitute a penalty or an otherwise unenforceable or invalid obligation. The Borrower expressly agrees that (i) the Prepayment Fee and Specified Return Shortfall are reasonable and is the product of an arm's-length transaction between sophisticated business people, ably represented by counsel, (ii) the Prepayment Fee and Specified Return Shortfall shall be payable notwithstanding the then prevailing market rates at the time payment is made, (iii) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Fee and Specified Return Shortfall, (iv) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this **Section 11.05**, (v) their agreement to pay the Prepayment Fee and Specified Return Shortfall is a material inducement to the Lenders to make the Loans, and (vi) the Prepayment Fee and Specified Return Shortfall represent a good faith, reasonable estimate and

calculation of the lost profits, losses or other damages of the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Lenders or profits lost by the Lenders as a result of such event.

SECTION 12.
THE ADMINISTRATIVE AGENT

12.01 Appointment and Duties. Subject in all cases to clause (c) below:

(a) **Appointment of the Administrative Agent**. Each of the Lenders hereby irrevocably appoints Oaktree Fund Administration, LLC (together with any successor Administrative Agent pursuant to **Section 12.09**) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from the Borrower or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto. Except as expressly set forth herein, the provisions of this **Section 12** are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any Affiliate thereof shall have rights as a third-party beneficiary of any such provisions.

(b) **Duties as Collateral and Disbursing Agent**. Without limiting the generality of **Section 12.01(a)** , the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of acquiring, holding, enforcing and perfecting all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Laws or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by the Borrower with, and cash and Permitted Cash Equivalents Investments held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for

purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties** . The Lenders and the Borrower hereby each acknowledge and agree that the Administrative Agent (i) has undertaken its role hereunder purely as an accommodation to the parties hereto and the Transactions, (ii) is receiving no compensation for undertaking such role and (iii) subject only to the notice provisions set forth in **Section 12.09** , may resign from such role at any time for any reason or no reason whatsoever. Without limiting the foregoing, the parties hereto further acknowledge and agree that under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature, notwithstanding the use of the defined term "the Administrative Agent", the terms "agent", "administrative agent" and "collateral agent" and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any duty or obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document (fiduciary or otherwise), in each case, regardless of whether a Default has occurred and is continuing, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in this **clause (c)**. Without in any way limiting the foregoing, the Administrative Agent shall not, except as expressly set forth in this Agreement and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

12.02 Binding Effect . Each Lender agrees that (i) any action taken by the Administrative Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

12.03 Use of Discretion.

(a) **No Action without Instructions**. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except (subject to **clause (b)** below) any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to written instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions**. Notwithstanding **Section 12.03(a)** or any other term or provision of this **Section 12** , the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Party thereof or (ii) that is, in the opinion of the Administrative Agent, in its sole and absolute discretion, contrary to any Loan Document, Law or the best interests of the Administrative Agent or any of its Affiliates or Related Parties, including, for the avoidance of doubt, any action that may be in violation of the automatic stay in connection with any Insolvency Proceeding.

12.04 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). The Administrative Agent and any such Person may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Any such Person and its Related Parties shall benefit from this **Section 12** to the extent provided by the Administrative Agent; provided, however, that the exculpatory provisions of this **Section 12** shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and of any such sub-agent, and shall apply to their respective activities in connection with their activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

12.05 Reliance and Liability.

(a) the Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Parties and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, the Borrower) and (ii) rely and act upon any notice, request, certificate, consent, statement, instrument, document or other writing (including and electronic message, Internet or intranet website posting or other distribution), telephone message or conversation or oral conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan.

(b) Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and the Borrower hereby waive and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the

fraudulent conduct or behavior of the Administrative Agent or, as the case may be, such Related Party (each as determined in a final, non-appealable judgment or order by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of, or with the consent of, the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided in **Section 13.04**) or for the actions or omissions of any of its Related Parties selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the (a) validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or (b) due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for, and shall not have any duty to ascertain or inquire into, any statement, document, information, certificate, report, representation or warranty made or furnished by or on behalf of any Related Party, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents, including, for the avoidance of doubt, the satisfaction of any condition set forth in **Section 6** of this Agreement or elsewhere herein (other than to confirm receipt of items expressly required to be delivered to the Administrative Agent); and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document or whether any condition set forth in any Loan Document is satisfied or waived, including, without limiting the generality of the foregoing, as to the financial condition of the Borrower or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled "notice of default" (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in **clauses (i)** through **(iv)** above, each Lender and the Borrower hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent based thereon.

12.06 Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, accept

deposits from, act as the financial advisor for or in any other advisory capacity for, or engage in any kind of business with, the Borrower or Affiliate thereof as though it were not acting as the Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Majority Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

12.07 Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Parties or upon any document solely or in part because such document was transmitted by the Administrative Agent or any of its Related Parties, conducted its own independent investigation of the financial condition and affairs of the Borrower and has made and continues to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.08 Expenses; Indemnities.

(a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Parties (to the extent not reimbursed by the Borrower) promptly upon demand for such Lender's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, the Borrower) that may be incurred by the Administrative Agent or any of its Related Parties in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent (or any sub-agent thereof) and any Related Parties of the Administrative Agent (or any such sub-agent) (to the extent not indefeasibly paid by the Borrower), from and against such Lender's aggregate Proportionate Share of the liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Related Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) under or with respect to any of the foregoing; provided that no Lender shall be liable to the Administrative Agent (or any sub-agent thereof) or any Related Parties of the Administrative Agent (or any such sub-agent) to the extent such liability has

resulted primarily from the gross negligence or willful misconduct of the Administrative Agent (or any sub-agent thereof) or, as the case may be, such Related Parties of the Administrative Agent (or any sub-agent thereof), as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

12.09 Resignation of the Administrative Agent.

(a) At any time upon not less than 30 days' prior written notice, the Administrative Agent may resign as the "the Administrative Agent" hereunder, in whole or in part (in the sole and absolute discretion of the Administrative Agent). If the Administrative Agent delivers any such notice, the Majority Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be (i) a Lender holding at least thirty percent (30%) of the outstanding principal amount of the Loans or any Affiliate thereof or (ii) any other financial institution consented to by the Borrower (provided that the consent of the Borrower shall not be required to the extent an Event of Default has occurred and is continuing). If a successor Administrative Agent has not been appointed on or before the effectiveness of the resignation of the resigning Administrative Agent (or such earlier date as shall be agreed by the Majority Lenders) (the "***Resignation Effective Date***"), then the resigning Administrative Agent may (but shall not be obligated to), on behalf of the Lenders, appoint any Person reasonably chosen by it as the successor Administrative Agent, notwithstanding whether the Majority Lenders have appointed a successor or the Borrower has consented to such successor. Whether or not a successor has been appointed, such resignation shall become effective on the Resignation Effective Date.

(b) Effective from the Resignation Effective Date, (i) the resigning Administrative Agent shall be discharged from its duties and obligations under the Loan Documents to the extent set forth in the applicable resignation notice, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the resigning Administrative Agent and its Related Parties shall no longer have the benefit of any provision of any Loan Document other than with respect to (x) any actions taken or omitted to be taken while such resigning Administrative Agent was, or because the Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents or (y) any continuing duties such resigning Administrative Agent will continue to perform, and (iv) subject to its rights under **Section 12.04**, the resigning Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the resigning Administrative Agent under the Loan Documents.

12.10 Release of Collateral or Guarantors . Each Lender hereby consents to the release and hereby directs the Administrative Agent to release any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by the Borrower in an Asset Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), and (ii) all of the Collateral, upon (x) termination of the Commitments and (y) payment

and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable (other than Warrant Obligations and inchoate indemnification and expense reimbursement obligations for which no claim has been made).

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guarantees and Liens when and as directed in this **Section 12.10**.

12.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this **Section 12** and the decisions and actions of the Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided that, notwithstanding the foregoing, (i) such Secured Party shall be bound by **Section 12.08** only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of pro rata share or similar concept, (ii) each of the Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (iii) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

12.12 Agent May File Proofs of Claim. In case of the pendency of any Insolvency Proceeding or any other judicial proceeding relating to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention or such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under **Section 13.03**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due to the Administrative Agent under **Section 13.03**.

SECTION 13.
MISCELLANEOUS

13.01 No Waiver. No failure on the part of the Administrative Agent or the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

13.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) or in the other Loan Documents shall be given or made in writing (including by telecopy or email) delivered, if to the Borrower, the Administrative Agent or any Lender, to its address specified on the signature pages hereto or at such other address as shall be designated by such party in a written notice to the other parties. Except as otherwise provided in this Agreement or therein, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication).

13.03 Expenses, Indemnification, Etc.

(a) **Expenses** . The Borrower agrees to pay or reimburse (i) the Administrative Agent and the Lenders and their respective Affiliates for all of their reasonable and documented out of pocket costs and expenses (including the reasonable and documented out of pocket fees, expenses, charges and disbursements of Sullivan & Cromwell LLP, counsel to the Lenders, the fees (if necessary) of local counsel for both of the Administrative Agent and the Lenders in each relevant material jurisdiction, and any sales, goods and services or other similar taxes applicable thereto, and reasonable and documented printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs (including, without limitation, costs of the administration of this Agreement and the other Loan Documents) and (z) the negotiation or

preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) each of the Administrative Agent and the Lenders for all of their documented out of pocket costs and expenses (including the fees and expenses of any legal counsel) in connection with the enforcement, exercise or protection of their rights in connection with this Agreement and the other Loan Documents, including their rights under this **Section 13.03**, or in connection with the Loans made hereunder, including such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) **Indemnification**. The Borrower hereby agrees to indemnify the Administrative Agent (and any sub-agent thereof), the Lenders and their respective Affiliates, directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an "***Indemnified Party***") from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind including reasonable and documented out of pocket fees and disbursements of any counsel for each Indemnified Party, joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to (i) this Agreement or any of the other Loan Documents or the Transactions, (ii) any use made or proposed to be made with the proceeds of the Loans, (ii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, investigation, litigation or proceeding relating to any of the foregoing, whether based on contract, tort, or any other theory, whether or not such investigation, litigation or proceeding is brought by the Borrower, any of its Subsidiaries, shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct. The Borrower shall not assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. The Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a "***Borrower Party***". No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the Transactions or the actual or proposed use of the proceeds of the Loans. This Section shall not apply to Taxes other than Taxes relating to a non-Tax Claim or Loss governed by this **Section 13.03(b)**.

13.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement and any other Loan Document (except for the Warrant, which may be amended, waived or supplemented in accordance with the terms thereof) may be modified or supplemented only by an instrument in writing signed by the Borrower, the Administrative Agent and the Majority Lenders; provided that:

(a) any such modification or supplement that is disproportionately adverse to any Lender as compared to other Lenders or subjects any Lender to any additional obligation shall not be effective without the consent of such affected Lender;

(b) the consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement or any other Loan Document if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans or Commitment, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal (it being understood that the waiver of any prepayment of Loans shall not constitute an extension of any date fixed for payment of principal), interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans; provided, for the avoidance of doubt, that any waiver or amendment relating to an Event of Default or Default arising out of breach or prospective breach of the Minimum Revenue Covenant shall only require the consent of the Majority Lenders;

(ii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release all or substantially all of the Collateral subject thereto other than pursuant to the terms hereof or thereof; or

(iii) amend this **Section 13.04** or the definition of "Majority Lenders".

13.05 Successors and Assigns.

(a) **General**. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto or thereto and their respective successors and assigns permitted hereby or thereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder (except in connection with an event permitted under **Section 9.03**) without the prior written consent of the Administrative Agent. Any Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents (i) to an assignee in accordance with the provisions of **Section 13.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 13.05(e)**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 13.05(f)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 13.05(e)** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lender**. Any Lender may at any time assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of the Loans at the time owing to it) and the other Loan Documents; provided that (i) no such assignment shall be made to the Borrower, any Affiliate of the Borrower, any employees or directors of the Borrower at any time and (ii) no such assignment shall be made without the prior written consent of the Administrative Agent. The consent of the Borrower (such consent not to

be unreasonably withheld, conditioned or delayed) shall be required unless (x) a Default or Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to an Eligible Transferee; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received written notice thereof. Subject to the recording thereof by the Lender pursuant to **Section 13.05(d)**, from and after the recordation date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lender under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 13.03**. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this **Section 13.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 13.05(e)**. The parties to each such Assignment and Assumption shall execute and deliver to the Administrative Agent, for the Administrative Agent's acceptance, an Assignment and Assumption, together with (i) a processing and recordation fee of $3,500, and (ii) all "know your customer" documentation and Patriot Act documentation requested by the Administrative Agent.

(c) **Amendments to Loan Documents**. Each of the Administrative Agent, the Lenders and the Borrower agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Administrative Agent, the Lenders and the Borrower, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 13.05**.

(d) **Register**. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "***Register***"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice.

(e) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower, sell participations to any Eligible Transferee (other than a natural person or the Borrower or any of its Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other

parties hereto for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection therewith. Any agreement or instrument pursuant to which any Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 13.05(f)**, the Borrower agrees that each Participant shall be entitled to the benefits of **Section 5.01** or **5.03** (subject to the requirements and limitations therein, including the requirements under **Section 5.03(f)** (it being understood that the documentation required under **Section 5.03(f)** shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.05(b)**; provided that such Participant (a) agrees to be subject to the provisions of **Section 5.04** as if it were an assignee under **Section 13.05(b)** and (b) shall not be entitled to receive any greater payment under **Section 5.01** or **5.03**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of **Section 5.04(b)** with respect to any Participant. To the extent permitted by Law, each Participant also shall be entitled to the benefits of **Section 4.03(a)** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) **Limitations on Rights of Participants**. A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **5.03** than such Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) **Certain Pledges**. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

13.06 Survival. The obligations of the Borrower under Sections **5.01**, **5.02**, **5.03**, **13.03**, **13.05**, **13.06**, **13.09**, **13.10**, **13.11**, **13.12**, **13.13** and **13.14** shall survive the repayment of the Obligations and the termination of the Commitments and, in the case of the Lenders' assignment of any interest in the Commitments or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a Borrowing Notice, herein or pursuant hereto shall survive the making of such representation and warranty.

13.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

13.08 Counterparts, Effectiveness. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission (in PDF format) shall be effective as delivery of a manually executed counterpart hereof. This Agreement shall become effective when counterparts hereof executed on behalf of the Borrower, the Administrative Agent and the Lender shall have been received by the Administrative Agent.

13.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York.

13.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction**. Each party hereby irremovably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or tort or otherwise, against such other party in any way relating to this Agreement or any Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) **Waiver of Venue, Etc**. Each party hereto irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such party is or may be subject, by suit upon judgment.

13.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

13.12 Waiver of Immunity. To the extent that the Borrower may be or become entitled to claim for itself or its property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

13.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including any confidentiality (or similar) agreements. THE BORROWER ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

13.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by any Law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

13.15 No Fiduciary Relationship. The Borrower acknowledges that the Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, the Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and the Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

13.16 Confidentiality. All information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses (the "***Information***") shall be deemed non-public information for purposes of this **Section 13.16** unless marked "Public." Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning Borrower or a Subsidiary, as the case may be, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Law, including United States federal and state securities Laws. The Administrative Agent and each Lender agree to keep confidential all non-public information provided to them by the Borrower pursuant to this Agreement in accordance with its customary procedures for handling material non-public information; provided that nothing herein shall prevent the Administrative Agent or any Lender from disclosing any such information (i) to the Administrative Agent, any other Lender, any Affiliate of a Lender or any Eligible Transferee or other assignee permitted under **Section 13.05(b)**, (ii) to its employees, officers, directors, agents, attorneys, accountants, trustees and other professional advisors or those of any of its affiliates (collectively, its "***Related Parties*** "), (iii) upon the request or demand of any Governmental Authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (iv) in response to any order of any court or other Governmental Authority or as may otherwise be required pursuant to any Law, (v) if requested or required to do so in connection with any litigation or similar proceeding, (vi) that has been publicly disclosed (other than as a result of a disclosure in violation of this **Section 13.16**), (vii) to the extent necessary in connection with the exercise of any remedy hereunder or under any other Loan Document, (viii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the Loans or (B) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the Loans or (ix) to any other party hereto; provided that, in the case of disclosure pursuant to **clause (iii), (iv)** and **(v)** above, the Administrative Agent or applicable Lender, as applicable, shall promptly provide notice to the Borrower to the extent reasonable and not prohibited by Law or any applicable Governmental Authority, so that Borrower may seek a protective order.

13.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, 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 Administrative Agent and the Lender holding such Loan in accordance with applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all charges payable in respect thereof, 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 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 so that at no time shall the interest and charges paid or payable in respect of such Loan exceed the maximum amount collectible at the Maximum Rate.

13.18 Judgment Currency.

(a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent permitted by Law, that the rate of exchange used shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase Dollars with such other currency at the buying spot rate of exchange in the New York foreign exchange market on the Business Day immediately preceding that on which any such judgment, or any relevant part thereof, is given.

(b) The obligations of the Borrower in respect of any sum due to the Administrative Agent hereunder and under the other Loan Documents shall, notwithstanding any judgment in a currency other than Dollars, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent of any sum adjudged to be so due in such other currency the Administrative Agent may, in accordance with normal banking procedures, purchase Dollars with such other currency. If the amount of Dollars so purchased is less than the sum originally due to the Administrative Agent in Dollars, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent against such loss. If the amount of Dollars so purchased exceeds the sum originally due to the Administrative Agent in Dollars, the Administrative Agent shall remit such excess to the Borrower.

13.19 USA PATRIOT Act . The Administrative Agent and the Lenders hereby notify the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Patriot Act***"), they are required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Person to identify the Borrower in accordance with the Patriot Act.

13.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(i) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

FORTRESS BIOTECH, INC.

By: /s/ Robyn Hunter
Name: Robyn Hunter
Title: Chief Financial Officer

Address for Notices:
Fortress Biotech, Inc
95 Sawyer Road, Suite 110
Waltham MA 02453
Attn: Chief Financial Officer
Phone: 781.652.4507
Email: rhunter@fortressbiotech.com

ADMINISTRATIVE AGENT:

OAKTREE FUND ADMINISTRATION, LLC

By: **Oaktree Capital Management, L.P.**
Its: Managing Member

By: /s/ Brian Price
Name: Brian Price
Title: Senior Vice President

By: /s/ Peter Boos
Name: Peter Boos
Title: Assistant Vice President

Address for Notices:
Oaktree Fund Administration, LLC
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Oaktree Agency
Email: Oaktreeagency@alterdomus.com

With a copy to:
Oaktree Capital Management, L.P.
333 S. Grand Avenue, 28th Fl.
Los Angeles, CA 90071
Attn: Aman Kumar
Email: AmKumar@oaktreecapital.com

LENDER:

By: **/s/**

By: /s/
Name:
Title:

By: /s/
Name:
Title:

Address for Notices:

Attn:
Email:

[Signature Page to Credit Agreement]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "***Agreement***") is made and entered into as of February 23, 2021 (the "***Effective Date***"), by and between Sentynl Therapeutics, Inc., a Delaware corporation ("***Sentynl***"), and Cyprium Therapeutics, Inc., a Delaware corporation ("***Cyprium***"). Each of Cyprium and Sentynl is a "***Party***," and they are, collectively, the "***Parties***."

RECITALS

A. Cyprium is engaged in the development of CUTX-101, a copper histidinate injection (the "***Product***") for the treatment of diseases involving copper deficiency or insufficiency, including Menkes Disease, which is currently in a Phase 3 clinical study.

B. Cyprium desires to sell, transfer, and convey to Sentynl, and Sentynl desires to purchase and acquire from Cyprium for the Territory, the Product NDA (as defined below), the Cyprium IP and certain related assets, upon the terms and subject to the conditions set forth herein.

C. Following the Effective Date and prior to the Closing (as defined below), Sentynl desires that Cyprium perform, and Cyprium agrees to perform and fund, continued development of the Product.

NOW, THEREFORE, in consideration of the foregoing and the respective representations and warranties, covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Agreement, including the recitals, the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

1.1 "***Acquisition***" has the meaning set forth in Section 2.1.

1.2 "***Affiliate***" means, with respect to any specified Person, any other Person that controls, is controlled by, or is under common control with such Person. A Person will be deemed to "control" another Person, for purposes of this definition, if such Person directly or indirectly (a) has the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities of such other Person, through contract, or otherwise, or (b) owns more than 50% of the voting securities of such other Person entitled to vote in the election of directors.

1.3 "***Affiliate Financial Guarantor***" means Zydus Pharmaceuticals (USA) Inc., a New Jersey corporation.

1.4 "***Ancillary Claim***" means all claims and/or Damages arising from facts or circumstances substantially more closely related to a Development Claim than any other claims and/or Damages, including an allegation of breach of Cyprium's obligations set forth in Section 5.2 to the extent the facts or circumstances for such breach are substantially more closely related to a Development Claim than any other claims and/or Damages.

1.5 *"**Approval Deadline Option**"* has the meaning set forth in Section 2.6.6.

1.6 "***Approval Deadline Option Date***" has the meaning set forth in Section 2.6.6.

1.7 *"**Approval Deadline Transfer**"* has the meaning set forth in Section 2.6.6.

1.8 "***Assignment and Assumption Agreement***" means the assignment and assumption agreement, dated as of the date of the Closing, by and between the Parties, in substantially the form attached hereto as Exhibit B.

1.9 "***Assumed Liabilities***" has the meaning set forth in Section 2.2.

1.10 "***Books and Records***" means all material files, documents, instruments, papers, books, and records (scientific or financial) owned or controlled by Cyprium or an Affiliate of Cyprium that relate to the Purchased Assets and the Product, including: any material financial data; regulatory information or files (including adverse event reports, annual regulatory reports, and protocol(s)); clinical and non-clinical data and safety information; litigation, claims or demands (to the extent they are not subject to any attorney-client privilege); investigation information or files; documentation relating exclusively to the Cyprium IP, the Product or the Healthcare Regulatory Authorizations for the Product (including the Product IND and the Product NDA); market research completed prior to the Closing; promotional materials; and relevant prescriber lists.

1.11 "***Business Day***" means any day that is not a Saturday, a Sunday, or other day on which banks are required or authorized by law to be closed in the State of New York.

1.12 "***Cap***" has the meaning set forth in Section 9.4.2.

1.13 "***Change of Control***" means the occurrence of any of the following events: (a) an acquisition of Cyprium by another entity that is not an Affiliate of Cyprium, by means of any transaction or series of related transactions (including any reorganization, merger or consolidation but excluding any merger effected exclusively for the purpose of changing the domicile of Cyprium); (b) a sale of all or substantially all of the assets of Cyprium (excluding the Acquisition); or (c) any change of the ownership of more than Fifty Percent (50%) of the outstanding voting equity interests of Cyprium in one or more related transactions; but excluding, in the cases of (a), (b), and/or (c), any and all transactions effected for the purpose of an internal reorganization which do not have a Material Adverse Effect or would not reasonably be expected to have a Material Adverse Effect on the Purchased Assets.

1.14 "***Closing***" has the meaning set forth in Section 2.7.

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

1.16 "***Commercialization Year***" means, initially, the period immediately following the first commercial sale of the Product, anywhere in the Territory, through December 31st of such calendar year and, thereafter, each subsequent twelve (12) month period in a calendar year.

1.17 "***Commercialize***" means to market, promote, offer for sale, sell, distribute or otherwise commercialize a product, and/or to use, import or export such product for any such purposes. "***Commercialization***" shall have a corresponding meaning.

1.18 "***Commercially Reasonable Efforts***" means the level of diligence, efforts, and resources that a Person in the pharmaceutical industry customarily devotes to the Development and/or Commercialization of a product that such Person owns, without the obligation to compensate any Third Party in connection with such Commercialization, including profit sharing, upfront, royalty, and milestone payments, and other arrangements, which such product is similar to the Product, with similar market potential.

1.19 "***Confidentiality Agreement***" has the meaning set forth in Section 12.1.

1.20 "***Cyprium Deliverables***" has the meaning set forth in Section 7.3.4.

1.21 "***Cyprium Indemnified Party***" has the meaning set forth in Section 9.2.

1.22 "***Cyprium IP***" has the meaning set forth in Section 3.7.1.

1.23 "***Cyprium's Knowledge***" or "***Knowledge of Cyprium***," or similar words, mean the actual knowledge of the Persons listed in Schedule 1.23, without any implication of verification or investigation concerning such knowledge; provided that to the extent that any such Person's employment with Cyprium is terminated prior to the Closing, any replacement employee thereof shall be deemed to be listed on Schedule 1.23 for purposes of the applicable representations made at the Closing.

1.24 "***Damages***" means any and all losses, damages, Liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and disbursements, the cost of defending any claim, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance claim.

1.25 "***Deductible***" has the meaning set forth in Section 9.4.1.

1.26 "***Derivative Product***" means a product derived from, and/or incorporating any of, the Product Improvements and/or the Cyprium IP; provided, however, that all future dosage forms, formulations, and methods of application and/or administration of the Product (collectively, "***Mere Extensions***") shall be included in references to the Product (and not the Derivative Product) solely for purposes of determining the quantities of Net Sales and duration for which Royalty Payments on Net Sales are due.

1.27 *"**Derivative Product Costs for Mere Extensions***" means any expenses that Sentynl or its Affiliates actually incurs and reasonably documents in connection with Sentynl's research and development activities solely with respect to Mere Extensions, including performance of clinical trials, pre-clinical studies, test method development and stability testing, toxicology, qualification and validation, statistical analysis and report writing, the preparation and submission of any regulatory filings (including a New Drug Application, Investigational New Drug Application, or Supplemental New Drug Application), regulatory affairs with respect to the foregoing, and all other activities necessary or useful or otherwise requested or required by a Governmental Authority or as a condition or in support of obtaining Healthcare Regulatory Authorizations of such product.

1.28 "***Derivative Product Restrictive Period***" means, with respect to each Derivative Product (but not including Mere Extensions), the seven (7) year period following the first commercial sale of such Derivative Product.

1.29 "***Development***" means all research and development activities with respect to the Product, including performance of clinical trials, pre-clinical studies, test method development and stability testing, toxicology, qualification and validation, statistical analysis and report writing, the preparation and submission of any regulatory filings (including a New Drug Application or Investigational New Drug Application), regulatory affairs with respect to the foregoing, and all other activities necessary or useful or otherwise requested or required by a Governmental Authority or as a condition or in support of obtaining Healthcare Regulatory Authorizations of such product. "***Develop***" means the performance of any of the foregoing activities.

1.30 "***Development Cap***" means the amount equal to the Upfront Payment, less any expenses that Cyprium has actually incurred following the Effective Date and reasonably documented in connection with its performance of the Development Plan.

1.31 "***Development Claim***" means all claims and/or Damages arising from allegations of breach of Cyprium's obligations set forth in Section 5.1.1(a).

1.32 "***Development Plan***" means the development plan attached hereto as Exhibit A, as amended from time to time.

1.33 "***Development Termination***" has the meaning set forth in Section 2.6.7.

1.34 "***Direct Claim***" has the meaning set forth in Section 9.3.3.

1.35 "***Disclosure Schedules***" has the meaning set forth in Section 3.

1.36 "***Encumbrance***" means any mortgage, deed of trust, lien (statutory or other), pledge, charge, security interest, title retention device, collateral assignment, adverse claim, or priority payment obligation, restriction, or other encumbrance of any kind (excluding, for the avoidance of doubt, any license) in respect of such asset, whether or not filed, recorded, or perfected under applicable Laws (including any restriction on the transfer of any asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any

asset and any restriction on the possession, exercise, or transfer of any other attribute of ownership of any asset, but other than restrictions under applicable securities Laws).

1.37 "***Excluded Assets***" has the meaning set forth in Section 2.3.

1.38 "***Excluded Liabilities***" has the meaning set forth in Section 2.4.

1.39 "***Expanded Access Program***" means the activities conducted under CYP-001 (otherwise known as the clinical trial identified by ClinicalTrials.gov as NCT04074512), as further described in Exhibit A-1.

1.40 "***FDA***" means United States Food and Drug Administration, or any successor agency thereto.

1.41 "***FDA Approval***" means the final FDA approval of the Product NDA.

1.42 "***Fundamental Representations***" means the representations and warranties of Cyprium set forth in Sections 3.1, 3.2, 3.3.1, 3.3.2, 3.6 and 3.9.

1.43 "***GAAP***" means United States generally accepted accounting principles in effect from time to time.

1.44 "***Gene Therapy Program***" means the Development program owned and controlled by Cyprium in connection with AAV-ATP7A.

1.45 "***General Survival Date***" has the meaning set forth in Section 9.5.

1.46 "***Governmental Authority***" means any United States or any foreign federal, national, state, local, cantonal, municipal, international, or multinational government, governmental, regulatory, or administrative authority, agency, or commission, any court, tribunal, or judicial or arbitral body of competent jurisdiction or any quasi-governmental or private body exercising any regulatory, taxing, importing, or other governmental or quasi-governmental authority.

1.47 "***Healthcare Regulatory Authority***" means the FDA or any other Governmental Authority that is concerned with or regulates the Development, approval, labelling, marketing, sale, use, handling and control, safety, efficacy, reliability, or manufacturing of drug or biological products or is concerned with or regulates public health care programs.

1.48 "***Healthcare Regulatory Authorizations***" means all approvals, clearances, authorizations, registrations, certifications, licenses, and permits granted by any Healthcare Regulatory Authority, including all investigational new drug applications and new drug applications.

1.49 "***Indemnified Party***" has the meaning set forth in Section 9.3.1.

1.50 "***Indemnifying Party***" has the meaning set forth in Section 9.3.1.

1.51 "***Independent Accountant***" has the meaning set forth in Section 2.8.2.

1.52 "***Insurance Policies***" has the meaning set forth in Section 3.10.

1.53 "***Intellectual Property***" means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) patents, patent applications, patent disclosures and inventions, utility models, utility model applications, petty patents, statutory invention registrations, certificates of invention, designs, unregistered industrial designs, design registrations and applications (including any continuations, continuations-in-part, divisionals, provisionals, non-provisionals, reexaminations, restorations, extensions, renewals, and reissues) for any of the foregoing, and all other indicia of invention ownership by any Governmental Authority; (b) copyrights (registered and unregistered), copyright applications, copyrightable subject matter, works of authorship (whether or not copyrightable), design rights, and design right registrations, and any and all renewals of any of the foregoing; (c) trademarks, service marks, trade dress, business names and trade names, assumed names, symbols, brand names, d/b/a's, fictitious names, certification marks, logos, and product names whether registered, unregistered, or existing at common law, including the goodwill associated therewith (and all registrations and applications therefor), and any and all renewals of any of the foregoing; (d) industrial design rights; (e) domain names (and all registrations and applications therefor) whether or not trademarks, all associated web addresses, URLs, websites, and web pages, and all content and data thereon or relating thereto, whether or not copyrights; (f) Know-How, (g) software, data processing, communications, inventory management, website content, programs, program interfaces, object code, source code, other computer systems, and all documentation relating to the foregoing; (h) all other proprietary information and intellectual property in all forms and media, and all goodwill associated therewith, now known or hereafter recognized in any jurisdiction throughout the Territory; (i) all rights pertaining to the foregoing, including those arising under international treaties and convention rights; (j) copies and tangible embodiments of all of the foregoing (in whatever form or medium); (k) all rights and powers to assert, defend, and recover title to any of the foregoing; and to assert, defend, sue, and recover damages for any past, present, and future infringement, misuse, misappropriation, impairment, unauthorized use, or other violation of any rights in or to any of the foregoing; and (l) all proceeds, income, royalties, damages, and payments now or hereafter due and payable under or in respect of all of the foregoing.

1.54 "***JSC***" has the meaning set forth in Section 5.1.4(a).

1.55 "***Know-How***" means all trade secrets and confidential or proprietary information, in any tangible or intangible form, including all inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, processes, techniques, improvements, discoveries, ideas, developments, data (including product composition, pharmacological, non-clinical, pre-clinical, clinical, analytical, quality control, research and development, purchasing and marketing, and personal data), results, methods, tests, assays, specifications, recipes, packaging specifications, procedures, customer lists, databases, technologies, instructions, formulae and information, manufacturing drawings, engineering drawings, manuals, designs, lab journals, notebooks, schematics, blue prints, research and development reports, audit reports, inspection reports, GxP documentation, technical information, documentations or descriptions, and design and engineering specifications.

1.56 "***Law***" means any United States or any foreign federal, national, state (including cantonal), local, international, multinational, or administrative order, law, common law, ordinance, regulation, statute, and/or treaty, or any rule, regulation, guidance, standard, judgment, order, writ, injunction, decree, arbitration award, agency requirement, license, or permit of any Governmental Authority.

1.57 "***Liabilities***" means any and all debts, liabilities, and obligations, whether accrued or fixed, direct or indirect, asserted or unasserted, absolute or contingent, known or unknown, liquidated or not, matured or unmatured, or determined or determinable, including those arising under any Law, Proceeding, or any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority and those arising under any contract.

1.58 "***Material Adverse Effect***" means any event, circumstance, occurrence, state of facts or matters, action, omission, condition, development, change, result, or effect (each, an "***Event***") that would reasonably be expected to be materially adverse to (a) the value of the Purchased Assets in the aggregate, or (b) the ability of Cyprium to consummate the Acquisition; provided, however, that the following Events shall not be taken into account in determining the occurrence of a Material Adverse Effect: (i) those caused by, arising out of, or attributable to the general political or economic environment or affecting the global economic markets generally; (ii) those that generally affect the pharmaceuticals industry (including legal and regulatory changes applicable to the Product and/or the Product NDA after the Effective Date); (iii) those caused by, arising out of, or attributable to acts of terrorism or warfare in any country or territory in which Cyprium operates; or (iv) those caused by, arising out of, or attributable to pandemics, including COVID-19, provided, that in the case of (i), (ii) (iii) and (iv), such changes, events, developments, effects or occurrences do not disproportionately adversely affect the Purchased Assets relative to the other participants in the pharmaceuticals industry.

1.59 "***Material Contracts***" has the meaning set forth in Section 2.1.5.

1.60 "***Milestone Payments***" has the meaning set forth in Section 2.6.5.

1.61 "***Modification Request***" has the meaning set forth in Section 5.1.4(b).

1.62 "***NDA Acceptance Payment***" means Three Million Dollars ($3,000,000).

1.63 "***Net Sales***" means, for a particular period of time, the sum of (a) net sales reported by Sentynl (or its Affiliates) for sales of (i) the Product and (ii) any Derivative Products (solely, in the case of Derivative Products that are not Mere Extensions, through the applicable Derivative Product Restrictive Period), to Third Parties, anywhere in the world, for any indication, calculated in a manner consistent with Sentynl's calculations of net sales across its product portfolio generally and calculated in accordance with GAAP, provided that such amount reflects the gross invoice price at which the Product and Derivative Products were sold or otherwise disposed of by Sentynl and its Affiliates (excluding sales by any licensee) to Third Parties in that period reduced by gross-to-net deductions, the fair-market-value amounts (or such other amount mutually agreed upon between the Parties) reasonably attributable to other components (other than the Product and/or any Derivative Product) of any combination product or bundled product (but only if such other

components are therapeutically active compounds that are sold separately), and amounts from a prior period which are not collected and are written off by Sentynl or its Affiliates (including bad debts), if not previously deducted from such invoiced amount, taken in accordance with GAAP, and (b) net sales reported by each licensee of Sentynl or its Affiliates (excluding amounts received by distributors for sales of the Product and/or Derivative Products sold to such distributor, if the sale amounts for such sales to such distributor are otherwise included by this definition of Net Sales) for sales of the Product and any Derivative Products (solely, in the case of Derivative Products that are not Mere Extensions, through the applicable Derivative Product Restrictive Period) to Third Parties as determined in accordance with GAAP. The calculations described in clauses (a) and (b) above shall exclude hedging gains or losses and shall be reduced by the following deductions to the extent specifically related to the Product and/or Derivative Products and actually allowed/accrued, incurred or paid during such period: (i) reasonable cash discounts, allowances, rebates, voucher redemptions or chargebacks; (ii) sales, value-added, excise taxes, tariffs and duties, and other taxes directly related to the sale, to the extent added to the sale price and paid by the selling party and not refundable in accordance with applicable Law and without reimbursement from any Third Party (but excluding income or net profit taxes or franchise taxes of any kind); and (iii) amounts allowed/accrued or credited on returns, provided that all of the foregoing deductions are incurred in the ordinary course and calculated in accordance with GAAP during the applicable Commercialization Year by Sentynl. In the case of sales of the Product and/or any Derivative Products for consideration other than cash, such as barter or counter trade, Net Sales shall be calculated with respect to the fair market value of the consideration received. For the avoidance of doubt, the supply of Product and/or Derivative Products for compassionate use, commercial samples, distributed at no charge to patients unable to purchase the same or for administration to patients enrolled in clinical or preclinical trials or to Third Parties as samples for evaluation purposes, in each case free of charge, shall not be included in Net Sales. For the avoidance of doubt, Derivative Products that are not Mere Extensions shall no longer be included in Net Sales, on a Derivative Product-by-Derivative Product basis, following the end of the applicable Derivative Product Restrictive Period.

1.64 "***Net Sales Statement***" has the meaning set forth in Section 2.8.1.

1.65 "***Newborn Screening Assay***" has the meaning set forth in Section 5.1.2.

1.66 "***Notice of Objection***" has the meaning set forth in Section 2.8.1.

1.67 "***OUS Cyprium Jurisdictions***" has the meaning set forth in Section 6.1.2.

1.68 "***OUS Jurisdictions***" means, (a) with respect to Cyprium, the OUS Cyprium Jurisdictions, and (b) with respect to Sentynl, the OUS Sentynl Jurisdictions.

1.69 "***OUS Sentynl Jurisdictions***" has the meaning set forth in Section 6.1.2.

1.70 "***Person***" means individuals or entities, including any corporation, limited liability company, joint venture, trust, body corporate (wherever located), unincorporated association, partnership, or other entity.

1.71 "***Pre-NDA Meeting Minutes and Written Responses***" means, collectively, (a) the Memorandum of Meeting Minutes for the September 30, 2020 Pre-NDA meeting between Cyprium Therapeutics, Inc. and the FDA, and (b) the Written Responses delivered by the FDA in connection with Cyprium's planned Type B pre-NDA meeting with the FDA for CMC issues and in response to the questions contained in Cyprium's November 13, 2020 background package.

1.72 "***Primary Indication***" means the treatment of Menkes Disease.

1.73 "***Proceeding***" means any action (at law or in equity), suit, claim, review, audit, inquiry, or legal or administrative proceeding or arbitration or other alternative dispute resolution proceeding or investigation (whether civil, criminal, or administrative).

1.74 "***Product Improvements***" has the meaning set forth in Section 2.1.7

1.75 "***Product IND***" means the Investigational New Drug Application filed with the FDA covering the Product, and all supplements and amendments thereto.

1.76 "***Product NDA***" means the New Drug Application filed with the FDA covering the Product for the Primary Indication, and all supplements and amendments thereto.

1.77 "***PRV***" means the priority review voucher which may be issued by the FDA upon approval of the Product NDA.

1.78 "***PRV Assignment Confirmation***" has the meaning set forth in Section 8.2.

1.79 "***Purchase Price***" means Nine Million Dollars ($9,000,000).

1.80 "***Purchased Assets***" has the meaning set forth in Section 2.1.

1.81 "***Representative***" means, with respect to a Party, its directors, officers, employees, agents, advisors, legal counsel, investment bankers, and any other representatives.

1.82 "***Restrictive Period****"* has the meaning set forth in Section 6.2.1.

1.83 "***Royalty Payments***" has the meaning set forth in Section 2.6.4.

1.84 "***Sentynl Deliverables***" has the meaning set forth in Section 7.2.4.

1.85 "***Sentynl Indemnified Party***" has the meaning set forth in Section 9.1.

1.86 "***Tax***" *or* "***Taxes***" means all taxes, duties, levies, or imposts imposed by any Governmental Authority, including on or with respect to any income (including capital gains), capital, gross receipts, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, production, withholding, social security (or similar), employment, unemployment, disability, national insurance, workers' compensation, governmental pension plan premium, property (including real property and personal property), escheat or unclaimed property, sales, use, transfer, registration or value-added taxes, stamp, customs, duties, alternative or add-on

minimum, estimated, or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, surcharge, finem, or addition thereto.

1.87 "***Territory***" means worldwide.

1.88 "***Third Party***" means any Person other than Cyprium, Sentynl, and their respective Affiliates.

1.89 "***Third Party Claim***" has the meaning set forth in Section 9.3.1.

1.90 "***Upfront Payment***" means Eight Million Dollars ($8,000,000).

2. ASSET PURCHASE

2.1 Sale and Purchase of the Assets. At the Closing, subject to the satisfaction of the conditions set forth in Article 7 (or the waiver thereof by the Party entitled to waive such condition), Cyprium shall sell, transfer, assign, and convey to Sentynl, and Sentynl shall purchase, accept, and acquire from Cyprium (the "***Acquisition***"), free and clear of any Encumbrances, all of Cyprium's right, title, and interest in and to the following assets (the "***Purchased Assets***"):

2.1.1 the Product NDA;

2.1.2 the Books and Records;

2.1.3 the Cyprium IP;

2.1.4 any remaining inventory or supply of the Product owned by Cyprium as of the Closing;

2.1.5 the contracts set forth on Schedule 2.1.5 (the "***Material Contracts***"), including all of the rights arising thereunder;

2.1.6 all claims, counterclaims, defenses, causes of action, favorable awards, rights under express or implied warranties, rights of recovery, rights of set-off, rights of subrogation and all other rights of any kind against any Third Party, to the extent relating exclusively to any Assumed Liabilities or Purchased Assets;

2.1.7 any other (a) tangible and intangible assets and documentation owned or controlled by Cyprium necessary to Commercialize or Develop the Product, (b) Product improvements and inventions that were created or conceived in the course of Developing the Product, and (c) derivatives and improved variants (e.g. reformulations, novel salts, polymorphs, inclusion complex) of the Product, with respect to each of (a), (b), and (c), to the extent relating to the Product (collectively, the "***Product Improvements***"); and

2.1.8 the Newborn Screening Assay.

2.2 Assumed Liabilities. At the Closing, subject to the satisfaction of the conditions set forth in Article 7 (or the waiver thereof by the Party entitled to waive such condition), Sentynl shall assume and agree to pay, perform, and discharge all of the Liabilities arising from or relating to the Purchased Assets accruing from and after the Closing, in each case other than the Excluded Liabilities (collectively referred to herein as the "***Assumed Liabilities***"), including (a) all Liabilities arising from or relating to the Material Contracts from and after the Closing, (b) all costs, expenses, obligations, and other Liabilities arising from or relating to the prosecution and maintenance of the Product NDA arising from and after the Closing (including, for the avoidance of doubt and without limitation, performance of any post-marketing study or requirement, regardless of when such obligations arise), and (c) all Liabilities arising from or relating to the Commercialization of the Product and/or any Derivative Product from and after Closing.

2.3 Excluded Assets. Notwithstanding any other provision to the contrary, the Purchased Assets shall not include the following assets (the "***Excluded Assets***"):

2.3.1 the PRV;

2.3.2 the Insurance Policies;

2.3.3 any assets relating exclusively to the Gene Therapy Program; and/or

2.3.4 any other assets, other than those expressly set forth in Section 2.1.

2.4 Excluded Liabilities. At the Closing, Sentynl shall not assume, and shall not be responsible to pay, perform, or discharge, the following Liabilities (the "***Excluded Liabilities***"):

2.4.1 all Liabilities arising out of or relating to the Development, Commercialization, manufacture, packaging, import, marketing, distribution, sale or use of the Product or the use of the Purchased Assets, in each case, by Cyprium or its Affiliates prior to the Closing or a Third Party on behalf of Cyprium or its Affiliates prior to the Closing, provided that, in no event shall Cyprium or its Affiliates have any Liabilities arising out of relating to actions or omissions of Sentynl or its Affiliates on or after the Closing (including Sentynl's or its Affiliates' Development, Commercialization, manufacture, packaging, importation, marketing, distribution, sale or use of the Product or Purchased Assets);

2.4.2 all Liabilities arising out of or relating to products liability claims relating to the Product being taken by or administered to any individual prior to the Closing (including claims alleging defects in such Product and claims involving the death of or injury to any such individual relating to the Product), even if such claims are asserted following the Closing;

2.4.3 all Liabilities arising out of or relating to the Material Contracts, solely to the extent relating to the period of time prior to the Closing;

2.4.4 all Liabilities relating to (a) Taxes incurred by Cyprium arising from Cyprium's use of the Purchased Assets prior to the Closing, (b) all Liabilities for any other Taxes incurred by Cyprium at any time, and/or (c) any sales, use or other similar transfer Taxes imposed on or with respect to any of the transactions contemplated pursuant to this Agreement;

2.4.5 all Liabilities relating to any accounts payable arising out of or relating to the use of the Product or the use of the Purchased Assets, in each case, by Cyprium or its Affiliates prior to the Closing;

2.4.6 all Liabilities to the extent relating to the Excluded Assets;

2.4.7 all Liabilities with respect to any current or former employee of Cyprium or its Affiliates;

2.4.8 all Liabilities arising out of or in connection with any Proceeding against Cyprium relating to the Product or use of the Purchased Asset (in any jurisdiction) where such Proceedings have been initiated prior to the Closing; and

2.4.9 all other Liabilities, other than the Assumed Liabilities.

2.5 Intentionally Omitted.

2.6 Consideration. In consideration for the consummation of the transactions contemplated by this Agreement:

2.6.1 Upfront Payment. Within three (3) Business Days following the Effective Date, Sentynl shall pay Cyprium the Upfront Payment, which will be used to fund the Development of the Product. For the avoidance of doubt, the Upfront Payment, when made, shall be fully earned and not contingent upon any future performance or occurrence.

2.6.2 NDA Acceptance Payment. Upon the FDA's acceptance of the Product NDA, Sentynl shall pay Cyprium the NDA Acceptance Payment. For the avoidance of doubt, the NDA Acceptance Payment, when made, shall be fully earned and not contingent upon any future performance or occurrence.

2.6.3 Purchase Price. At the Closing, subject to Section 2.6.6 and Section 2.6.7, Sentynl shall pay Cyprium the Purchase Price.

2.6.4 Royalty Payments. Subject to Section 2.6.6 and Section 2.6.7, for (y) the life of the Product in the case of the Product (including, for the avoidance of doubt, all Mere Extensions), and (z) the applicable Derivative Product Restrictive Period with respect to any Derivative Products (excluding Mere Extensions), on or prior to the thirtieth (30th) calendar day following the completion of each calendar quarter during a Commercialization Year, Sentynl shall pay Cyprium as follows (collectively, the "***Royalty Payments***"):

(a) Six Percent (6%) of Net Sales for such calendar quarter with respect to any portion of Net Sales during such Commercialization Year less than or equal to Seventy-Five Million Dollars ($75,000,000);

(b) Seventeen and a Half Percent (17.5%) of Net Sales for such calendar quarter with respect to any portion of Net Sales during such Commercialization Year (A) greater

than Seventy-Five Million Dollars ($75,000,000), and (B) less than or equal to One Hundred Million Dollars ($100,000,000); and

(c) Twenty-Five Percent (25%) of Net Sales for such calendar quarter with respect to any portion of Net Sales during such Commercialization Year greater than One Hundred Million Dollars ($100,000,000).

As a financial contribution to the development of Mere Extensions, Sentynl shall have the right to invoice and charge Cyprium a fee, invoiced separately, but chargeable by Sentynl against portions of Royalty Payments attributed to the applicable Mere Extension, equal, in the aggregate to fifty percent (50%) of the Derivative Product Costs for Mere Extensions for such Mere Extension; provided, however, that such fees shall not, in any event, equal an amount in the aggregate in excess of twenty-five percent (25%) of the portion of Royalty Payments attributed to the applicable Mere Extension that would otherwise be due and owing from Sentynl to Cyprium during any calendar quarter in which Sentynl seeks to collect such fees. Fees for Derivative Product Costs for Mere Extensions do not need to be invoiced in the calendar quarter in the period where such Derivative Product Costs for Mere Extensions are incurred and such fees may be invoiced and charged against Royalty Payments attributed to the applicable Mere Extension in subsequent quarters in the event there are no Royalty Payments attributable to the applicable Mere Extension or such Derivative Product Costs for Mere Extensions exceed twenty-five percent (25%) of the portion of Royalty Payments attributable to the applicable Mere Extension in such calendar quarter. For the avoidance of doubt Sentynl's invoicing and collection of such fees shall have no effect on the calculation for determining the applicable royalty tier percentage for the Royalty Payments due and owing under Subsections 2.6.4(a)-(c) or on the calculation for determining the triggering of payment of the Milestone Payments due and owing under Section 2.6.5.

2.6.5 Milestone Payments. Subject to Section 2.6.6 and Section 2.6.7, Sentynl shall pay Cyprium the following one-time payments (the "***Milestone Payments***"):

(a) Five Million Dollars ($5,000,000), within thirty (30) days of achieving Net Sales of Seventy-Five Million Dollars ($75,000,000) during any Commercialization Year;

(b) Twenty-Five Million Dollars ($25,000,000), within thirty (30) days of achieving Net Sales of One Hundred Twenty-Five Million Dollars ($125,000,000) during any Commercialization Year;

(c) Thirty-Five Million Dollars ($35,000,000), within thirty (30) days of achieving Net Sales of One Hundred Seventy-Five Million Dollars ($175,000,000) during any Commercialization Year;

(d) Forty Million Dollars ($40,000,000), within thirty (30) days of achieving Net Sales of Two Hundred Million Dollars ($200,000,000) during any Commercialization Year;

(e) Seventy-Five Million Dollars ($75,000,000), within thirty (30) days of achieving Net Sales of Three Hundred Million Dollars ($300,000,000) during any Commercialization Year; and

(f) Seventy-Five Million Dollars ($75,000,000), within thirty (30) days of achieving Net Sales of Four Hundred Million Dollars ($400,000,000) during any Commercialization Year.

2.6.6 Approval Deadline Transfer. In the event Cyprium fails to obtain FDA Approval as of September 30, 2023, Sentynl shall have the option (in its sole discretion) to assume and take over the Development of the Product (the "***Approval Deadline Option***"), which Sentynl shall have the right to exercise by providing Cyprium with written notice no later than forty-five (45) days thereafter (the "***Approval Deadline Option Date***"). If Sentynl exercises the Approval Deadline Option in a timely manner (the "***Approval Deadline Transfer***"), then: (a) any Development following the Approval Deadline Transfer shall be at Sentynl's sole discretion and expense; (b) Cyprium shall no longer be obligated to perform under Section 5.1; and (c) each of the NDA Acceptance Payment (solely to the extent not due and payable by Sentynl to Cyprium prior to the consummation of the Approval Deadline Transfer), the Purchase Price, the Royalty Payments and the Milestone Payments shall be reduced by Fifty Percent (50%), and shall be paid by Sentynl to Cyprium as and when due in accordance with Sections 2.6.2, 2.6.3, 2.6.4, and 2.6.5.

2.6.7 Development Termination. In the event that (a) Cyprium delivers to Sentynl written notice that it desires to terminate or cease the Development of the Product, or (b) Cyprium delivers to Sentynl written notice in accordance with Section 5.4 (in each case, a "***Development Termination***"), then (y) Cyprium shall no longer be obligated to perform under Section 5.1, and (z) Sentynl shall be permitted to either terminate this Agreement or effect the Closing, as specified by Sentynl in its sole discretion in a written notice delivered to Cyprium within five (5) Business Days of delivery of the notice described in the foregoing (a) or (b). In the event that Sentynl desires to effect the Closing following a Development Termination, Sentynl's obligations to pay each of the NDA Acceptance Payment (solely to the extent not due and payable by Sentynl to Cyprium prior to the consummation of the Development Termination), the Purchase Price, the Royalty Payments, and the Milestone Payments shall terminate immediately, and, as the only additional consideration and payments contemplated under this Agreement, Sentynl shall pay Cyprium One Percent (1%) of Net Sales during such calendar quarter with respect to any portion of Net Sales for (A) the life of the Product in the case of the Product (including, for the avoidance of doubt, all Mere Extensions), and (B) the applicable Derivative Product Restrictive Period with respect to any Derivative Products (excluding Mere Extensions), on or prior to the thirtieth (30th) calendar day following the completion of each calendar quarter during a Commercialization Year.

2.7 Closing. Subject to the satisfaction of the conditions set forth in Article 7 (or the waiver thereof by the Party entitled to waive such condition), the consummation of the transactions contemplated by this Agreement (the "***Closing***") shall take place on the fifth (5th) Business Day following the date that all of the conditions set forth in Article 7 have been satisfied or waived, or at such other time as Cyprium and Sentynl agree in writing. The Closing shall take place remotely via the exchange of documents, signatures, and payments, at 10:00 a.m. Eastern Time (or at such place as the Parties may otherwise designate in writing).

2.8 Net Sales Statements.

2.8.1 Simultaneous with the payment of the Royalty Payments, the Milestone Payments, and any royalty payments following Closing based on a Development Termination, as applicable, Sentynl shall deliver to Cyprium a statement setting forth Sentynl's calculation of Net Sales and Derivative Product Costs for Mere Extensions during such calendar quarter (the "***Net Sales Statement***"). In order to allow Cyprium to reasonably verify Sentynl's calculation of Net Sales and Derivative Product Costs for Mere Extensions, Sentynl shall provide Cyprium with (a) copies of any books, records, or other documentation reasonably requested by Cyprium that were used by Sentynl (and/or its Affiliates) to calculate the Net Sales and Derivative Product Costs for Mere Extensions, and (b) reasonable access during normal business hours to appropriate Sentynl personnel to discuss such books, records, or other documentation. If Cyprium has any objections to the calculation of Net Sales and/or Derivative Product Costs for Mere Extensions as set forth the Net Sales Statement, then Cyprium may object by delivering to Sentynl a written objection notice (a "***Notice of Objection***") within thirty (30) days of delivery of the Net Sales Statement, and the Parties shall proceed to resolve such disagreement in accordance with the dispute resolution procedures set forth in Section 2.8.2.

2.8.2 Unless Cyprium provides a Notice of Objection within thirty (30) days of delivery of the Net Sales Statement, the determination of Net Sales and Derivative Product Costs for Mere Extensions set forth therein shall be final and binding for all purposes hereunder. Any Notice of Objection shall specify in reasonable detail the basis for the objections set forth therein. If Cyprium provides such Notice of Objection to Sentynl within such thirty (30)-day period, Cyprium and Sentynl shall attempt in good faith to resolve any disputed amounts. If Cyprium and Sentynl are unable to resolve all such disputed amounts within thirty (30) days, the matters remaining in dispute shall be submitted to a nationally recognized public accounting firm mutually agreed upon by Cyprium and Sentynl (the "***Independent Accountant***"). The resolution of the disputed amounts by the Independent Accountant shall be final and binding. Any overpayment or underpayment as per the audit findings, shall be adjusted accordingly in the next Royalty Payment, Milestone Payment, and/or any royalty payment following Closing based on a Development Termination (as applicable). Cyprium and Sentynl shall each pay their own costs and expenses incurred in connection with the resolution of the disputed amounts; provided, however, that the fees and expenses of the Independent Accountant shall be borne by the Parties equally.

2.9 Withholding; Tax Documentation. Sentynl shall be entitled to deduct and withhold from payment of any amounts payable pursuant to this Agreement such amounts as may be required to be deducted and withheld with respect to the making of such payment or any other amounts payable pursuant to this Agreement under the Code or any other applicable Law. To the extent that amounts are so withheld by Sentynl and remitted to the applicable Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

3. CYPRIUM'S REPRESENTATIONS, WARRANTIES, AND COVENANTS

The representations and warranties contained in this Article 3 are the sole and exclusive representations and warranties of Cyprium under this Agreement. Except as set forth on the

disclosure schedules (the "***Disclosure Schedules***") delivered by Cyprium to Sentynl concurrently with the execution of this Agreement, Cyprium hereby represents, warrants, and covenants to Sentynl as follows:

3.1 Organization of Cyprium; Due Authorization.

3.1.1 Cyprium (a) is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Delaware, (b) is duly licensed and qualified to conduct its business, in all material respects, in each jurisdiction where the nature of the properties owned, leased, or operated by it and the business transacted by it requires such licensing or qualification, and (c) holds all necessary corporate power and authority to own, license, and operate its assets and properties, to conduct its business, to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. This Agreement and the consummation of the transactions contemplated hereby, the execution and delivery of this Agreement by Cyprium, the performance by Cyprium of its obligations hereunder, and the consummation by Cyprium of the transactions contemplated hereby, have been duly authorized by all requisite action on the part of Cyprium, and no other proceedings on the part of Cyprium are necessary to authorize the execution and delivery of this Agreement or the consummation by Cyprium of the transactions contemplated hereby.

3.1.2 This Agreement has been duly executed and delivered by Cyprium and (assuming due authorization, execution, and delivery by Sentynl) constitutes a legal, valid, and binding obligation of Cyprium, enforceable against Cyprium in accordance with their respective terms, except: (a) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium, and other Laws of general application affecting enforcement of creditors' rights generally; and (b) as limited by Laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

3.1.3 Cyprium has full corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and each other agreement, document, instrument, or certificate contemplated by this Agreement to be executed by Cyprium in connection with the consummation of the transactions contemplated hereby.

3.2 No Conflicts, Consents, or Approvals . Neither the execution or delivery by Cyprium of this Agreement, nor the performance by Cyprium of its obligations hereunder, nor the consummation of the transactions contemplated hereby, will (a) result in any breach of any provision of Cyprium's certificate of incorporation and by-laws, each as amended from time to time, (b) result in any breach of, require (with or without notice or lapse of time or both) any payment, consent, or notice, or constitute a default (or give rise to any right of purchase, termination, amendment, acceleration, or cancellation) under, any material agreement or other instrument to which Cyprium is a party or by which Cyprium or any of its assets (including the Purchased Assets) are subject or bound, including the Material Contracts, (c) result in the creation of an Encumbrance, or (d) violate or result in a breach of, or constitute a default under, any applicable Law. To Cyprium's Knowledge, neither Cyprium nor Sentynl will need to make any royalty payment or other payment to any Third Party (that is not a Governmental Authority) for the right to use the Purchased Assets, excluding, for the avoidance of doubt, any payments owed

to any Third Party in the ordinary course of Commercializing the Product, including, without limitation, payments owed to distributors, manufacturers, and others.

3.3 Purchased Assets

3.3.1 Cyprium has good and freely transferable title to the Purchased Assets, free and clear of all Encumbrances, and has the complete and unrestricted power and right to sell and transfer the Purchased Assets to Sentynl in accordance with the terms hereof.

3.3.2 Neither Cyprium nor any of its Affiliates has (a) transferred, sold, assigned, licensed, or given any rights, title, or interest to the Purchased Assets to any Third Party, or (b) granted any license or right to any Third Party to Develop or Commercialize the Product, in the case of (a) or (b), that would conflict with the rights granted to Sentynl hereunder.

3.3.3 Cyprium has provided Sentynl with a true and complete copy of each Material Contract. Each Material Contract is valid and binding on Cyprium and, to Cyprium's Knowledge, the other party thereto, and is in full force and effect in accordance with its terms, except (a) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium, and other Laws of general application affecting enforcement of creditors' rights generally, and (b) as limited by Laws relating to the availability of specific performance, injunctive relief, or other equitable remedies. Neither Cyprium nor, to Cyprium's Knowledge, any other party thereto is in material breach of, or material default under, any Material Contract, and, to Cyprium's Knowledge, no event has occurred that, with the giving of notice or lapse of time or both, would constitute a material breach or material default thereunder.

3.3.4 To Cyprium's Knowledge as of the Effective Date, except as set forth in the Development Plan and the Pre-NDA Meeting Minutes and Written Responses, and except for any studies and tasks contemplated to be conducted under each of the foregoing, whether pre-NDA submission or post-FDA Approval as a post-marketing study or requirement, the Purchased Assets include the data and information reasonably required to (a) Develop the Product, and (b) manufacture the Product; provided, however, for the avoidance of doubt, Cyprium does not have any Knowledge of any FDA requirements or positions with respect to the submission of the Product NDA relating to the manufacture of the Product for the Primary Indication other than as set forth in the Development Plan and/or the Pre-NDA Meeting Minutes and Written Responses.

3.4 Development Plan. To Cyprium's Knowledge as of the Effective Date, so long as the studies and other tasks and steps set forth in the Development Plan are successful and the FDA does not deviate from the positions described in the Pre-NDA Meeting Minutes and Written Responses, the Development Plan is reasonably likely to generate the data that the FDA has indicated to Cyprium that it is likely to require in connection with the submission of the Product NDA. Without limiting the foregoing, Sentynl acknowledges and agrees that the Development of pharmaceutical products is inherently unpredictable, and the Product, as of the Effective Date, remains under Development. The FDA may request additional Development work, including issuing a complete response letter with respect to the Product NDA and/or withholding approval following the pre-approval inspection of the Product manufacturing facility, and such facts, standing alone, shall not be deemed a breach of this or any other representation or warranty. The FDA may also agree that certain studies can be performed following FDA Approval as post-

marketing studies, and such changes in timing shall be deemed automatically incorporated into the Development Plan. Sentynl acknowledges that Cyprium has the right to modify the Development Plan, subject to approval of the JSC with respect to any material modifications as set forth in Section 5.1.4(b), and such modifications shall be deemed disclosures set forth in Schedule 3.4.

3.5 Litigation and Other Proceedings; Orders. No Proceeding is or has ever been pending or, to Cyprium's Knowledge, threatened that (a) affects or relates to the Purchased Assets, or (b) seeks to enjoin, restrain, or prohibit the consummation of the transactions contemplated hereby. Cyprium is not operating under or subject to any injunction, writ, temporary restraining order, decree, or any order by any Governmental Authority that relates to the Purchased Assets.

3.6 Governmental Consents and Approvals. The execution, delivery, and performance by Cyprium of this Agreement and the consummation by Cyprium of the transactions contemplated hereby do not and will not require any material filing or registration with, notification to, or authorization, permit, license, declaration, order, consent, or approval of, or other action by or in respect of, any Governmental Authority in the United States, other than the filing of the Product NDA and the FDA Approval.

3.7 Intellectual Property.

3.7.1 To Cyprium's Knowledge, Cyprium solely and exclusively owns, or has the sole and exclusive valid and legally enforceable right to use, all Intellectual Property currently used by Cyprium and its Affiliates and as contemplated to be used to perform the Development activities set forth in the Development Plan, including to submit the Product NDA to the FDA, and to further Develop and Commercialize the Product for the Primary Indication (collectively, the "***Cyprium IP***"). Additionally, Cyprium has the right to include in the Product NDA all data, information, and methods set forth, included or referred to therein, whether or not patentable, confidential, or otherwise subject to Laws related to Intellectual Property.

3.7.2 To Cyprium's Knowledge, no Person (including any current or former employee or consultant of Cyprium) has infringed, misappropriated, or violated, or is currently infringing, misappropriating, or violating, the Cyprium IP.

3.7.3 To Cyprium's Knowledge, performance of the Development activities contemplated by the Development Plan and Commercialization of the Product do not, and shall not, infringe or misappropriate the Intellectual Property of a Third Party. Cyprium has not received any written claim or notice from a Third-Party alleging that the Development, manufacturing, and/or Commercialization of the Product in the United States constitutes an infringement or misappropriation of the Intellectual Property of a Third Party. Cyprium has not obtained from patent counsel any freedom-to-operate opinion with respect to the Product for the Primary Indication. For the avoidance of doubt, Sentynl acknowledges and agrees that the sole representations and warranties provided by Cyprium with respect to the infringement and/or misappropriation of the Intellectual Property of a Third Party is set forth in this Section 3.7.3.

3.7.4 The Cyprium IP is free and clear of any Encumbrances.

3.8 Regulatory.

3.8.1 Cyprium has provided, and shall provide, Sentynl with a true and complete copy of the Product NDA and material supporting documentation.

3.8.2 Cyprium has provided, and shall provide, Sentynl with true and complete copies of all material correspondence with the FDA regarding the Product and the Product NDA.

3.8.3 Cyprium is, has been, and shall be, in compliance, in all material respects, with (a) all applicable Laws, and (b) all Healthcare Regulatory Authorizations, in each case (a) and (b), to the extent related to (i) the Development of the Product and the Product NDA and (ii) the ownership, use, Development and clinical manufacturing of the Product.

3.8.4 Cyprium (a) has not made, and shall not make, an untrue statement of a fact or a fraudulent statement to the FDA or any other Healthcare Regulatory Authority, (b) has not failed, and shall not fail, to disclose a fact required to be disclosed to the FDA or any other Healthcare Regulatory Authority, (c) has not committed, and shall not commit, any other act, made any statement, or failed to make any statement, that (in any such case) establishes a basis for the FDA to invoke its Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy, and (d) has not been the subject of any investigation by the FDA pursuant to its Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy, in all cases (a)-(d), in connection with the Development and Commercialization of the Product and the Product NDA. Neither Cyprium nor any of Cyprium's officers or employees, nor, to Cyprium's Knowledge, its agents or clinical investigators, has been suspended or debarred or convicted of any crime or engaged in any conduct that could result in (i) debarment under 21 U.S.C. Section 335a or any other Law, or (ii) exclusion under 42 U.S.C. Section 1320a-7 or any other Law. Cyprium has not received any written notice from a Governmental Authority alleging that Cyprium has materially violated, or inquiring into allegations related to the material violation of, any Laws applicable to the Purchased Assets.

3.8.5 Cyprium has obtained all necessary and applicable approvals, clearances, authorizations, licenses and registrations required by the United States, other than the FDA Approval, for the conduct of its Development activities conducted with respect to the Product as contemplated by the Development Plan, except where the failure to hold such approvals, clearances, authorizations, licenses or registrations has not had a Material Adverse Effect and would not reasonably be expected to have a Material Adverse Effect.

3.9 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, opinion, or other fee or commission in connection with the transactions contemplated by this Agreement.

3.10 Insurance. Schedule 3.10 sets forth (a) a true and correct list of all material policies of liability and product liability insurance maintained by or on behalf of Cyprium that are primarily for the benefit of Cyprium (collectively, the "***Insurance Policies***") and (b) a true and correct list of all pending claims and the claims history of Cyprium related to the Purchased Assets and Development of the Product. Cyprium has maintained continuous coverage of all such Insurance Policies (or substantially similar equivalents) and all such Insurance Policies are in full force and

effect. Cyprium has not received any written notice of cancellation or termination of, or material alteration of coverage under, any of the Insurance Policies. There are no material claims pending under any Insurance Policies relating to the Product as to which coverage has been denied or disputed or in respect of which there is an outstanding reservation of rights. All premiums due on the Insurance Policies have been paid. Cyprium is not in default under, nor has otherwise failed to comply with, any provision contained in any such Insurance Policy.

3.11 Liabilities. Schedule 3.11 sets forth a true and complete list of all material Liabilities existing as of the Effective Date with respect to the Purchased Assets.

3.12 Books and Records. To Cyprium's Knowledge, Cyprium has disclosed to Sentynl copies of the Books and Records, and such copies are, to Cyprium's Knowledge, true and complete in all material aspects.

3.13 Disclaimer of Certain Representations and Warranties. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS ARTICLE 3, CYPRIUM EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING AS TO THE CONDITION, FUTURE PROSPECTS, FORWARD LOOKING STATEMENTS, VALUE, OR QUALITY OF THE PURCHASED ASSETS AND/OR THE PRODUCT, AND INCLUDING, WITHOUT LIMITATION, THE PROVISIONS OF THE DEVELOPMENT PLAN; AND EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS ARTICLE 3, CYPRIUM SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, SUITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY REPRESENTATION OR WARRANTY ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICES.

4. SENTYNL'S REPRESENTATIONS, WARRANTIES, AND COVENANTS

Sentynl hereby represents, warrants, and covenants to Cyprium as follows:

4.1 Organization of Sentynl; Due Authorization.

4.1.1 Sentynl (a) is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Delaware, (b) is duly licensed and qualified to conduct its business, in all material respects, in each jurisdiction where the nature of the properties owned, leased, or operated by it and the business transacted by it requires such licensing or qualification, and (c) holds all necessary corporate power and authority to own, license, and operate its assets and properties, to conduct its business, to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement and the consummation of the transactions contemplated hereby, the execution and delivery of this Agreement by Sentynl, the performance by Sentynl of its obligations hereunder, and the consummation by Sentynl of the transactions contemplated hereby, have been duly authorized by all requisite action on the part of Sentynl, and no other proceedings on the part of Sentynl are necessary to authorize the execution and delivery of this Agreement or the consummation by Sentynl of the transactions contemplated hereby.

4.1.2 This Agreement has been duly executed and delivered by Sentynl and (assuming due authorization, execution, and delivery by Cyprium) constitutes a legal, valid, and binding obligation of Sentynl, enforceable against Sentynl in accordance with their respective terms, except: (a) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium, and other Laws of general application affecting enforcement of creditors' rights generally, and (b) as limited by Laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

4.1.3 Sentynl has full corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and each other agreement, document, instrument, or certificate contemplated by this Agreement to be executed by Sentynl in connection with the consummation of the transactions contemplated hereby.

4.2 No Conflicts, Consents, or Approvals. Neither the execution or delivery by Sentynl of this Agreement, nor the performance by Sentynl of its obligations hereunder, nor the consummation of the transactions contemplated hereby, will (a) result in any breach of any provision of Sentynl's certificate of incorporation and by-laws, each as amended from time to time, (b) result in any breach of, require (with or without notice or lapse of time or both) any payment, consent, or notice, or constitute a default (or give rise to any right of purchase, termination, amendment, acceleration, or cancellation) under, any material agreement or other instrument to which Sentynl is a party or by which Sentynl or any of its assets are subject or bound, or (c) violate any applicable Law.

4.3 Governmental Consents and Approvals. The execution, delivery, and performance by Sentynl of this Agreement and the consummation by Sentynl of the transactions contemplated hereby do not and will not require any filing or registration with, notification to, or authorization, permit, license, declaration, order, consent, or approval of, or other action by or in respect of, any Governmental Authority.

4.4 Financing of the Transactions. As of the Effective Date, Sentynl (or its Affiliates that are obligated to provide funds and other support to Sentynl to enable Sentynl to meet its obligations under this Agreement) has sufficient immediately available funds to pay, in cash, a sum equal to (a) the Upfront Payment, *plus* (b) the NDA Acceptance Payment. As of the Closing, Sentynl (or its Affiliates that are obligated to provide funds and other support to Sentynl to enable Sentynl to meet its obligations under this Agreement) will have sufficient immediately available funds to pay, in cash, the Purchase Price and all other amounts payable by Sentynl pursuant to this Agreement or otherwise necessary to be paid by Sentynl to consummate the transactions contemplated hereby. To the knowledge of Sentynl and its Affiliates, Sentynl's and such Affiliates' ability to pay their debts as they become due is not and will not be adversely affected by any government investigations or enforcement actions, or any private lawsuits, relating to or arising from any opioid products commercialized by or on behalf of Sentynl and/or its Affiliates.

4.5 Litigation and Other Proceedings; Orders. No Proceeding is or has ever been pending or, to Sentynl's knowledge, threatened, that seeks to enjoin, restrain, or prohibit the consummation of the transactions contemplated hereby.

4.6 Brokers. No broker, finder, or investment banker is entitled to any brokerage, finder's, opinion, or other fee or commission in connection with the transactions contemplated by this Agreement.

4.7 Sentynl's Investigation and Non-Reliance. Sentynl and its Representatives have been provided with access to the Representatives, properties, offices, facilities, and books and records of Cyprium and other information (including the information necessary to determine whether to enter into this Agreement) that they have requested in connection with their investigation of the Product, the Purchased Assets, and the transactions contemplated by this Agreement. Sentynl is not relying, has not relied, and disclaims all reliance upon any statement, representation, or warranty (whether oral, written, express, or implied) made by Cyprium or any of its Affiliates or Representatives of any kind whatsoever, except as expressly set forth in Article 3 and the Disclosure Schedules specifically identified in Article 3. Except in the case of fraud, willful misconduct or intentional misrepresentation, neither Cyprium nor any of its Affiliates or Representatives shall have any liability to Sentynl or any of its Affiliates or Representatives resulting from the use of any information, documents, or materials made available to Sentynl (or its Representatives), whether orally or in writing, in any confidential information memoranda, "data rooms," "virtual data rooms," management presentations, due diligence (whether or not received from Cyprium or any of its Affiliates or Representatives) in any form (including via discussion or presentation) in expectation of the transactions contemplated by this Agreement. Cyprium (and its Affiliates and Representatives) is not making, directly or indirectly, any representation or warranty with respect to any estimates, projections, or forecasts involving the Product or the Purchased Assets, including the likelihood of approval of the Product NDA and/or the timing of any decision by the FDA. Sentynl acknowledges and agrees that there are inherent uncertainties in attempting to make such estimates, projections, and forecasts and that Sentynl takes full responsibility for making its own evaluation of the adequacy and accuracy of any such estimates, projections, or forecasts (including the reasonableness of the assumptions underlying any such estimates, projections, or forecasts). Sentynl acknowledges and agrees that Sentynl is acquiring the Purchased Assets without any representation or warranty as to the merchantability or fitness for any particular purpose of the Product or the Purchased Assets or the effectiveness or the success of the Product or the Purchased Assets, and on an "as is" and "where is" basis, except as expressly set forth in Article 3 and the Disclosure Schedules specifically identified in Article 3. The provisions of this Section 4.7, together with the limited exclusive remedies provided in Article 9, were specifically bargained-for between Sentynl and Cyprium in arriving at the consideration to be paid under this Agreement. Sentynl hereby represents and warrants that, as of the Effective Date, it does not have any actual knowledge of, and is unaware of any existing facts or circumstances that, with the passage of time, would reasonably be expected to cause, any breach by Cyprium of any of the representations and warranties set forth in Article 3.

5. PRE-CLOSING COVENANTS

5.1 Product Development.

5.1.1 Product Development Generally.

(a) Cyprium Responsibilities. Following the Effective Date and prior to the Closing, Cyprium hereby agrees to (i) use Commercially Reasonable Efforts to Develop the Product, at its sole cost and expense and (ii) fund the Development in accordance with the Development Plan, and including using the Upfront Payment.

(b) Sentynl Acknowledgement. Sentynl acknowledges and agrees that Cyprium shall be deemed to have satisfied its obligations set forth in Section 5.1.1(a) so long as it complies, in all material respects, with the Development Plan (including any additional Development work required by the FDA).

(c) Development Termination. Notwithstanding any provisions to the contrary, including Sections 5.1.1(a) and (b), Sentynl acknowledges and agrees that Cyprium shall have the right, at any time and for any reason (including, for the avoidance of doubt, in the event that the FDA requires additional Development work), without incurring Liability under this Agreement, to terminate Development and provide Sentynl with notice of such termination in accordance with Section 2.6.7, subject, however, to the provisions of Section 7.5.3 (in the event of a termination of this Agreement) and Article 9 (in the event of Closing).

5.1.2 Development of Newborn Screening Assay. From and after the Effective Date, Sentynl shall, as Cyprium's agent and for Cyprium's benefit, at Sentynl's sole cost, use Commercially Reasonable Efforts to develop a newborn screening assay with respect to the Primary Indication in accordance with industry standards relating to the development of such assays and their acceptance by applicable Governmental Authorities and the medical community. Upon Sentynl's request, Cyprium shall reasonably cooperate and provide reasonable assistance in support of Sentynl's development efforts described in this Section 5.1.2. For the avoidance of doubt, as between the Parties, prior to the Closing, Cyprium shall be the sole and exclusive owner of any work product arising out of or related to the development of a newborn screening assay and all Intellectual Property, information, records, and any documentation arising out of or related to Sentynl's development efforts under this Section 5.1.2 (collectively, the "***Newborn Screening Assay***"); and, from and after Closing, as between the Parties, Sentynl shall be the sole and exclusive owner of the Newborn Screening Assay in accordance with Section 2.1.8. In the event this Agreement is terminated prior to the Closing by either Party for any reason, Cyprium shall reimburse Sentynl for any expenses that Sentynl or its Affiliates actually and reasonably incurs and reasonably documents in connection with Sentynl's development efforts described in this Section 5.1.2.

5.1.3 Regulatory. Following the Effective Date and prior to the Closing:

(a) Submission of the Product NDA. Cyprium shall use Commercially Reasonable Efforts to submit and file, on a rolling basis and in Cyprium's name, the Product NDA with the FDA. Upon Cyprium's request, Sentynl shall provide reasonable cooperation and support

in connection with the foregoing activities. Sentynl acknowledges and agrees that Cyprium shall be deemed to have satisfied its obligations set forth in this Section 5.1.3(a) so long as it complies, in all material respects, with the Development Plan (including any additional Development work required by the FDA).

(b) Regulatory Communications. Cyprium shall be solely responsible for all communications with the FDA and any other Healthcare Regulatory Authority and/or Governmental Authority in connection with the Product NDA; provided, however, that Cyprium shall furnish Sentynl with a copy of any proposed material communication with the FDA at least five (5) Business Days prior to submission to the extent permitted by Law. Sentynl shall be entitled to review and provide comments to such proposed material communication and Cyprium shall in good faith give due consideration to any such comments from Sentynl; provided, however, that, notwithstanding the foregoing, Cyprium shall have final decision-making authority with respect to any such communication, and Cyprium's obligation to consult with Sentynl shall be subject to Cyprium's good faith determination that the time required to so consult would not materially impair the availability of rights or remedies, or increase exposure, in connection with such communication. Cyprium shall keep the JSC reasonably informed regarding any non-routine communications with the FDA and/or any other Healthcare Regulatory Authority or Governmental Authority in connection with the Product NDA, including any additional Development work required by the FDA which such work shall be deemed to be incorporated into the Development Plan upon delivery of the foregoing notice.

5.1.4 Joint Steering Committee.

(a) Cyprium and Sentynl will establish a joint steering committee (the "***JSC***"), comprised of two (2) representatives from each of Cyprium and Sentynl, which shall oversee the performance of the Development Plan and the development of the newborn screening assay for the Primary Indication. Cyprium's initial representatives on the JSC shall be Lung S. Yam, M.D., Ph.D. and Robert Niecestro, Ph.D.; and Sentynl's initial representatives on the JSC shall be Eileen Banaga, MS, RAC and Darren Pincus. Each of Cyprium and Sentynl may change one (1) or more representatives serving on the JSC at any time upon prior written notice to the other Party.

(b) Cyprium shall provide the JSC with quarterly written reports on the progress of the Development of the Product, and Sentynl shall provide the JSC with quarterly written reports on the progress of the development of the newborn screening assay for the Primary Indication. All material modifications to the Development Plan, other than those required by the FDA, must be approved by the JSC; provided, however, that such JSC approval shall not be unreasonably conditioned, delayed, or withheld. In the event that Cyprium desires to materially modify the Development Plan (other than as required by the FDA), Cyprium shall promptly provide the JSC with written notice of such proposed modification, specifying the rationale for such proposed modification (the "***Modification Request***"). The JSC shall respond to any Modification Request within five (5) Business Days of the delivery of the Modification Request. The failure by the JSC to respond to a Modification Request in a timely manner shall be deemed approval of such Modification Request. Prior to a Development Termination and any other

termination of this Agreement, any approved Modification Request shall be at the sole cost and expense of Cyprium.

(c) Decisions of the JSC shall be made by unanimous consensus, with one vote for Cyprium and one vote for Sentynl. The members of the JSC shall at all times use good faith to reach unanimous consensus on matters referred to the JSC under this Agreement. In the event that the JSC is unable to reach consensus with respect to a particular matter, then either Party may, by written notice to the other, refer the matter to the respective business head of each Party or their respective designee of such business head for resolution of such matter in good faith within fifteen (15) Business Days. In the event that the business head or their designees as may be applicable are unable to reach agreement with respect to such matter within such fifteen (15) Business Days, then Cyprium shall have the right to make the final decision. Notwithstanding the foregoing, in the event that Cyprium determines in its reasonable judgment that failing to act in accordance with any Modification Request pending the resolution of any disagreement in accordance with the provisions of this Section 5.1.4(c) is reasonably likely to adversely and materially jeopardize the success of the Development Plan or any material portion of the Development Plan, Cyprium shall be permitted to act immediately in accordance with such Modification Request, and such actions shall not be deemed a breach of this Section 5.1.4 or Section 5.1.1(a)(i).

(d) The JSC will meet at least quarterly in person or by audio or video teleconference. Each of Cyprium and Sentynl will be responsible for all of the expenses of its representatives participating in the JSC meetings. A representative from each of Cyprium and Sentynl will be necessary for a quorum at any such meeting.

5.1.5 Termination. The Parties acknowledge and agree that the obligations set forth in this Section 5.1 shall terminate or expire automatically upon the earliest of (a) the Closing or (b) the termination of this Agreement in accordance with Section 7.5.1.

5.2 Conduct of Cyprium Prior to the Closing.

5.2.1 General. Except for matters required by applicable Law or expressly permitted by this Agreement or as otherwise consented to in writing by Sentynl, from the Effective Date to the Closing (or until the earlier termination of this Agreement), Cyprium shall Develop the Product for the Primary Indication in a manner reasonably designed to satisfy Cyprium's obligations under this Agreement and shall use Commercially Reasonable Efforts to preserve its existing business relationships with and the goodwill of suppliers, licensors, regulators and others having material business dealings with respect to the Purchased Assets, except as set forth in or to the extent reasonably required to perform the Development Plan.

5.2.2 Negative Covenants. Following the Effective Date and prior to the Closing, except as expressly set forth in the Development Plan, Cyprium shall not:

(a) transfer, license, sell, lease, or otherwise dispose of (whether by way of merger, consolidation, sale of stock or assets, or otherwise) or pledge, grant any lien on, encumber, or otherwise subject to any Encumbrance, the Purchased Assets;

(b) abandon, allow to lapse, sell, assign, transfer, grant any security interest in, otherwise encumber or dispose of any Cyprium IP, or grant any right or license to any Cyprium IP;

(c) disclose to another Person, or facilitate the use or transfer by or to another Person, of the Product NDA, "regulatory documents," "essential documents," or any amendments thereto, any data or information contained in the files submitted to the FDA, or any other information or data, in each case, related to the Product or improvements thereon, except in the ordinary course of business or to the extent reasonably required to perform the Development Plan;

(d) adopt a plan of liquidation, dissolution, merger, consolidation, statutory share exchange, restructuring, recapitalization or reorganization;

(e) initiate or threaten, or allow to commence or proceed, any bankruptcy, receivership, insolvency, reorganization or similar Proceeding;

(f) amend, terminate, renew, extend or increase the rate of payment under any Material Contract, in any material respect, without Sentynl's prior written consent (not to be unreasonably withheld, conditioned or delayed), except to the extent reasonably required to perform the Development Plan;

(g) enter into any settlements of any Proceeding related to the Purchased Assets;

(h) waive, release or assign any material rights, benefits or claims of Cyprium relating to any of the Purchased Assets, in any material respect, without Sentynl's prior written consent (not to be unreasonably withheld, conditioned or delayed);

(i) increase or otherwise change the terms or conditions of any of the Assumed Liabilities, in any material respect, without Sentynl's prior written consent (not to be unreasonably withheld, conditioned or delayed); or

(j) agree or commit to do any of the foregoing.

5.2.3 Affirmative Covenants. Following the Effective Date and prior to the Closing, Cyprium shall:

(a) preserve, maintain and renew, as applicable, all Healthcare Regulatory Authorizations held by Cyprium as of the Effective Date and required for the Development of the Product or the ownership and use of the Purchased Assets;

(b) pay or otherwise satisfy any indebtedness, Taxes and other Liabilities and obligations related to the Purchased Assets when due;

(c) use Commercially Reasonable Efforts to defend and protect the assets included in the Purchased Assets from infringement or misappropriation;

(d) perform its obligations under all Material Contracts, except as set forth in or to the extent reasonably required to perform the Development Plan;

(e) maintain in full force and effect, without material modification, all Insurance Policies or comparable insurance policies, except as required by applicable Law; and

(f) comply in all material respects with all Laws and any applicable Healthcare Regulatory Authority in connection with the Development of the Product or the ownership and use of the Purchased Assets.

5.3 Compliance with Laws. Each of Cyprium and Sentynl shall comply with all applicable Laws in connection with its performance of the activities set forth herein and the consummation of the transactions contemplated by this Agreement.

5.4 Financial Solvency. Following the Effective Date and prior to the Closing, each Party shall promptly notify the other Party, in writing, in the event it is unable to pay its debts as they become due, defaults on a material financial obligation, or commences discussions with respect to a bankruptcy, receivership, or reorganization due to insolvency. Each Party shall use Commercially Reasonable Efforts to notify the other Party at least one hundred twenty (120) calendar days prior to the commencement of any bankruptcy, receivership, insolvency, reorganization or similar Proceeding with respect to such Party.

5.5 Notifications. Following the Effective Date and prior to the Closing, each Party will promptly notify the other Party in writing of any fact, change, condition, circumstance, or occurrence or nonoccurrence of any event of which it is aware that will or is reasonably likely to result in any of the conditions set forth in Article 7 becoming incapable of being satisfied. For the avoidance of doubt, following the Effective Date and until the Closing, each Party will promptly notify the other Party, in writing, of:

5.5.1 the occurrence, or failure to occur, of any event, which occurrence or failure would be reasonably likely to cause any representation and warranty of a Party contained in this Agreement to be untrue or inaccurate at any time between the date hereof and the Closing;

5.5.2 any written notice or other written communication from any Third Party alleging that the permission, consent or approval of such Third Party is or may be required in connection with the Acquisition;

5.5.3 any written notice or other communication from any Governmental Authority in connection with the Acquisition;

5.5.4 any actions, suits, claims, investigations or proceedings commenced or threatened against either Party that relate to the consummation of the Acquisition or the Purchased Assets; and

5.5.5 any failure or inability of a Party to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it hereunder.

Between the date hereof and the Closing, Cyprium will notify Sentynl of any material change in a relationship with a material supplier, distributor or manufacturer related to the Purchased Assets. The giving of any notice under this Section 5.5 shall in no way change or modify the representations and warranties of the Parties, or the conditions to the obligations of the Parties, contained herein, or otherwise affect the remedies available to the Parties hereunder.

5.6 Tax Matters. If the Closing occurs, the Parties agree that the consummation of the Acquisition is intended by each of the Parties to be characterized for U.S. federal and all applicable U.S. state income tax purposes as Cyprium's sale, transfer and assignment to Sentynl, and Sentynl's acquisition and purchase of, all of Cyprium's right, title, and interest in and to the Purchased Assets (i.e., as a "purchase and sale" of property, and not as a "license" by Cyprium (each such term as defined for U.S. federal income tax purposes) with respect to such Purchased Assets). Consistent with the foregoing, it is further agreed that the Parties further intend that the payments of the Upfront Payment, the NDA Acceptance Payment, the Purchase Price, and the Royalty Payments from Sentynl to Cyprium pursuant to this Agreement, to the extent allocable to the Acquisition, are to be characterized for U.S. federal and all applicable U.S. state income tax purposes as part of the purchase price paid or payable by Sentynl to Cyprium in respect of such purchase and sale of property. The Parties covenant and agree to prepare and file their respective Tax returns in a manner consistent in all respects with the foregoing intended income Tax characterization of the transactions contemplated hereby, except as otherwise required by applicable Law following any challenge thereto by an applicable Governmental Authority.

5.7 Qualification of Additional Manufacturing Site. Following the Effective Date, Cyprium hereby consents to and grants Sentynl the right to begin qualifying an additional manufacturing site for the Product, which shall occur in parallel with the ongoing Development of the Product by Cyprium. All such qualification activities (and any activities related thereto) shall be at Sentynl's sole discretion and expense. Cyprium shall cooperate with Sentynl, upon Sentynl's reasonable request and at Sentynl's sole expense, in connection with the activities set forth in this Section 5.7, including executing and delivering, or causing to be executed and delivered, such documents and instruments, and taking, or causing to be taken, such actions, as the Parties may reasonably agree are necessary or desirable to qualify the additional manufacturing site. Notwithstanding any other provision to the contrary, Sentynl shall not, without Cyprium's prior written consent, notify or engage in any way, whether in writing or verbally, and whether formally or informally, the FDA or any other Governmental Authority, with respect to its efforts to qualify such additional manufacturing site. Sentynl acknowledges and agrees that Cyprium shall have the right to withhold its consent in connection with the foregoing, so long as Cyprium determines, in its sole and absolute discretion, that any such notification and/or engagement could lead to (a) a delay in (i) the submission of the Product NDA or (ii) the FDA granting the FDA Approval, or (b) action by the FDA that could adversely affect (i) the timing or approval of the Development Plan, (ii) submission of the Product NDA, (iii) the FDA Approval, and/or (iv) the approval or receipt of the PRV.

6. POST-CLOSING COVENANTS

6.1 Product Development and Commercialization.

6.1.1 Commercialization in the United States. From and after the Closing, Sentynl shall use Commercially Reasonable Efforts to Develop (solely following an Approval Deadline Transfer or a Development Termination, until the FDA Approval is granted) and to Commercialize the Product in the United States. Without limiting the generality of the foregoing, for purposes of this Section 6.1.1, Commercially Reasonable Efforts includes launching the Product in the United States within six (6) months of FDA Approval.

6.1.2 Commercialization outside the United States**.** Sentynl shall, within forty-eight (48) months of FDA Approval, provide Cyprium with written notice (the "***OUS Notice***") of the jurisdictions in the Territory where Sentynl intends, in good faith, to Develop and Commercialize the Product (the "***OUS Sentynl Jurisdictions***"). Following delivery of the OUS Notice, Sentynl shall use Commercially Reasonable Efforts to Develop and Commercialize the Product in such OUS Jurisdictions. Additionally, Sentynl shall promptly assign, transfer, and convey all rights to Develop and Commercialize the Product, including a right of reference with respect to the approved Product NDA, in any jurisdiction in the Territory that (a) is not identified in accordance with this Section 6.1.2 as an OUS Sentynl Jurisdiction, and/or (b) is initially identified as an OUS Sentynl Jurisdiction, but Sentynl fails to use Commercially Reasonable Efforts to Develop and/or Commercialize the Product in such jurisdiction (collectively, the "***OUS Cyprium Jurisdictions***"); provided, however, that such assignment, transfer and conveyance by Sentynl is contingent upon Cyprium using Commercially Reasonable Efforts to launch the Product for the Primary Indication in the OUS Cyprium Jurisdictions within thirty-six (36) months of Sentynl assigning, transferring, and conveying to Cyprium the right to Develop and Commercialize the Product in such OUS Cyprium Jurisdiction. Cyprium shall promptly assign, transfer, and convey all rights to Develop and Commercialize the Product back to Sentynl in those OUS Cyprium Jurisdictions where Cyprium has not used Commercially Reasonable Efforts to launch the Product for the Primary Indication within such thirty-six (36) month period. For the avoidance of doubt, Cyprium shall not, under any circumstance, owe Sentynl any payment in connection with its acceptance of any rights in accordance with this Section 6.1.2 and/or its Development and/or Commercialization of any Product in any OUS Cyprium Jurisdiction.

6.1.3 Parallel Imports. To the fullest extent allowable under applicable Law, Cyprium hereby covenants that it shall not knowingly, directly or indirectly, (a) Commercialize the Product to, or solicit orders from, any existing or prospective customer inside or outside the OUS Cyprium Jurisdictions for subsequent sale outside the OUS Cyprium Jurisdictions; (b) deliver or tender (or cause to be delivered or tendered) the Product outside the OUS Cyprium Jurisdictions for use outside the OUS Cyprium Jurisdictions; or (c) Commercialize the Product to, or solicit Product sales from, a customer in the OUS Jurisdictions if Cyprium knows or has a reasonable basis to conclude that such customer intends to resell the Product outside the OUS Cyprium Jurisdictions. To the fullest extent allowable under applicable Law, Cyprium shall require in its contracts with its licensees and contractors that such licensees and contractors shall comply with the provisions of this Section 6.1.3, and, in the event Cyprium becomes aware, or has

a reasonable basis to conclude, that any of its licensees and/or contractors is in breach of this Section 6.1.3, Cyprium shall take all reasonable actions to prevent the continuance thereof, and to remedy such breach, including enforcing its rights under, or terminating, the applicable agreement with such licensee or contractor.

6.1.4 Maintenance of the Product NDA. Following Closing, Sentynl shall maintain the Product NDA. In the event that Sentynl desires to abandon the Product NDA, it shall provide Cyprium prior written notice; and Sentynl shall, upon Cyprium's request, assign, transfer, and convey to Cyprium, at no cost, the Product NDA.

6.2 Non-Competition.

6.2.1 To the greatest extent permissible under applicable Law, each Party covenants and agrees that, following the Closing and until seven (7) years following the first commercial sale of the Product in the United States (the "***Restrictive Period***"), neither it nor its Affiliates shall, directly or indirectly, in any capacity, (a) engage in, (b) have any direct or indirect ownership interest in any Person that engages in, (c) permit their names to be used in connection with, or (d) enter into any joint venture, distribution, profit sharing, or other agreement or arrangement with respect to, in any case (a) through (d), the development, manufacturing and/or Commercialization of any product (other than AAV-ATP7A with respect to Cyprium and its Affiliates and their respective successors and assigns), anywhere in the Territory, that (y) is approved by the FDA or any applicable Governmental Authority for the Primary Indication, and/or (z) is, or can be, used to treat the same indication(s) as the Product; provided, however, that Cyprium acknowledges and agrees that Sentynl and its Affiliates shall not be limited in any way from manufacturing, developing and/or commercializing Derivative Products, dietary supplements, vitamins, and/or other nutraceuticals or bioceuticals for the Primary Indication. Notwithstanding anything to the contrary in this Section 6.2.1, Cyprium acknowledges and agrees that Sentynl and its Affiliates (i) may enter into pharmaceutical development, manufacturing, clinical development and other activities related to the development of any other non-copper based pharmaceuticals (or other non-copper based product) for the Primary Indication or acquire (including by merger or consolidation) a Person or substantially all of the assets of a Person developing non-copper based pharmaceuticals (or other non-copper based product) for the Primary Indication and (ii) for the avoidance of doubt, may form a joint venture for marketing, distribution, profit sharing, or other agreement or arrangement for the Product in the Territory.

6.2.2 Following the Closing and through the Restrictive Period, Sentynl shall not, at any time, enter into an agreement pursuant to which Sentynl agrees to supply the Product to a Third Party for use in connection with the Development of any gene therapy product for the Primary Indication.

6.3 Further Action. From time to time, as and when reasonably requested by the other Party, each Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions, as the requesting Party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement, in any such case, at the requesting Party's sole cost and expense, including (a) Cyprium shall take any action reasonably necessary or desirable to transfer to, and

vest in, Sentynl, its successors and assigns all of Cyprium's right, title and interest in, to and under the Purchased Assets and (b) Sentynl shall take any action necessary or desirable to (i) confirm that it does not have, and has never had, any right, title, or interest in or to the PRV, and (ii) provide Cyprium with reasonable access to any of the Purchased Assets, including by means of a royalty-free license, to the extent useful solely in connection with the Gene Therapy Program.

6.4 Insurance. From and after the Closing, Cyprium or its Affiliate, as applicable, shall maintain the coverage under the Insurance Policies or maintain comparable insurance policies, including the purchase of a 4-year prepaid tail policy for the Insurance Policies or substantially similar coverage which shall name Sentynl and its Affiliates as an additional insured.

6.5 Expanded Access Program. Without limiting the generality of Sections 2.1 and 2.2, in the event that the Closing takes place prior to the granting of the FDA Approval, Sentynl shall, from and after the Closing and until the granting of the FDA Approval, continue to maintain and operate the Expanded Access Program, substantially in the same manner as operated by Cyprium immediately prior to the Closing and in compliance with all applicable Laws. During the sixty (60) days following a Closing that takes place prior to the granting of the FDA Approval, Cyprium shall, upon Sentynl's request and at Sentynl's cost, reasonably cooperate and provide reasonable assistance in connection with the maintenance and operation of the Expanded Access Program.

6.6 Gene Therapy Program. Sentynl shall consider in good faith, but not be bound to agree to, any reasonable request by Cyprium to support Cyprium's Gene Therapy Program, including by providing clinical and commercial supplies of the Product upon commercially reasonable terms.

6.7 Development of Newborn Screening Assay. From and after the Closing, Sentynl shall use Commercially Reasonable Efforts to develop a newborn screening assay with respect to the Primary Indication in accordance with industry standards relating to the development of such assays and their acceptance by applicable Governmental Authorities and the medical community.

7. CONDITIONS PRECEDENT, WAIVER, AND TERMINATION

7.1 Conditions Precedent to Performance of the Parties. The obligations of the Parties to consummate the Acquisition are subject to fulfillment, at or prior to the Closing, of each of the following conditions:

7.1.1 No Governmental Authority shall have enacted, issued, enforced, or entered into any statute, rule, regulation, injunction, or other order that is in effect and has the effect of making the Acquisition illegal or otherwise restraining or prohibiting its consummation.

7.2 Conditions Precedent to Performance of Cyprium. Cyprium's obligation to consummate the Acquisition is subject to the fulfillment or written waiver, at or prior to the Closing, of the following conditions:

7.2.1 Either: (a) the FDA shall have issued to Cyprium the FDA Approval; (b) Sentynl shall have exercised the Approval Deadline Option; or (c) Sentynl shall have delivered notice of its desire to effect Closing following a Development Termination.

7.2.2 Sentynl shall have complied, in all material respects, with its obligations and covenants set forth in this Agreement;

7.2.3 Sentynl's representations and warranties set forth in Article 4 shall be true and correct in all material respects as of the Closing with the same effect as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and

7.2.4 Sentynl shall have paid or delivered (or caused to be paid or delivered) to Cyprium the following items, each in form and substance satisfactory to Cyprium (the "***Sentynl Deliverables***"):

(a) by wire transfer of immediately available funds, (i) the Purchase Price, solely if the Closing occurs following the FDA Approval, or (ii) Fifty Percent (50%) of the Purchase Price, solely if the Closing occurs following the Approval Deadline Transfer;

(b) an assignment and assumption of the Product NDA, duly executed by Sentynl and in such form that is mutually satisfactory to the Parties;

(c) an assumption of the Material Contracts (including, without limitation, the NIH Agreements (as defined in Schedule 2.1.5)) from Cyprium;

(d) the Assignment and Assumption Agreement, duly executed by Sentynl;

(e) the PRV Assignment Confirmation, duly executed by Sentynl; and

(f) a certificate of the Secretary of Sentynl, dated as of the Closing, certifying that attached thereto are true and complete copies of the resolutions or written consents duly adopted by Sentynl's board of directors and by the board of directors of the Affiliate Financial Guarantor authorizing the execution, delivery, and performance of this Agreement and the transactions contemplated hereby.

7.3 Conditions Precedent to Performance of Sentynl. Sentynl's obligation to consummate the Acquisition is subject to the fulfillment or written waiver, at or prior to the Closing, of the following conditions:

7.3.1 Either: (a) the FDA shall have issued to Cyprium the FDA Approval; (b) Sentynl shall have exercised the Approval Deadline Option; or (c) Sentynl shall have delivered notice of its desire to effect Closing following a Development Termination.

7.3.2 Cyprium shall have complied, in all material respects, with all of its obligations and covenants set forth in this Agreement;

7.3.3 Cyprium's representations and warranties set forth in Article 3, shall be true and correct in all respects as of the Closing with the same effect as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date) except

where the failure to be true or correct has not had a Material Adverse Effect and would not reasonably be expected to have a Material Adverse Effect; and

7.3.4 Cyprium shall have delivered (or caused to delivered) to Sentynl the following items, each in form and substance satisfactory to Sentynl (the "***Cyprium Deliverables***"):

(a) the Product NDA;

(b) the Books and Records;

(c) an assignment and assumption of the Product NDA, including a letter notifying the FDA of the assignment of the Product NDA, duly executed by Cyprium and all in such forms that are mutually satisfactory to the Parties and in accordance with 21 CFR 314.72;

(d) an assignment of, or, as the case may be, a sublicense under the Material Contracts to Sentynl (or other form of transfer of the Material Contracts to Sentynl);

(e) the Assignment and Assumption Agreement, duly executed by Cyprium;

(f) the PRV Assignment Confirmation, duly executed by Cyprium; and

(g) a certificate of the Secretary of Cyprium, dated as of the Closing, certifying that attached thereto are true and complete copies of the resolutions or written consent duly adopted by Cyprium's board of directors authorizing the execution, delivery, and performance of this Agreement and the transactions contemplated hereby.

7.4 Waiver; Determination of Satisfaction of Conditions. Cyprium may waive all or any of the conditions set forth in Section 7.2 and Sentynl may waive all or any of the conditions set forth in Section 7.3, but neither Cyprium nor Sentynl may waive the conditions set forth in Section 7.1.

7.5 Termination of this Agreement.

7.5.1 This Agreement may be terminated at any time prior to the Closing:

(a) by either Party, if (i) the other Party shall have failed to comply, in any material respect, with any of its covenants or agreements contained in this Agreement, or (ii) any one or more of the other Party's representations or warranties contained in this Agreement shall prove to have been inaccurate in any material respect when made, and, in the case of (i) or (ii), such Party shall have given the other Party a reasonable opportunity to cure any such failure or inaccuracy to so comply before the Closing (which, in the case of Cyprium's failure to cure funding obligations, such opportunity to cure shall be no more than fifteen (15) Business Days from Sentynl's delivery of notice of such breach);

(b) by Sentynl, if prior to the Closing, (i) Cyprium enters into a definitive agreement for a Change of Control, and (ii) such Person obtaining control of Cyprium has not agreed, in writing, to be bound by the provisions of this Agreement;

(c) by Sentynl, (i) in lieu of exercising the Approval Deadline Option under Section 2.6.6, by delivering to Cyprium written notice of termination no later than the Approval Deadline Option Date, or (ii) in the event of a Development Termination, in accordance with Section 2.6.7, without Sentynl incurring any Liability to Cyprium in respect thereof;

(d) by Cyprium, if Sentynl delivers to Cyprium a notice in accordance with Section 5.4;

(e) by either Party, in the event that any Governmental Authority has enacted, issued, enforced, or entered into any statute, rule, regulation, injunction, or other order, restraining, enjoining, or otherwise prohibiting the Acquisition that has become final and non-appealable; or

(f) by the mutual written consent of Cyprium and Sentynl.

7.5.2 Effect of Termination on Qualification Activities. Upon termination of this Agreement in accordance with Section 7.5.1, Sentynl shall immediately cease the qualification activities contemplated by Section 5.7, and shall promptly provide Cyprium with written confirmation of the foregoing.

7.5.3 Indemnification upon Termination.

(a) Mutual Indemnification. Subject to the limitations set forth in this Section 7.5.3, solely in the event that either Party terminates this Agreement, each Party shall indemnify and hold harmless the other Party and its officers, directors, employees, agents, Affiliates, successors, and assigns from and against all Damages incurred by such other Party and/or its officers, directors, employees, agents, Affiliates, successors, and assigns to the extent based upon, arising out of, with respect to, or by reason of any breach of such indemnifying Party's representations, warranties, covenants, and/or obligations set forth in this Agreement.

(b) Limitations on Indemnification.

(i) Notwithstanding anything in this Agreement to the contrary, the maximum aggregate liability of a Party for indemnification under this Section 7.5.3 shall not exceed an amount equal to the Upfront Payment; provided, however, that the maximum aggregate liability of Cyprium with respect to any Development Claim and Ancillary Claims shall not exceed the Development Cap.

(ii) Each Party hereby acknowledges and agrees that, prior to Closing, other than as set forth in Section 5.1.2 and Section 12.11, its sole and exclusive remedy with respect to any and all claims and Damages relating to or arising from this Agreement or the transactions contemplated hereby shall be governed by, and subject to, the terms and provisions set forth in this Section 7.5.3.

(iii) Neither Cyprium nor Sentynl nor their respective officers, directors, employees, agents, Affiliates, successors, or assigns, shall have any right to recover any amounts pursuant to this Section 7.5.3, unless such party notifies the indemnifying Party in writing of its claim(s) or Damages within one (1) year of the effective date of termination.

(iv) Notwithstanding any other provision to the contrary, Sentynl and its officers, directors, employees, agents, Affiliates, successors, and assigns shall have no right to indemnification under this Section 7.5.3 with respect to any Development Claim and/or Ancillary Claim unless Cyprium has engaged in gross negligence, fraud, willful misconduct, or intentional misrepresentation in connection with such Development Claim and/or Ancillary Claim. For the avoidance of doubt, Cyprium's election to terminate or cease the Development of the Product, by itself, is not a valid basis for a Development Claim.

8. PRV

8.1 Acknowledgement. Sentynl acknowledges and agrees that (a) the PRV is an Excluded Asset, even if, for technical reasons, the PRV is issued in the name of Sentynl or any of its Affiliates, and, in such case, such recipient shall only hold the PRV as a nominee for, and for the benefit of, Cyprium; and (b) Cyprium retains, at all times, the right to receive the PRV, including in the event of an Approval Deadline Transfer or Closing following a Development Termination. Sentynl acknowledges and agrees that Sentynl, its Affiliates, and their respective successors and assigns shall have no right to receive or hold the PRV, except and only to the extent it is a nominee of, and holding it for the benefit of, Cyprium.

8.2 Confirmatory Assignment. In confirmation of the provisions of Section 8.1, Sentynl hereby assigns, transfers, and conveys, and shall assign, transfer, and convey, to Cyprium all right title, and interest in and to the PRV. In accordance with Section 7.2.4(d), Sentynl shall execute and deliver to Cyprium (a) an undated Confirmatory Assignment (the "***PRV Assignment Confirmation***") in the form attached hereto as Exhibit C, and (b) any documents reasonably necessary and desirable, promptly upon request thereof, to further confirm such assignment of the PRV, including dating and making effective the PRV Assignment Confirmation upon the issuance of such PRV, communicating with the FDA, and satisfying any other requirements of the FDA and applicable Law.

8.3 Cooperation. Upon Cyprium's request and at Cyprium's reasonable expense, Sentynl shall cooperate and provide assistance as Cyprium may reasonably deem necessary or desirable, including joining any lawsuit or other proceeding, (a) to confirm that Sentynl does not have, and has never had, any right, title, or interest in or to the PRV, and/or (b) to obtain the PRV, including in the event of an initial FDA denial relative to the Product NDA's qualification for the PRV.

9. POST-CLOSING INDEMNIFICATION

9.1 Indemnification of Sentynl Indemnified Parties. Subject to the limitations set forth in this Article 9 and to the extent not Damages otherwise indemnifiable by Sentynl under Section 9.2, from and after Closing, Cyprium shall indemnify and hold harmless Sentynl and its officers, directors, employees, agents, Affiliates, successors, and assigns (each, a "***Sentynl***

Indemnified Party") from and against all Damages incurred by the Sentynl Indemnified Parties to the extent based upon, arising out of, with respect to, or by reason of:

9.1.1 any breach of any of Cyprium's representations or warranties set forth in this Agreement;

9.1.2 any breach of any of Cyprium's covenants or obligations set forth in this Agreement (exclusive of Sections 9.1.3 and 9.1.4);

9.1.3 the Excluded Assets to the extent arising from any Third Party Claim; or

9.1.4 the Excluded Liabilities to the extent arising from any Third Party Claim.

9.2 Indemnification of Cyprium Indemnified Parties. Subject to the limitations set forth in this Article 9 and to the extent not Damages otherwise indemnifiable by Cyprium under Section 9.1, from and after Closing, Sentynl shall indemnify and hold harmless Cyprium and its officers, directors, employees, agents, Affiliates, successors, and assigns (each, a "***Cyprium Indemnified Party***") from and against all Damages incurred by the Cyprium Indemnified Parties to the extent based upon, arising out of, with respect to, or by reason of:

9.2.1 any breach of any of Sentynl's representations or warranties set forth in this Agreement;

9.2.2 any breach of any of Sentynl's covenants or obligations set forth in this Agreement; or

9.2.3 the Assumed Liabilities.

9.3 Indemnification Procedures.

9.3.1 The party making a claim under this Article 9 is referred to as the "***Indemnified Party***" and the party against whom such claims are asserted under this Article 9 is referred to as the "***Indemnifying Party.***" If any Indemnified Party receives written notice of the commencement of any action or proceeding or the assertion of any claim by a Third Party or the imposition of any penalty or assessment for which a claim for indemnification may be made under this Article 9 (a "***Third Party Claim***") or otherwise discovers the liability, obligation, or facts giving rise to such claim for indemnity, and such Indemnified Party intends to seek indemnity pursuant to this Article 9, such Indemnified Party shall promptly provide the Indemnifying Party with written notice of such Third Party Claim, stating the nature, basis, and the amount thereof, to the extent known, along with copies of the relevant documents evidencing such Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice will not prohibit such Indemnified Party from seeking indemnification hereunder, except if and to the extent that the Indemnifying Party is materially prejudiced thereby. The Indemnifying Party shall be entitled to participate in the defense of a Third Party Claim and, to the extent that it wishes, to assume the defense of a Third Party Claim, if, within thirty (30) days from receipt of any such notice of a Third Party Claim, the Indemnifying Party provides written notice to the Indemnified Party that the Indemnifying Party intends to undertake such defense; provided, however, that if the

Third Party Claim (a) involves a Governmental Authority, potential criminal liability, or is reasonably likely to have a Material Adverse Effect on any other matter beyond the scope or limits of the indemnification obligation of the Indemnifying Party, or (b) seeks specific performance or injunctive or other equitable relief, then the Indemnified Party shall be entitled to assume and control the defense of such Third Party Claim by providing written notice to the Indemnifying Party. If the Indemnifying Party has assumed the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel in any such action and to participate in (but not control) the defense thereof, provided that the fees and disbursements of such counsel shall be at the expense of the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 9.3.2, pay, compromise, and/or defend such Third Party Claim, and seek indemnification for any and all reasonable Damages based upon, arising from, or relating to such Third Party Claim. Cyprium and Sentynl shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

9.3.2 Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except in the event that such settlement (a) would not lead to liability or the creation of a financial or other obligation on the part of the Indemnified Party, and (b) provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 9.3.1, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

9.3.3 Any claim by an Indemnified Party on account of a Damage that does not result from a Third Party Claim (a "***Direct Claim***") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is materially prejudiced thereby. Such notice by the Indemnified Party shall state the nature, basis, and the amount of the Direct Claim, to the extent known, along with copies of the relevant documents evidencing such Direct Claim and the basis for indemnification sought. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim, and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance as the Indemnifying Party or any of its professional advisors may reasonably request.

9.4 Limitations on Indemnification.

9.4.1 Notwithstanding anything in this Agreement to the contrary, the Indemnifying Party shall not be obligated to pay for any Damages under Section 9.1 until the amount of all such Damages exceeds, in the aggregate, $50,000 (the "***Deductible***"), in which event the Indemnifying Party shall only pay or be liable for the Damages in excess of the Deductible. For purposes of this Section 9.4.1, any inaccuracy in or breach of any representations, warranties, covenants, and/or obligations shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation, warranty, covenant, and/or obligation.

9.4.2 Notwithstanding anything in this Agreement to the contrary, the maximum aggregate liability of Cyprium for indemnification under Section 9.1.1 shall not exceed [***] (the "***Cap***"); provided, however, the maximum aggregate liability of [***] shall not exceed [***].

9.4.3 Notwithstanding any other provision to the contrary, the Sentynl Indemnified Parties shall have no right to indemnification under this Article 9 with respect to any Development Claim and/or Ancillary Claim unless Cyprium has engaged in gross negligence, fraud, willful misconduct, or intentional misrepresentation in connection with such Development Claim and/or Ancillary Claim. For the avoidance of doubt, Cyprium's election to terminate or cease the Development of the Product, by itself, is not a valid basis for a Development Claim.

9.4.4 The amount of any Damages that any Indemnified Party is entitled to receive pursuant to this Article 9 shall be reduced by any related recoveries which such Indemnified Party actually receives under applicable insurance policies or from any other Person alleged to be responsible for any such Damages. If an Indemnified Party actually receives any amounts under applicable insurance policies, or from any other Person alleged to be responsible for any Damages, subsequent to an indemnification payment being made by the Indemnifying Party hereunder, then such Indemnified Party shall promptly pay to the Indemnifying Party an amount equal to such indemnification payment, up to the amount received by the Indemnified Party, net of any previously unpaid or unreimbursed expenses incurred by such Indemnified Party in collecting such amount and the aggregate increase in insurance premiums that are directly and proximately caused by such Damages.

9.4.5 Each Party hereby acknowledges and agrees that, from and after the Closing, its sole and exclusive remedy with respect to any and all claims and Damages relating to or arising from this Agreement or the transactions contemplated hereby (other than claims of, or causes of action arising from, fraud) shall be governed by, and subject to, the terms and provisions set forth in this Article 9.

9.4.6 The Indemnified Parties shall have no right to recover any amounts pursuant to this Article 9, unless on or before the applicable General Survival Date (as defined below), the Indemnified Party notifies the Indemnifying Party in writing pursuant to Section 9.3.1. Additionally, and for the avoidance of doubt, the Indemnified Parties shall have no right to recover any amounts pursuant to this Article 9 prior to the Closing or in the event that either Party terminates this Agreement in accordance with Section 7.5.1.

9.5 Survival of Representations, Warranties, and Covenants. Subject to the limitations and other provisions of this Agreement, claims for indemnification brought under Article 9 will survive (the "***General Survival Date***") until, as follows: (a) with respect to claims for indemnification under Sections 9.1.1 and 9.2.1, (i) except with respect to the Fundamental Representations, fifteen (15) months following the Closing, and (ii) in the case of the Fundamental Representations, the expiration of the applicable statute of limitations; and (b) with respect to claims for indemnification under Sections 9.1.2 and 9.2.2, the expiration of the applicable statute of limitations. Claims for indemnification under Sections 9.1.3, 9.1.4, and 9.2.3 shall survive indefinitely. It is the express intent of the Parties that if an applicable survival period as contemplated by this Section 9.5 is shorter than the statute of limitations that would otherwise apply, then, by contract, the applicable statute of limitations shall be reduced to the survival period contemplated hereby. The Parties further acknowledge that the time periods set forth in this Section 9.5 for the assertion of claims under this Agreement are the result of arms' length negotiation among the Parties and that they intend for the time periods to be enforced as agreed by the Parties. Notwithstanding anything in this Section 9.5 to the contrary, any claim based on fraud, willful misconduct or intentional misrepresentation shall survive the Closing and remain in full force and effect until the expiration of the applicable statute of limitations.

10. AFFILIATE FINANCIAL GUARANTY

10.1 Affiliate Financial Guarantor unconditionally and irrevocably guarantees, as a continuing obligation, the due and punctual payment by Sentynl of the Upfront Payment, the NDA Acceptance Payment and the Purchase Price, to the extent such payments are actually earned by Cyprium in accordance with this Agreement. If Sentynl fails to pay such amount when due, then Affiliate Financial Guarantor shall pay such amount to Cyprium within ten (10) Business Days of receiving written demand from Cyprium. This guaranty is a guaranty of payment and not of collection, and Affiliate Financial Guarantor shall be liable under this guaranty as if it were a primary obligor and not merely as a surety. The guaranty hereunder shall be a continuing guaranty and shall remain in full force and effect until the earlier of (i) the payment of the Upfront Payment, the NDA Acceptance Payment and the Purchase Price, (ii) the termination of this Agreement with no disputed obligations with respect to the payment of the Upfront Payment, the NDA Acceptance Payment and the Purchase Price or (iii) the Closing with satisfaction of any of Sentynl's payment obligations with respect to the Upfront Payment, the NDA Acceptance Payment and the Purchase Price to the extent relevant for such Closing. This guaranty is in addition to, and independent of, any lien, guarantee, or other security or right or remedy now or at any time hereafter held by or available to Cyprium. Affiliate Financial Guarantor hereby waives any requirement of promptness, diligence, or notice with respect to the foregoing guaranty and any requirement that Cyprium exhaust any right or take any action against Sentynl in respect of the payment of the Upfront Payment, the NDA Acceptance Payment and/or the Purchase Price.

10.2 Sentynl hereby represents, warrants, and covenants to Cyprium that, as of the Effective Date, Sentynl's direct and indirect parent companies do not intend, and Sentynl is not aware of any intention, to transfer, assign, or convey to any other party any of its ownership interests in Sentynl.

11. LIMITATIONS ON LIABILITY

NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, EXCEPT WITH RESPECT TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 9.1 AND 9.2 SOLELY WITH RESPECT TO THIRD PARTY CLAIMS, ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS INCORPORATED BY SECTION 12.8, A BREACH OF THE NON-COMPETITION OBLIGATIONS SET FORTH IN SECTION 6.2, A CLAIM FOR DAMAGES FOR A MISAPPROPRIATION BY CYPRIUM OF THE PURCHASED ASSETS OR BY SENTYNL OF THE EXCLUDED ASSETS, AND/OR IN THE CASE OF FRAUD, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES RELATED TO LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF CUSTOMERS OR BUSINESS INTERRUPTION, WHETHER IN CONTRACT, WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE.

12. MISCELLANEOUS

12.1 Entire Agreement. This Agreement, together with the Disclosure Schedules and all other documents referred to herein, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersede any and all prior agreements, negotiations, correspondence, undertakings, understandings, and communications of the Parties with respect to the subject matter of this Agreement, with the exception of that certain Mutual Confidentiality Agreement, dated May 19, 2020, by and between Cyprium and Sentynl (the "***Confidentiality Agreement***"), to which Section 12.8 applies. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between the Parties.

12.2 Transaction Costs; Attorneys' Fees. Except as otherwise provided herein, the Parties will pay their own costs and expenses (including legal, accounting, and other fees) relating to this Agreement; provided, however, that the prevailing Party in any action seeking to enforce or interpret this Agreement or any provision of this Agreement shall be entitled to reasonable attorneys' fees and costs, including with respect to any appeals thereon, as determined by a court in conjunction with a final adjudication of any such legal proceeding.

12.3 Modifications. Any amendment or modification to this Agreement, including this undertaking itself, shall only be valid if effected by an instrument or instruments in writing and shall be effective against each of the Parties that has signed such instrument or instruments. The Parties agree that they jointly negotiated and prepared this Agreement and that this Agreement will not be construed against either Party on the grounds that such Party prepared or drafted the same.

12.4 Notices. Notices will be deemed to have been received (a) if given by certified mail, return receipt requested, with postage prepaid addressed as aforesaid, upon receipt (and refusal of receipt shall constitute receipt), (b) one (1) Business Day following proper deposit with an internationally recognized express overnight delivery service, or (c) in the case of transmission by email, as of the date so transmitted (or if so transmitted after normal business hours at the place of the recipient, on the Business Day following such transmission):

If to Cyprium:

Cyprium Therapeutics, Inc.
2 Gansevoort Street, 9th Floor
New York, NY 10014
Attn: Dr. Lung S. Yam, MD, PhD
Email: LYam@cypriumtx.com

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

DLA Piper LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600
Fax: (410) 580-3251
Attention: Howard S. Schwartz, Esq.
Email: howard.schwartz@dlapiper.com

If to Sentynl:

Sentynl Therapeutics, Inc.
420 Stevens Avenue, Suite 200
Solana Beach, CA 92075
Attn: Chief Executive Officer
Email: mheck@sentynl.com

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

Zydus Pharmaceuticals (USA) Inc.
73, Route 31 North
Pennington, NJ 08534
Attn: Chief Executive Officer
Email: jrenner@zydususa.com

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

Pillsbury Winthrop Shaw Pittman LP
501 West Broadway, Suite 110
San Diego, CA 92101-3575
Attn: Christian A. Salaman, Esq.
Email: Christian.salaman@pillsburylaw.com

or to such other address as may be hereafter communicated in writing by the Parties in a notice given in accordance with this Section 12.4.

12.5 Public Announcements. Except as required by Laws or by the requirements of any stock exchange on which the securities of a Party or any of its Affiliates are listed, neither Party

will make, or cause to be made, any press release or public announcement related to this Agreement or the transactions contemplated by this Agreement, or otherwise communicate with any news media with respect to the foregoing, without prior written consent of the other Party. Without limiting the foregoing, the Parties intend to issue a press release announcing the entry into this Agreement and upon the Closing, with the mutual consent of the Parties for each press release, which consent shall not be unreasonably withheld, conditioned or delayed.

12.6 Severability. Each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Laws, but if any provision of this Agreement is found to be unenforceable or invalid under applicable Laws, including by reason of such covenant or agreement extending for too great a period of time or over too great a geographical area, or by reason of it being too extensive in any other respect, such provision will be ineffective only to the extent of such unenforceability or invalidity, and the Parties will negotiate in good faith to modify this Agreement so that the unenforceable or invalid provision is replaced by such valid and enforceable provision which the Parties consider, in good faith, to match as closely as possible the invalid or unenforceable provision and to achieve the same or a similar economic effect and to give effect to the Parties' original intent. The remaining provisions of this Agreement will continue to be binding and in full force and effect.

12.7 Assignment. Neither Party may assign, in whole or in part, or delegate all or any part of its rights, interests, or obligations under this Agreement without the prior written consent of the other Party; provided, however, that each Party shall be permitted to assign this Agreement to any of its Affiliates prior to the Closing and to any Affiliate or any Third Party following the Closing. Any assignment or delegation made without such consent will be void. Subject to the terms of this Agreement, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

12.8 Confidentiality Agreement. The terms of the Confidentiality Agreement are hereby incorporated herein by reference and will continue in full force and effect until expiration or termination in accordance with the terms therein; provided, however, the confidentiality obligations and non-use restrictions set forth therein shall, notwithstanding the provisions set forth therein, survive termination or expiration and be binding upon the Receiving Party for a period of five (5) years following the termination of this Agreement or through the Restrictive Period in the event of the Closing (except with respect to portions of Confidential Information that constitute trade secrets, which will be subject to the obligations of confidentiality and non-use hereunder for as long as they are protected under applicable Law as trade secrets). In the event that this Agreement is terminated in accordance with Section 7.5, Sentynl shall promptly return to Cyprium all of Cyprium's Confidential Information.

12.9 Third-Party Beneficiaries. With the exception of the provisions of Article 9 which are intended to be for the benefit of, and will be enforceable by, the Indemnified Parties, nothing in this Agreement is intended or shall be construed to entitle any Person, other than the Parties, their respective transferees and assigns permitted hereby, to any claim, cause of action, remedy or right of any kind.

12.10 Governing Law; Consent to Jurisdiction. This Agreement will be governed by, and construed in accordance with, the Law of the State of Delaware without regard to the conflict of laws rules of such state. Each Party and any Person asserting any rights or defenses under this Agreement hereby irrevocably consents and agrees that it shall bring any action, suit, or proceeding with respect to any matter arising out of or relating to this Agreement or the subject matter herein in the courts of the State of Delaware. Each Party and any Person asserting any rights or defenses under this Agreement hereby irrevocably accepts and submits, for itself and in respect of its properties, to the personal jurisdiction of the state and federal courts located in the State of Delaware with respect to any such action, suit, or proceeding. Each Party and any Person asserting any rights or defenses under this Agreement hereby irrevocably consents to service of process in any such action, suit, or proceeding in any such court by the mailing of a copy of such process by registered or certified mail, postage prepaid, to such Person at the address specified in Section 12.4 for notices to such Person. Additionally, service of process may also be made in any other manner permitted by applicable Law. Each Party and any Person asserting any rights or defenses under this Agreement hereby irrevocably and unconditionally waives any objection or defense that it may now or hereafter have to the laying of venue in any such action, suit, or proceeding in the courts of the State of Delaware and hereby irrevocably and unconditionally waives and agrees not to plead or claim that any such action, suit, or proceeding brought in such court has been brought in an inconvenient forum.

12.11 Specific Performance. Each Party acknowledges and agrees that the other Party would be irreparably damaged if the provisions of this Agreement are not performed in accordance with their terms and that any breach of this Agreement and the non-consummation of the transactions contemplated hereby by either Party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any remedy to which such other Party may be entitled under Article 9, provisional measures and injunctive relief necessary to protect the ability of each Party to seek specific performance from the other Party from the tribunal referred to in Section 12.10 can be sought from any court of competent jurisdiction. Each Party (a) agrees that it shall not oppose the granting of any such relief, and (b) hereby irrevocably waives any requirement for the security or posting of any bond in connection with any such relief (it is understood that clause (a) of this sentence is not intended to, and shall not, preclude any Party from litigating on the merits the substantive claim to which such remedy relates).

12.12 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (A) NO

REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION; (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.12.

12.13 Waiver. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition, and no waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty, covenant, or agreement hereunder or affect in any way any rights arising by virtue of any such prior or subsequent occurrence. No failure or delay of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, and no waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

12.14 Counterparts; Facsimile Signature. This Agreement may be executed in one (1) or more counterparts, by original or facsimile (or other such electronically transmitted) signature, each of which will be deemed an original, but all of which will constitute one and the same instrument.

12.15 Rights Cumulative. All rights and remedies of each Party will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement or applicable Laws.

12.16 Interpretation. (a) The words “hereof,” “herein,” and “hereunder,” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (b) the terms defined in the singular have a comparable meaning when used in the plural, and vice versa; (c) the terms defined in the present tense have a comparable meaning when used in the past tense, and vice versa; (d) any references herein to a specific Section or Article shall refer, respectively, to Sections or Articles of this Agreement; (e) wherever the word “include,” “includes,” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation”; (f) references herein to any gender include each other gender; (g) the word “or” shall not be exclusive; (h) the headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof; (i) any references herein to any Governmental Authority shall be deemed to also be a reference to any successor Governmental Authority thereto; (j) where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning; (k) all references to “dollars” or “$” in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement; (l) when calculating the period of time before which, within which, or following which, any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating

such period shall be excluded; and (m) the Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

[*Remainder of the page intentionally left blank*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

CYPRIUM THERAPEUTICS, INC.

By: _____
Name:
Title:

SENTYNL THERAPEUTICS, INC.

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED TO, SOLELY WITH RESPECT TO ARTICLE 10, BY:

ZYDUS PHARMACEUTICALS (USA) INC.

By: _____
Name:
Title:

Exhibit A

Development Plan

[attached]

Exhibit A-1

Expanded Access Program

The Expanded Access Program is a means to provide the Product on a compassionate use basis. As of the Effective Date, physicians are treating twelve (12) patients under Cyprium's protocol CYP-001. Upon physician request, Cyprium will continue to accept qualified additional patients into the Expanded Access Program following the Effective Date. CYP-001 provides that each enrolled patient will be dosed for three (3) years following enrollment. Although data arising from the Expanded Access Program will be included in the NDA, the Expanded Access Program is not a pivotal study which is being performed to satisfy requirements for FDA Approval.

In March 2019, the FDA contacted Cyprium by telephone and requested that Cyprium consolidate the compassionate use efforts by physicians nationally to make the Product available to pediatric patients. Prior to that time, physicians administering the Product on a compassionate use basis had been authorized to operate under IND No. 34,166 through investigator-initiated INDs and Letters of Authorization from Cyprium. Cyprium agreed to the FDA's request and modified CYP-001 in order to create the Expanded Access Program. The Expanded Access Program is ongoing.

In November 2019, to enable NICHD to terminate its NIH Protocol 09-CH-0059, NICHD and Cyprium agreed that Cyprium would accept into its Expanded Access Program all patients then-enrolled in such NICHD protocol. Of the twelve (12) patients currently enrolled in the Expanded Access Program, one (1) is a former NICHD patient.

Here is a list of the documentation supporting the Expanded Access Program and contained in the data room, "Project Copper," hosted by Intralinks on behalf of Cyprium:

(a) Copper Histidinate Treatment for Menkes Disease, Protocol Number CYP-001, NCT Identified Number NCT04074512.

(b) Letter of Authorization to Cross Reference IND 34,166/NDA 211,241 (Copper Histidinate), from Cyprium to FDA, dated November 13, 2018.[1]

(c) Letter of Authorization to Cross Reference IND 34,166/NDA 211,241 (Copper Histidinate, from Cyprium to FDA, dated January 22, 2019.

(d) Letter of Authorization to Cross Reference IND 34,166/NDA 211,241 (Copper Histidinate), from Cyprium to FDA, dated February 22, 2019.

(e) Institutional Review Board approval letter from Advarra, Inc.

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[1] Patient passed away July 3, 2019.

Exhibit B

Form of Assignment and Assumption Agreement

[attached]

Exhibit C

Form of PRV Assignment Confirmation

[attached]

Schedule 1.23

Cyprium's Knowledge Parties

1. Lung Yam, M.D., Ph.D. (CEO of Cyprium)
2. Shama Munim (Director of Regulatory Affairs of Cyprium)
3. Robert Niecestro, Ph.D. (Senior Regulatory Consultant to Cyprium)
4. Lindsay A. Rosenwald, M.D. (Executive Chairman of the Board of Cyprium and CEO of Fortress Biotech, Inc.)

Schedule 2.1.5

Material Contracts

1. CRADA Termination Agreement, dated as of February 17, 2021, by and between Cyprium and U.S. Department of Health and Human Services, as represented by Eunice Kennedy Shriver National Institute of Child Health and Human Development, an Institute or Center of the NIH ("***NICHD***"), to the extent there are any surviving provisions from the Cooperative Research and Development Agreement for Intramural-PHS Clinical Research, dated as of March 13, 2017, by and between Cyprium and NICHD, as amended by that certain Amendment #1, dated January 17, 2019 (with an effective date of December 14, 2018) (collectively, the "***CRADA***").

2. Data Transfer Agreement for the Transfer of Human Data for Non-Profit Research Purposes, dated as of December 20, 2019, by and between Cyprium and NICHD, as amended by that certain Amendment 1 to Data Transfer Agreement, dated May 28, 2020 and that certain Amendment 2 to Data Transfer Agreement, dated February 17, 2021 (the "***DTA***," and, together with the CRADA, the "***NIH Agreements***").

3. Master Services Agreement, dated as of July 15, 2019, by and between Cyprium and Advarra, Inc., together with that certain Purchase Order, dated July 15, 2019.

4. Master Services Agreement, dated as of February 20, 2019, by and between Cyprium and BioMedical Insights, Inc., together with that certain Purchase Order, dated March 8, 2019.

5. Master Services Agreement, dated as of December 6, 2019, by and between Cyprium and Cambridge Regulatory Services Limited, together with that certain Work Order #1, dated February 6, 2020, and that certain Work Order #2, dated October 8, 2020.

6. Master Services Agreement, dated as of May 4, 2020, by and between Cyprium and Charles River Laboratories, Inc., together with that certain Statement of Work, dated May 5, 2020, as amended by that certain Amended Statement of Work #1, dated October 2, 2020, as further amended by that certain Amended Statement of Work #2, dated October 12, 2020, and that certain Statement of Work, dated October 28, 2020.

7. DXC FastTrack Professional Services Agreement, dated as of January 7, 2019, by and between Cyprium and Computer Sciences Corporation, together with that certain Statement of Work for Lifecycle Management Services, dated January 27, 2020.

8. Master Services Agreement, dated as of February 19, 2019, by and between Cyprium and HKP Consulting, LLC, together with that certain Work Order #1, dated February 24, 2019, and that certain Work Order #2, dated May 21, 2019.

9. Master Services Agreement, dated as of June 23, 2017, by and between Cyprium and Integrity Bio, Inc., together with that certain Statement of Work #1, dated February 22, 2017 (corresponding Purchase Order, dated March 16, 2017); that certain Statement of

Work #2, dated May 26, 2017 (corresponding Purchase Order, dated June 23, 2017), as amended by that certain Amendment No.1, dated December 21, 2017, as further amended by that certain Amendment No. 2, dated February 21, 2018 (corresponding Purchase Order, dated June 28, 2018); that certain Statement of Work #3, dated July 24, 2017 (corresponding Purchase Order, dated July 25, 2017); that certain Statement of Work, dated January 2, 2018, as amended by that certain Change Order No. 1, dated January 4, 2019, as further amended by that certain Change Order No. 2, dated January 4, 2019, as further amended by that certain Change Order No. 3, dated March 5, 2019, as further amended by that certain Change Order No. 4, dated June 4, 2019, as further amended by that certain Change Order No. 5, dated October 15, 2019; that certain Statement of Work, dated January 4, 2019; that certain Statement of Work, dated January 22, 2019 (corresponding Purchase Order, dated February 6, 2019), as amended by that certain Change Order No. 1, dated October 15, 2019; that certain Statement of Work, dated September 17, 2019 (corresponding Purchase Order, dated September 18, 2019), as amended by that certain Change Order No. 1 (Rev 4), dated February 11, 2020 (corresponding Purchase Order, dated February 11, 2020), as further amended by that certain Change Order No. 2, dated July 20, 2020 (corresponding Purchase Order, dated July 20, 2020); that certain Statement of Work, dated November 11, 2019 (corresponding Purchase Order, dated December 4, 2019); that certain Statement of Work, dated January 8, 2020 (corresponding Purchase Order, dated February 6, 2020); that certain Statement of Work, dated January 23, 2020 (corresponding Purchase Order, dated February 6, 2020), as amended by that certain Change Order No. 1, dated June 22, 2020 (corresponding Purchase Order, dated June 22, 2020); that certain Statement of Work, dated May 18, 2020 (corresponding Purchase Order, dated May 26, 2020); that certain Statement of Work, dated June 17, 2020, as amended by that certain Change Order No. 1, dated September 16, 2020; that certain Statement of Work, dated June 25, 2020; that certain Statement of Work, dated July 6, 2020; that certain Statement of Work, dated September 11, 2020; that certain Statement of Work, dated September 14, 2020; that certain Statement of Work, dated October 22, 2020 (corresponding Purchase Order, dated October 30, 2020); and that certain Statement of Work, dated October 22, 2020 (corresponding Purchase Order, dated October 30, 2020).

10. Master Services Agreement, dated as of June 3, 3019, by and between Cyprium and Nuventra, Inc., together with that certain Work Order No. 1, dated September 5, 2019, that certain Work Order No. 2, dated January 14, 2020 (corresponding Purchase Order, dated January 14, 2020), and that certain Work Order No. 3, dated October 10, 2019 (corresponding Purchase Order, dated January 1, 2020) .

11. Master Early Phase Clinical Services Agreement, dated as of May 26, 2020, by and between Cyprium and Syneos Health, together with that certain Statement of Work #1, dated June 15, 2020 (corresponding Purchase Order, dated June 15, 2020); that certain Statement of Work #2, dated July 7, 2020 (corresponding Purchase Order, dated July 7, 2020), as amended by that Change Order #1, effective October 2, 2020 (corresponding Purchase Order, dated October 16, 2020); that certain Statement of Work #3, dated June 25, 2020 (corresponding Purchase Order, dated June 25, 2020); that certain Statement of Work #4, dated September 16, 2020 (corresponding Purchase Order, dated September 16, 2020),

as amended by that certain Change Order #1, effective November 3, 2020 (corresponding Purchase Order, dated November 3, 2020).

12. Clinical Supply Services Agreement, dated August 1, 2019, by and between Cyprium and Xerimis Inc., together with that certain Purchase Order, dated August 2, 2019, as amended by that certain Change Order #1, dated September 12, 2019, as further amended by that certain Change Order #3, dated November 8, 2019, and as further amended by that certain Change Order #4, dated July 17, 2020.

13. Consulting Agreement, dated as of November 20, 2019, by and between Cyprium and Brookins Consulting, Inc., as amended by that certain First Amendment to Consulting Agreement, dated April 24, 2020, and that certain Second Amendment to Consulting Agreement, dated September 27, 2020.

14. Memorandum of Understanding, dated as of June 10, 2020, by and between The Office of the Clinical Director, Division of Intramural Research, Eunice Kennedy Shriver National Institute of Child Health and Human Development and Cyprium.

15. Consulting Agreement, dated November 4, 2020, by and between Coast-2-Coast Consulting LLC and Cyprium.

16. Consulting Agreement, dated September 27, 2019, by and between Barry Rosenblatt d/b/a SME Biotech Consulting and Cyprium, together with that certain Statement of Work attached thereto.

17. Master Services Agreement, dated May 28, 2020, by and between TCM Groups, Inc. and Cyprium, together with that certain Workplan 01 for New Drug Application (NDA) for Copper Histidinate for the Treatment of Menkes Disease, dated June 3, 2020, by and between TCM Groups, Inc. and Cyprium.

18. Consulting Agreement, dated January 28, 2019, by and between Fleming Consulting, Inc. and Cyprium.

19. Master Services Agreement, dated as of May 7, 2020, by and between Cyprium and Syner-G Pharma Consulting, LLC, including Statement of Work #3, dated July 20, 2020.

20. Master Services Agreement, dated as of July 29, 2020, by and between Cyprium and Certara USA, Inc. (“Synchrogenix”), including Work Order #1, dated October 16, 2020, as amended by that Change Order No.1, dated November 3, 2020

21. Master Services Agreement, dated as of January 19, 2021, by and between Cyprium and Avomeen, LLC, including Work Order #1, dated January 27, 2021.

22. Master Services Agreement, dated January 19, 2020, by and between Cyprium and Human Factors MD, LLC, including Work Order #1, dated January 20, 2020.

23. Consulting Agreement, dated January 27, 2021, by and between Joan Keutzer and Cyprium.

24. Master Services Agreement, dated September 27, 2020, by and between PharmaDirections, Inc. and Cyprium, including Work Order #1, dated October 16, 2020, by and between PharmaDirections, Inc. and Cyprium.

25. Mutual Confidentiality Agreement, dated January 11, 2021, by and between Cyprium and The NemetzGroup LLC.

Exhibit 10.3

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

ASSET PURCHASE AGREEMENT

BETWEEN

DERMIRA, INC.

AND

JOURNEY MEDICAL CORPORATION

DATED AS OF

MARCH 31, 2021

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EXHIBITS

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of March 31, 2021, is made by and between Journey Medical Corporation, a Delaware corporation ("Buyer"), and Dermira, Inc., a Delaware corporation ("Seller").

WHEREAS, Seller sells the pharmaceutical product that currently is marketed for sale to consumers under the trademark Qbrexza®, and in connection therewith, operates the Business (as defined herein); and

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to (a) purchase (or cause its Affiliates to purchase) from Seller the Transferred Assets (as defined herein) and (b) assume (or cause its Affiliates to assume) the Assumed Liabilities (as defined herein), in each case, upon the terms and subject to the conditions set forth in this Agreement.

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

ARTICLE I

DEFINITIONS

Section 1.1. Definitions.

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

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

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

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

"Ancillary Agreements" means the Assignment and Assumption Agreement, the Bill of Sale, the IP Assignment Agreement, the Confidentiality Agreement, the Transition Services Agreement and the other documents, instruments, exhibits, annexes, schedules or certificates contemplated hereby and thereby.

"ANDA" means an abbreviated new drug application submitted to the FDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act and any amendments or supplements thereto.

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

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

"Auditors" has the meaning set forth in Section 3.2(c)(iii).

"Authorized Generic" means a pharmaceutical product that would otherwise satisfy the requirements for a Generic Product under this Agreement, but which (a) is or will be manufactured, sold or otherwise distributed under the Product NDA and is (b) (i) manufactured, sold or otherwise distributed by a Third Party whose operations relating to such pharmaceutical product use rights received, directly or indirectly, from the Buyer pursuant to a license, settlement or other agreement or (ii) otherwise authorized, directly or indirectly, by the Buyer. For the avoidance of doubt, any pharmaceutical product that is manufactured, sold or otherwise distributed under an ANDA shall not be deemed to be an "Authorized Generic".

"Bill of Sale" means the Bill of Sale, in the form attached hereto as Exhibit B.

"Business" means (a) the commercialization, manufacturing, packaging, distributing, marketing, storing, managing, importing, exporting and selling of the Product as conducted by Seller as of the Closing Date and (b) the development by Seller as of the Closing Date of (i) [***] or (ii) [***] (but with respect to (ii), solely to the extent performed under the [***] or otherwise related to the following indications: [***] [***].

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

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

"Buyer Fundamental Representations" means the representations and warranties made in Section 6.1(a) (*Buyer's Organization; Good Standing*), Section 6.2 (*Authority; Enforceability*), Section 6.3(ii) (*No Conflict*) and Section 6.7 (*No Brokers*).

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

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

"Calendar Quarter" shall mean the three-month period commencing on January 1, April 1, July 1, and October 1 during a given Calendar Year (defined below).

"Calendar Year" shall mean the twelve-month period commencing on January 1 and ending on December 31 of a given year.

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

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

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

"Combination Product" has the meaning set forth in Section 3.2(i)(ii)(1).

"Commercialization and Medical Materials" has the meaning set forth in Section 2.2(a)(iv).

"Commercially Reasonable Efforts" means, (a) with respect to a referenced obligation or activity other than the development or commercialization of a pharmaceutical product, such efforts that are consistent with the efforts normally used by a comparable pharmaceutical company in the fulfilment of such an obligation or performance of such an activity, and (b) with respect to a referenced obligation or activity relating to development or commercialization of a pharmaceutical product, such efforts consistent with the efforts normally used by a comparable pharmaceutical company in the development or commercialization of a pharmaceutical product at a similar stage in its development or commercialization, taking into account, as applicable, for purposes of clause (b): the commercial and market potential of the product; competitiveness of the marketplace (including the existence and developmental stages of alternative products); the likelihood of receipt of regulatory approval and any applicable actual or anticipated labeling; status of intellectual property coverage, regulatory exclusivity, or proprietary position; product profile, safety, and efficacy; profitability (including pricing and reimbursement status achieved or likely to be achieved and costs of producing finished goods); cost of further development or commercialization, time required for development or profitability; and any applicable regulatory or legal issues; provided, however, that for purposes of clause (b) Buyer may not take into account or consider in any manner the payments that could be due and owing to Seller pursuant to the terms of this Agreement.

"Compound" means [***].

"Confidentiality Agreement" has the meaning set forth in Section 7.3.

"Contract" means any written legally binding contract, subcontracts, agreement, instrument, lease, license, commitment, sales and purchase orders, and other instruments, arrangements or understandings of any kind, together with amendments, modifications and supplements thereto.

"Control" means, with respect to any document, information, material or intellectual property right, possession of the right, whether directly or indirectly, and whether by ownership, license or otherwise, to sell, transfer or assign or grant a license, sublicense or other right (including the right to reference any regulatory documentation) to or under such document, information, material, or intellectual property right to the extent permitted under applicable law and as provided for herein without violating the terms of any agreement or other arrangement with any Third Party.

"Covers" means, with respect to intellectual property and a thing or method, such as a referenced product, activity or service, that such intellectual property reads on, encompasses, or otherwise would be infringed or misappropriated by the unauthorized making, use, sale, offer for sale, sale, copying, distribution, display, practice, performance, import, export, lease or other disposition, of such thing or method.

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

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

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

"Development Product" means a prescription pharmaceutical product developed by or on behalf of Buyer that (a) [***] and [***] or (b) [***] as an active ingredient and is approved by the FDA for the treatment of any indication.

"Encumbrance" means, any mortgage, charge, lien, security interest, easement, right of way, pledge or encumbrance of any kind.

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

"Evercore" has the meaning set forth in Section 5.9.

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

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

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

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

"Excluded Taxes" means without duplication, (i) all Taxes of Seller; (ii) all Taxes relating to the Business, the Transferred Assets or the Assumed Liabilities for any Pre-Closing Tax Period (determined in the case of a Proration Period in accordance with Section 8.4(b)); (iii) all Taxes related to the Excluded Assets or Excluded Liabilities for any taxable period; (iv) Taxes of any Affiliate of Seller of any kind or description (including any Liability for Taxes of Seller or any Affiliate of Seller that becomes a Liability of Buyer, including under any common law doctrine of de facto merger or as transferee or successor liability, or otherwise by operation of contract (other than a contract entered into in the ordinary course of business the primary purpose of which is not Tax) or Law), in each case, that relate to an event or transaction occurring prior to the effective time on the Closing Date; (v) any bulk sales taxes of Seller that were due and payable in the Pre-Closing Tax Period and, as a result of Seller's non-payment thereof, remain due and payable; and (vi) Transfer Taxes for which Seller is liable under Section 8.4(a); provided, however, that Excluded Taxes shall not cover any withholding Taxes under Section 3.5(b).

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

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

"Finished Goods" means the Product packaged, labeled and ready for distribution and sale in finished form.

"First Initial Sales-Based Payment Term" shall have the meaning set forth in Section 3.2(b)(i).

"Fraud" means failure of Seller's representations and warranties in ARTICLE V hereof to be accurate in any material respect; provided that at the time such representation and warranty was made, one or more of the individuals listed in the definition of "Knowledge" had actual knowledge (as opposed to constructive knowledge) that such representation and warranty was inaccurate in a material respect with the specific intent that Buyer rely thereon to its detriment.

"Generic Product" means with respect to a given Milestone Product in a given country, a product sold by a Third Party that is not an Authorized Generic, and (a) contains the Compound, (b) is approved by the Regulatory Authority in such country for use in such country for the same indication(s) as such Milestone Product; and (c) is deemed by the applicable Regulatory Authority to be substitutable or interchangeable for, or therapeutically equivalent or bioequivalent to, such Milestone Product by healthcare practitioners, reimbursement organizations, or pharmacists in such country.

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

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

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

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

"Initial Sales-Based Payment" has the meaning set forth in Section 3.2(b)(i).

"Initial Sales-Based Payment Term" has the meaning set forth in Section 3.2(b)(i).

"Intellectual Property" means all intellectual property that is Controlled by Seller as of the Closing Date (including all worldwide rights, title and interests associated with or arising out of such intellectual property) that (a) is exclusively related to the Business as of the Closing Date and/or (b) exclusively Covers [***] or [***], including: (i) the Patents; (ii) the Know-How; (iii) the Trademarks and Domain Names and (iv) rights in works of authorship (including advertisements and publications), copyrights, software, database rights, including registrations, applications, renewals and extensions of any or all of the foregoing.

"Interest Rate" has the meaning set forth in Section 3.2(a).

"Inventory" means all inventories, wherever located, including all supplies, raw materials, bulk drug substances, work-in-progress, Finished Goods and packaging and labeling materials, in each case, exclusively related to [***], [***] or the Business.

"Inventory Statement" has the meaning set forth in Section 2.2(a)(iii).

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

"Know-How" means all existing and available technical information, know-how and data, including, but not limited to, inventions (whether patentable or not), patent disclosures, discoveries, trade secrets, specifications, instructions, processes and formulae, including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical, safety, quality control, preclinical and clinical data, in each case, exclusively relating to the Product or the Development Product.

"Knowledge" of Seller or Buyer, as the case may be, means all such facts, circumstances or other information, of which with respect to Seller, the applicable Person listed on Section 1.1(a) of the Seller Schedules or with respect to Buyer, Claude Maraoui or Ramsey Alloush, as applicable, is actually aware or should be aware after reasonable inquiry of such Person's direct reports.

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

"Liability" means any debt, liability, claim, expense, commitment or obligation of whatever kind, whether direct or indirect, accrued or fixed, absolute or contingent, matured or not or determined or determinable.

"Licensed Intellectual Property" means all Intellectual Property that is Controlled, but not owned (in whole or in part) by Seller or any of its Affiliates as of the Closing Date.

"LOE Country" shall have the meaning set forth in Section 3.2(b)(iv).

"LOE Milestone Product" shall have the meaning set forth in Section 3.2(b)(iv).

"Loss of Exclusivity" means, with respect to a Milestone Product that is being marketed or sold in a given country, a condition in which one or more Third Parties launches, sells or otherwise distributes a Generic Product in such country, and such Generic Product accounts for [***] ([***]%) or more of aggregate sales of [***] and [***] in [***] in [***] or [***] to be mutually agreed between Buyer and Seller [***] and [***] to be mutually agreed between Buyer and Seller [***] in [***].

"Losses" means any and all damages, losses, Liabilities, judgments, penalties, costs and expenses actually suffered or incurred and paid (including reasonable legal fees and expenses incurred in investigating and/or prosecuting any claim for indemnification).

"[***]" has the meaning set forth in [***].

"[***]" means that certain [***], dated as of [***], by and between [***] and [***].

"Material Adverse Effect" means a material adverse effect on the financial condition or results of operations of the Business, taken as a whole; provided, however, that any adverse effect arising out of, resulting from or attributable to (a) an event or circumstances or series of events or circumstances affecting (i) the U.S. (or any other country or jurisdiction in which the Business or Seller operates) or the global economy generally or capital, financial, banking, credit or securities markets generally, including changes in interest or exchange rates, (ii) political conditions generally of the U.S. or any other country or jurisdiction in which the Business or Seller operates or (iii) any industry generally in which the Business or Seller or any customer thereof operates or in which products or services of the Business are used or distributed, (b) the negotiation, pendency, announcement or consummation of the transactions contemplated by, or the performance of obligations under, this Agreement or any other Transaction Agreement, including adverse effects related to compliance with the covenants or agreements contained herein, the failure to take any action as a result of any restrictions or prohibitions set forth herein or the identity of Buyer or its Affiliates, and any adverse effect proximately caused by (i) shortfalls or declines in revenue, margins or profitability, (ii) threatened or actual loss of, or disruption in, any customer, supplier, vendor, employee or landlord relationships or (iii) loss of any personnel, (c) any changes in applicable Law or U.S. GAAP, or accounting principles, practices or policies that Seller required to adopt, or the enforcement or interpretation thereof, (d) actions specifically permitted to be taken or omitted pursuant to this Agreement or actions taken or omitted at the request or with the consent of Buyer, (e) the effect of any action taken by Buyer or its Affiliates with respect to any transaction contemplated hereby or with respect to Seller or any of its Affiliates, (f) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, cyber-attack or malware attack, pandemic (including the COVID-19 pandemic, and any future resurgence, or evolutions or mutations, of COVID-19 or related disease outbreaks, epidemics or pandemics), natural disaster, fire, flood, hurricane, tornado, or other weather event, (g) any hostilities, acts of war (whether or not declared), sabotage, terrorism or military actions, or any escalation or worsening of any such hostilities, act of war, sabotage, terrorism or military actions, (h) any failure to meet internal or published projections, estimates or forecasts of revenues, earnings, or other measures of financial or operating performance for any period (provided, that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded), or (i) any adverse change or effect that is cured before the Closing shall not, in any such case, constitute or be deemed to contribute to a Material Adverse Effect, and otherwise shall not be taken into account in determining whether a Material Adverse Effect has occurred or would be reasonably likely to occur; provided further, that, in the case of clause (a), the event or circumstance referred to therein does not disproportionately adversely affect the Business, taken as a whole, as compared to other comparable companies in the industries in which the Seller operates.

"Milestone" has the meaning set forth in Section 3.2(a).

"Milestone Abandonment Notice" has the meaning set forth in Section 3.2(d)(i).

"Milestone Notice" has the meaning set forth in Section 3.2(a).

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

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

"Milestone Product" means (a) [***], (b) [***] and (c) [***].

"Milestone Product Parties" means, collectively, Buyer, its Affiliates and/or its or their respective partners, licensees, and/or sublicensees, and any assignees and/or successors of any of the foregoing with respect to rights to a Milestone Product, or any other Person who receives from any of the foregoing rights for the development, manufacturing and/or commercialization of any Milestone Product or any other Person that has been delegated responsibility for achieving a Milestone for which a Milestone Payment must be paid, and each, an "Milestone Product Party."

"NDC" means a national drug code as issued by the FDA.

"Net Sales" has the meaning set forth in Section 3.2(i)(i).

"Non-Party Affiliates" has the meaning set forth in Section 12.19.

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

"Open Claims" has the meaning set forth in Section 8.7.

"Ordinary Course of Business" means the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice (giving effect to any adjustments and modifications thereto reasonably necessary and reasonably taken in response to or as a result of the COVID-19 pandemic). Notwithstanding anything contrary contained herein, the definition of Ordinary Course of Business shall not include: "channel stuffing" or discounting products beyond what is commercially reasonable and consistent with past practice (giving effect to any adjustments and modifications thereto reasonably necessary and reasonably taken in response to or as a result of the COVID-19 pandemic).

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

"Party" or "Parties" means the Parties to this Agreement.

"Patents" means (a) the patent applications or patents in Exhibit E; (b) any continuations, divisionals, or other patent applications that claim priority to any of the patent applications or patents in Exhibit E or that share a common claim of priority therewith; (c) any patents issuing on any such patent applications (of either (a) or (b)); (d) any substitutions, reexaminations, reissues, registrations, corrections, additions, confirmation patents, revivals, and/or any similar modifications of any such patents in (c) or listed in Exhibit E; (e) any extensions (including pediatric exclusivity, patent term extension, and supplementary patent certificate extensions), and/or or restorations of such patents (referenced in (d)), including all rights in any such patent

applications or patents (in (a)-(e)), in each case, whether domestic or foreign, including all rights of priority, rights to file and prosecute, and the like.

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

"Permitted Encumbrances" means: (i) Encumbrances for Taxes, assessments and charges or levies of any Governmental Authority not yet delinquent or that are being contested in good faith by appropriate Proceedings or that may thereafter be paid without penalty; (ii) Encumbrances that do not materially impair the ownership or use of assets to which they relate; (iii) Encumbrances imposed by applicable Law (including materialmen's, mechanics', carriers', workmens' and repairmen's liens and transfer restrictions imposed by national, federal or state securities laws); (iv) Encumbrances imposed in the Ordinary Course of Business that are not yet due and payable, which are being contested in good faith or which are securing obligations or Liabilities that are not material to the applicable Transferred Asset; (v) pledges or deposits to secure obligations under applicable Law to secure public or statutory obligations; (vi) liens, title retention arrangements or deposits to secure the performance of bids, trade contracts (other than for borrowed money), conditional sales contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the Ordinary Course of Business; and (vii) other Encumbrances that do not, and would not reasonably be expected to, materially detract from the value of any of the asset, right or property to which they relate or that do not materially interfere with the use of such asset, right or property as currently used.

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

"Personal Information" means, in addition to any definition for any similar term (e.g., "personal data" or "personally identifiable information" or "PII") provided by applicable Laws, all information that identifies, could be used to identify or is otherwise associated with an individual person (including employees), whether or not such information is directly associated with an identified individual person.

"PIV Challenge" has the meaning set forth in Section 2.3(a)(iv).

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

"Proceeding" means any civil, criminal, judicial, administrative or arbitral actions, suits, hearings, litigation, proceedings (public or private), claims or investigations, in each case by or before a Governmental Authority.

"Product" means [***].

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

alleged to result from the use, sale or manufacture of any of the Product or the Development Product.

"Product NDA" means [***], including all amendments, supplements, variations, extensions and renewals thereof.

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

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

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

"Regulatory Approvals" means with respect to the applicable Milestone Product in the applicable regulatory jurisdiction, all permits, licenses, certificates, approvals, clearances, or other authorizations of or recognized by the applicable Regulatory Authority necessary to conduct clinical trials of, manufacture, distribute, market, sell and/or use such Milestone Product in such regulatory jurisdiction in accordance with applicable Law (including NDAs, INDs, 510(k)s, 505(b)(2)s or their foreign equivalents, and pricing and reimbursement approvals, and all supplements and amendments thereto).

"Registered Intellectual Property" has the meaning set forth in Section 5.13(a).

"Regulatory Authority" means any applicable supranational, federal, foreign, national, regional, state, provincial, local or municipal regulatory agencies, departments, bureaus, commissions, councils or other Governmental Authority (including the FDA) regulating or otherwise exercising authority with respect to any of the Milestone Products.

"Representatives" means the directors, officers, employees, agents, subsidiaries or advisors (including attorneys, accountants, investment bankers, financial advisers and other consultants and advisors) of the specified party hereto.

"Rose U Related Agreements" means (i) that certain [***], dated as of [***], by and between [***] [***] and (ii) that certain [***], dated as of [***], by and between [***]and [***].

"Sales-Based Payment Term" has the meaning set forth in Section 3.2(b)(ii).

"Sales-Based Payment" has the meaning set forth in Section 3.2(b)(ii).

"Sales-Based Payment Date" has the meaning set forth in Section 3.2(b)(iii).

"Schedules" means the Seller Schedules.

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

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

"Seller Fundamental Representations" means the representations and warranties of Seller set forth in Section 5.1(a) (*Seller Organization; Good Standing*), Section 5.2 (*Authority;*

Enforceability), Section 5.3(ii) (*No Conflicts*), Section 5.5 (*Title to Transferred Assets*), and Section 5.9 (*Brokers*).

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

"Seller Intellectual Property" means all Intellectual Property that is owned (in whole or in part) by Seller or any of its Affiliates as of the Closing Date.

"Seller Licensed Intellectual Property" means, collectively: (a) all (i) patent applications or patents, (ii) any continuations, divisionals, or other patent applications that claim priority to any of the patent applications or patents in subsection (i) or that share a common claim of priority therewith, (iii) any patents issuing on any such patent applications (of either (i) or (ii)), (iv) any substitutions, reexaminations, reissues, registrations, corrections, additions, confirmation patents, revivals, and/or any similar modifications of any such patents in (i)-(iii), (v) any extensions (including pediatric exclusivity, patent term extension, and supplementary patent certificate extensions), and/or or restorations of such patents (referenced in (iv)), including all rights in any such patent applications or patents (in (i)-(v)), in each case, whether domestic or foreign, including all rights of priority, rights to file and prosecute, and the like; and (b) all technical information, know-how and data, including, but not limited to, inventions (whether patentable or not), patent disclosures, discoveries, trade secrets, specifications, instructions, processes and formulae, including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical, safety, quality control, preclinical and clinical data, in each case of (a) and (b), Controlled (consistent with the modified definition below) by Seller as of the Closing Date and which is not Intellectual Property, that is necessary for, or then-currently used by Seller in connection with, the manufacturing or sale of the Product. For clarity, solely for purposes of this definition, the definition of "Control" shall be modified such that any intellectual property right that is licensed or sublicensed by Seller that would otherwise be considered to be under the "Control" of Seller shall not be deemed to be under the "Control" of Seller if the application of such definition in the context of any licenses or sublicenses granted to Buyer under this Agreement would require Seller to provide any consideration to any Third Party or make any additional payments or royalties to a Third Party in connection with such license or sublicense grant unless and to the extent Buyer agrees to pay and does in fact pay such consideration, payments or royalties, after the Closing. Upon Seller becoming aware of any such payment obligations, Seller will provide Buyer with written notice of any such payment obligations and reasonably cooperate in the provision of such information.

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

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

"Seller Special Representations" means Section 5.8 (*Regulatory Approvals*) and Section 5.13 (*Intellectual Property*).

"Seller NDC Numbers" means [***] and [***].

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

"Subsidiary" means [***], a [***] organized under the laws of [***] and a [***].

"Tax(es)" means all federal, state, local and non-U.S. taxes, including income, gross receipts, license, excise, sales, use, transfer, registration, value added, severance, stamp, environmental, customs duties, franchise, escheat, profits, withholding, real property, personal property or other taxes of any kind whatsoever that may be imposed by any Governmental Authority together with all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Authority in connection therewith.

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

"Territory" means all countries of the world other than [***].

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

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

"Third Party Compensation" has the meaning set forth in Section 3.2(b)(v).

"Third Party Consents" has the meaning set forth in Section 7.6.

"Third Party Rights" has the meaning set forth in Section 2.4(b).

"Trademarks and Domain Names" means all trademarks, service marks, trade names, certification marks, service names, industrial designs, brand marks, trade dress rights, identifying symbols, logos, emblems, signs, insignia and domain names listed on Exhibit F, including all goodwill therein and any trademark applications or registrations for the foregoing.

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

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

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

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

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

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

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

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

"Transition Services" has the meaning set forth in Section 3.2(f).

"Transition Period" has the meaning set forth in Section 3.2(f).

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

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

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

"Willful Breach" means a breach that is a consequence of an act or omission knowingly undertaken or omitted by the breaching Party with the intent of causing a breach of this Agreement.

ARTICLE II

SALE AND PURCHASE OF TRANSFERRED ASSETS

Section 2.1. Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, and subject to Section 2.4, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller all right, title and interest of Seller in, to and under the Transferred Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

Section 2.2. Transferred Assets; Excluded Assets.

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

(i) the Contracts listed on Exhibit D (the "Transferred Contracts");

(ii) all accounts receivable of Seller relating to (A) [***] or (B) [***];

(iii) all Inventory, including all Finished Goods, in each case, existing as of the effective time on the Closing Date, as set forth in the inventory statement attached hereto as Exhibit H (the "Inventory Statement"), as and to the extent such inventory complies with the requirements set forth in the Inventory Statement (it being understood that the Finished Goods shall constitute Transferred Inventory solely to the extent they [***]) (collectively, the "Transferred Inventory");

(iv) copies of all books and records, including customer, supplier and consultant lists, customer relationship management data, account lists, distribution lists, sales history, development plans and life cycle management data, correspondence (in all cases, in any form or medium), non-clinical, research and/or development-related notes, studies, records, reports and other documents or data (collectively, "Records"), in each case, exclusively related to the Business, the Product or the Development Product, other than any Excluded Assets, and to the extent in the possession or Control of Seller (collectively, the "Transferred Records");

(v) all rights to causes of action, lawsuits, judgments, claims, counterclaims, rights of recovery and demands exclusively related to the Business, the Product or the Development Product, other than the Excluded Actions;

(vi) (A) all labeling, advertising, marketing, sales and promotional materials (including television, radio and print content and materials), point of sale materials and website content, (B) all consumer and end-user information, (C) materials used for medical education activities and medical informational services, (D) training materials, (E) healthcare provider payor and consumer market research, and (F) investigator sponsored study agreements, in each case to the extent (x) exclusively related to the Business and (y) transferable in compliance with applicable Law (the "Commercialization and Medical Materials");

(vii) all (A) applications, submissions, registrations, or notifications submitted to a Regulatory Authority with a view to the obtaining, updating or maintaining of any Regulatory Approval, in each case including any investigational medicinal product dossier relating to the Product or the Development Product (including, for clarity, INDs), (B) correspondence with or to Regulatory Authorities (including Regulatory Approval letters, minutes and official contact reports relating to any communications with any Regulatory Authorities) with respect to the assets described in clause (A) above, (C) records contained in the pharmacovigilance and study databases, all adverse drug experience or reaction reports and associated documents, investigations of adverse drug experience or reaction reports, and any other information relevant to the assessment of safety or benefit-risk ratios, (D) non-clinical, clinical and other files, writings, notes, studies, reports and other documents or data contained or referenced in or supporting any of the foregoing, in each case, that were acquired, developed, compiled, collected or generated by Seller or by any Third Party on behalf of Seller, in each case, to the extent exclusively related to the Business, the Product or the Development Product and (E) all Regulatory Approvals for the Product, including the Product NDA (the "Transferred Regulatory Documentation");

(viii) all Permits exclusively used or held for use in the conduct of the Business, the Product or the Development Product, to the extent transferable;

(ix) the Intellectual Property, including any applicable intellectual property rights in the Product, the Development Product, Transferred Records, Commercialization and Medical Materials and the Transferred Regulatory Documentation;

(x) all Non-Transferable Assets that are subsequently assigned or transferred to Buyer pursuant to Section 2.4;

(xi) Seller's labeler code for the Product and the Seller NDC Numbers; and

(xii) all goodwill associated with any of the assets described in the foregoing clauses.

(b) Seller and Buyer expressly agree and acknowledge that the Transferred Assets will not include any assets of any kind, nature, character or description (whether real, personal or mixed, whether tangible or intangible, whether

absolute, accrued, contingent, fixed or otherwise, and wherever situated) that is not expressly included in the definition of "Transferred Assets" in Section 2.2(a). For clarity, the "Transferred Assets" do not include the following assets, rights or interests of Seller collectively, the "Excluded Assets"):

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

(ii) the following Records: (A) personnel records; (B) Records to the extent relating to any Excluded Asset or Excluded Liability, (C) Records (including accounting Records and Tax Returns) relating to (1) Taxes paid or payable by Seller and all financial and Tax Records relating to the conduct of the Business that form part of Seller's general ledger or otherwise constitute accounting Records or (2) any Tax refund, deposit, prepayment, credit, attribute, or other Tax asset of or with respect to Seller, (D) file copies of the Records retained by Seller, (E) sales representative call notes, (F) headquarter personnel notes, (G) all privileged materials; and (H) reports and financial statements prepared or received by Seller or its Affiliates relating to the financial condition of the Business.

(iii) all accounts receivable of Seller relating to sales of the Product made prior to the effective time on the Closing Date, provided that such sales were made in accordance with the terms of Section 5.15;

(iv) all equity interests in the Subsidiary;

(v) all cash and cash equivalents;

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

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

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

(ix) all electronic mail;

(x) all Contracts other than the Transferred Contracts ("Excluded Contracts");

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

(xii) (A) all records and reports prepared or received by Seller in connection with the sale of the Business and the transactions contemplated hereby, including all analyses, financial statements, including balance sheets and projections relating to the Business or Buyer so prepared or received; (y) all confidentiality agreements with prospective purchasers of the Business or any portion thereof, and all bids and expressions of interest received from Third Parties with respect to the Business;

(xiii) the lease for the headquarters at 275 Middlefield Road, Menlo Park, CA;

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

(xv) Non-Transferable Assets, subject to Section 2.4; and

(xvi) all computer hardware, software and networks owned by Seller.

(c) License to Buyer. Seller hereby grants to Buyer a [***] under the [***], for Buyer to use solely in connection with [***] provided, that with respect to [***], Buyer [***]; provided further, that, Seller shall promptly respond to Buyer's reasonable requests for information regarding [***] in a manner sufficient for Buyer to comply with its obligations under this Section 2.2(c) ([***]). The Parties acknowledge and agree that [***] is solely intended to grant Buyer [***], and that this license does not require Seller to [***].

Section 2.3. Assumption of Certain Liabilities and Obligations.

(a) On the terms and subject to the conditions set forth in this Agreement and subject to Section 2.4, effective as of the effective time on the Closing Date, Buyer shall assume, become responsible for, and thereafter timely pay, perform and otherwise discharge, in accordance with their respective terms, all Liabilities of Seller, to the extent arising out of or in connection with or related to the Business to the extent, except as otherwise expressly set forth to the contrary below, arising or occurring on or after the effective time on the Closing Date (whether accrued or unaccrued, fixed, known or unknown, absolute or contingent, matured or unmatured or determined or determinable as of the effective time on the Closing Date), including the following Liabilities (collectively, the "Assumed Liabilities"):

(i) all Liabilities arising from any patent infringement claim or Proceeding brought by any Third Party, including any Governmental Authority, on or after the effective time on the Closing Date, in all cases including such Liabilities related to Products sold on or after the effective time on the Closing Date by or on behalf of Buyer or its Affiliates;

(ii) all Liabilities arising from any Governmental Authority action or notification filed by a Governmental Authority initiated on or after the effective time on the

Closing Date, related to Products sold on or after such time by or on behalf of Buyer or its Affiliates;

(iii) [***] (the "PIV Challenge") and all Liabilities arising therefrom, [***];

(iv) all Liabilities arising under the Transferred Contracts, including all Liabilities for accounts payable, accrued and unaccrued expenses and similar items, in each case, to the extent that they arise or are to be performed or completed on or after the effective time on the Closing Date;

(v) all Liabilities arising out of or relating to the Products or Development Products made, sold or otherwise exploited on or after the effective time on the Closing Date, or made prior to such time and comprising Transferred Inventory, including all Liabilities for product warranty service claims or Product Liabilities arising on or after the effective time on the Closing Date relating to such Products, Development Products or Transferred Inventory;

(vi) all Liabilities for Taxes to the extent relating to the Business for all taxable periods (or portions thereof), beginning after the effective time on the Closing Date (determined in the case of a Proration Period in accordance with Section 8.4(b));

(vii) any other Liability, obligation or commitment, but solely to the extent arising from the Business on or after the effective time on the Closing Date or the ownership, sale, lease, use or misuse of any of the Transferred Assets or the conduct of the Business on or after the effective time on the Closing Date; and

(viii) any other Liability of Buyer to the extent indicated as such in the Transition Services Agreement (including in the event such Liability falls within one or more of the categories of Excluded Liabilities set forth in Section 2.3(b)).

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

(i) all Liabilities to the extent relating to any breach of or default under any Transferred Contract by Seller prior to the effective time on the Closing Date;

(ii) all Liabilities for Excluded Taxes;

(iii) any Liabilities to the extent exclusively related to or arising under any Excluded Asset;

(iv) any Liabilities to the extent related to any Inventory that does not constitute Transferred Inventory (which, for clarity, shall include any costs associated with the storage, handling or destruction of any such Inventory);

(v) any obligations of Seller under this Agreement and the Transaction Agreements;

(vi) all other Liabilities of Seller to the extent relating to the conduct of the Business or ownership, lease or operation of the Transferred Assets, in each case to the extent arising prior to the effective time on the Closing Date, except as otherwise set forth in the Assumed Liabilities; and

(vii) any other Liability of Seller to the extent indicated as such in the Transition Services Agreement (including in the event such Liability falls within one or more of the categories of Assumed Liabilities set forth in Section 2.3(a)).

Section 2.4. Assignment of Certain Transferred Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, but without limiting Section 9.1(c), this Agreement shall not constitute an agreement for Seller to sell, convey, assign, transfer or deliver to Buyer any Transferred Asset or any claim or right or any benefit arising thereunder or resulting therefrom or for Buyer to purchase, acquire, or receive any Transferred Asset or to enter into or fulfil its obligations under the Transaction Agreements if an attempted sale, conveyance, assignment, transfer or delivery thereof, or an agreement to do any of the foregoing, without the consent, authorization or approval of a Third Party (including any Governmental Authority), would constitute a breach or other contravention thereof or a violation of Law. Subject to Section 7.6, Seller shall use its Commercially Reasonable Efforts to obtain any such consent, authorization or approval as promptly as practicable after the date hereof and, Buyer shall, and shall cause each of its applicable Affiliates to, use its Commercially Reasonable Efforts to cooperate with Seller to obtain any such consent, authorization or approval necessary for the sale, conveyance, assignment, transfer or delivery of any such Transferred Asset, claim, right or benefit to Buyer and its Affiliates. For clarity, any Contract that would otherwise constitute a Transferred Contract, or other asset that would otherwise constitute a Transferred Asset, that is not assignable or transferable as contemplated in this Section 2.4(a) (each, a "Non-Transferable Asset") shall not be deemed a Transferred Asset; provided however, following Seller's receipt of the relevant consent, authorization or approval, as applicable, Seller shall promptly assign or transfer to Buyer the Non-Transferable Asset, and such asset shall thereafter be deemed a "Transferred Asset" for purposes of this Agreement.

(b) If, on the Closing Date, any such consent, authorization or approval is not obtained, or if an attempted sale, conveyance, assignment, transfer or delivery thereof would constitute a breach or other contravention or a violation of Law, subject to Section 7.6, Seller will, on and after the Closing, use Commercially Reasonable Efforts to transfer such Non-Transferable Asset to Buyer. Prior to having the ability to convey a Non-Transferable Asset as provided in this Section 2.4(b), Seller and Buyer will cooperate and use Commercially Reasonable Efforts to obtain a mutually acceptable arrangement under which Buyer (and/or its Affiliates) would, in compliance with Law and the terms of the applicable Non-Transferable Asset, obtain the benefits of, and assume the obligations and bear the economic burdens associated with, such Transferred Asset, claim, right or benefit in accordance with this Agreement, including subcontracting, sublicensing or subleasing to Buyer (and/or its

Affiliates), or under which Seller would (i) enforce for the benefit of Buyer (and/or its Affiliates) any and all of its or their rights against a Third Party (including any Governmental Authority) associated with such Transferred Asset, claim, right or benefit (collectively, "Third Party Rights"), and (ii) promptly pay to Buyer (and/or its Affiliates), when received, all monies received by it or them under any such Transferred Asset, claim, right or benefit, and Buyer (and/or its Affiliates) would assume the obligations and bear the economic burdens associated therewith. If, notwithstanding Seller's efforts any consent, authorization or approval is not obtained, Seller shall use Commercially Reasonable Efforts to assist Buyer with entering into its own arrangements with respect to any Non-Transferable Asset(s) by providing contact information for individuals employed by the applicable counterparty with whom Seller has a relationship and facilitating discussions between Representatives of Buyer and such individuals. Buyer shall use Commercially Reasonable Efforts to provide to Seller whatever is reasonably required for Seller to meet its or its Affiliates' obligations on a timely basis in relation to any such Transferred Asset, claim, right or benefit.

(c) The obligations of Seller under Section 2.4(a) and Section 2.4(b) shall terminate upon the earliest of (i) receipt of the requisite consent, authorization or approval (in which event the applicable Transferred Asset shall be sold, conveyed, assigned, transferred or delivered to Buyer (and/or its Affiliates)), (ii) such time as Buyer enters into its own arrangement with respect to a Non-Transferable Asset and (iii) June 30, 2021.

ARTICLE III

PURCHASE PRICE

Section 3.1. Purchase Price. The consideration for the Transferred Assets shall be (i) an aggregate cash amount equal to the sum of (A) Twelve Million Five Hundred Thousand Dollars ($12,500,000) (the "Closing Payment), *plus* (B) the Milestone Payments, *plus* (C) the Sales-Based Payments, *plus* (D) the Initial Sales-Based Payments, *plus* (E) the [***] (such sum, the "Purchase Price") and (ii) Buyer's assumption of the Assumed Liabilities.

Section 3.2. Milestone Payments and Sales-Based Payments.

(a) Buyer shall pay or cause to be paid to Seller each of the payments set forth below (each a "Milestone Payment" and together, the "Milestone Payments") following the first achievement of the corresponding event (each a "Milestone") set forth in Table 3.2(a)(i) and Table 3.2(a)(ii) below. Each Milestone Payment set forth in this Section 3.2 is payable only once (*i.e.*, the first time the Milestone event is achieved) irrespective of the number of Milestone Products and the times such event is achieved and is non-refundable once paid. Within twenty (20) Business Days after achievement of a Milestone in respect of which a payment is required to be made under this Agreement (the "Milestone Payment Date"), Buyer shall (i) notify Seller in writing of such achievement (the "Milestone Notice") and (ii) pay the corresponding Milestone Payment that is due and payable to Seller. The

Milestone Notice shall include (A) with respect to the Milestones in Table 3.2(a)(i), Buyer's good faith determination of the amount of Net Sales for the applicable measurement period and the corresponding Milestone Payment, with reasonable details and supporting materials in respect of such calculations set forth in the Milestone Notice, and (B) with respect to the Milestones in Table 3.2(a)(ii), whether or not there exists a Loss of Exclusivity as of the relevant date(s) set forth in such table. In the event that Buyer fails to pay a Milestone Payment on the Milestone Payment Date, such payment shall accrue interest for the period commencing on the Milestone Payment Date at an annual rate equal to the lesser of: (x) [***] or (y) [***], in each case calculated on the number of days such payment is delinquent, compounded monthly (the "Interest Rate"). In addition, if Buyer fails to pay the Milestone Payment when due, Buyer shall pay to Seller all of Seller's costs and expenses (including attorneys' fees) in connection with efforts to collect such Milestone Payment.

Table 3.2(a)(i)		
Amount of annual Net Sales of all Milestone Products in a given Calendar Year in the Territory:		**Milestone Payment (in Dollars):**
1.	$[***]– $[***]	$[***]
2.	$[***]– $[***]	$[***]
3.	$[***]– $[***]	$[***]
4.	$[***]– $[***]	$[***]

For purposes of determining whether a Milestone set forth in Table 3.2(a)(i) has been achieved, Net Sales of the Product, the Development Product and any other Milestone Product in a given Calendar Year in the Territory shall be aggregated. The Milestones set forth in Table 3.2(a)(i) are intended to be sequential, such that satisfaction of any numbered Milestone other than 1. shall be deemed to have satisfied all lower numbered Milestones (to the extent not previously satisfied), and Buyer shall be obligated to make Milestone Payments for any such lower numbered Milestone that were not previously paid concurrently with the Milestone Payment for such higher numbered Milestone. Without prejudice to the generality of the foregoing, satisfaction of a Milestone at any Net Sales threshold would be deemed to satisfy all Milestones at any lower Net Sales threshold(s) (to the extent not previously satisfied). For the sake of clarity, the aggregate maximum amount payable in Milestone Payments to Seller under this Agreement pursuant to Table 3.2(a)(i) is [***]Dollars ($[***]).

Table 3.2(a)(ii)	
No Loss of Exclusivity as of the Following Date with respect to the Milestone Products being sold in the U.S. as of such date:	**Milestone Payment (in Dollars):**
[***]	$[***]

[***]	$[***]
[***]	$[***]

The Milestones set forth in Table 3.2(a)(ii) shall be deemed achieved if, as of the relevant dates set forth in table above, at least one (1) Milestone Product is being sold by or on behalf of Buyer in the U.S. and there is no Loss of Exclusivity for all Milestone Products being sold by or on behalf of Buyer in the U.S. as of such dates. For clarity, as of the date of the first Loss of Exclusivity for a Milestone Product in the U.S., there shall be no further Milestone Payments due in connection with the Milestones listed in Table 3.2(a)(ii) for any Milestone Product. For the sake of clarity, the aggregate maximum amount payable in Milestone Payments to Seller under this Agreement pursuant to Table 3.2(a)(ii) is [***]Dollars ($[***]).

(b) Sales-Based Payments are payable as follows:

(i) Subject to Section 3.2(b)(iv)-(v), from and after (A) the first day after the Closing Date until the date that is the last day of the month that includes the date that is the first anniversary of the Closing Date (the "First Initial Sales-Based Payment Term"), Buyer shall pay to Seller an amount equal to [***]percent ([***]%) of Net Sales of the Milestone Products in the Territory for such twelve-month (12) period, and (B) the first day after the last day of the First Initial Sales-Based Payment Term until the first anniversary of the last day of the First Initial Sales-Based Payment Term (such period, together with the First Initial Sales-Based Payment Term, the "Initial Sales-Based Payment Term"), Buyer shall pay to Seller an amount equal to [***]percent ([***]%) of Net Sales of the Milestone Products in the Territory for such twelve-month (12) period. Each payment described in clauses (A) and (B) of this Section 3.2(b)(i) shall be deemed an "Initial Sales-Based Payment".

(ii) Subject to Section 3.2(b)(iv)-(v), for each twelve (12) month period (or with respect to the last period, such shorter period) commencing with the first day after the date that is the end of the Initial Sales-Based Payment Term until the date that is the later of (x) the last day of the month that includes the date that is eight (8) years from the Closing Date and (y) the date that is the last day of the month that includes the first date on which all Milestone Products have suffered a Loss of Exclusivity in each country in which all Milestone Products are marketed or sold ("Sales-Based Payment Term"), Buyer shall pay to Seller a sales-based payment (each of (A)-(C) below, a "Sales-Based Payment" and collectively, "Sales Based Payments") set forth in Table 3.2(b)(ii) below, as calculated by multiplying the applicable percentage rate by the corresponding amount of incremental Net Sales of all Milestone Products in the Territory during the first and each successive twelve (12)-month period (or for the last period, such shorter period).

Table 3.2(b)(ii)	
Amount of Net Sales of all Milestone Products in the Territory during the twelve (12) month period to which the Sales-Based Payment relates:	**The percentage rate of such Sales-Based Payment applicable to such Net Sales:**
(A) $[***]-[***]	[***]%

(B) $[***]-[***]	[***]%
(C) Greater than $[***]	[***]%

For the avoidance of doubt, Buyer shall only be required to pay the Initial Sales-Based Payments or the Sales-Based Payments as set forth in this Agreement.

(iii) All Initial Sales-Based Payments and Sales-Based Payments payable to Seller shall be paid by Buyer on a quarterly basis within thirty (30) days after the end of each Calendar Quarter in which the applicable Net Sales were recorded (each a "Sales-Based Payment Date"). In the event that Buyer fails to pay an Initial Sales-Based Payments or Sales-Based Payment on the applicable Sales-Based Payment Date, such payment shall accrue interest for the period commencing on the Sales-Based Payment Date at a rate equal to the Interest Rate.

(iv) Loss of Exclusivity.

(1) In the event of a Loss of Exclusivity with respect to a particular Milestone Product (each, an "LOE Milestone Product") in a particular country in which such LOE Milestone Product is marketed or sold (such country, an "LOE Country"), any Initial Sales-Based Payment and/or Sales-Based Payment allocable to such LOE Milestone Product (and only such LOE Milestone Product) sold in such LOE Country (and only such LOE Country) shall be reduced by Fifty Percent (50%) of the amounts otherwise payable under Section 3.2(b)(i) and Section 3.2(b)(ii), effective as of the first date of the month following the date of such Loss of Exclusivity for such LOE Milestone Product in such LOE Country. For the avoidance of doubt, with respect to any instance of Loss of Exclusivity for a particular LOE Milestone Product in a particular LOE Country, there shall be no reduction in any Initial Sales-Based Payments and/or Sales-Based Payments for any other Milestone Products in such LOE Country nor shall there be any reduction in any Initial Sales-Based Payments and/or Sales-Based Payments for such LOE Milestone Product in any country other than the applicable LOE Country.

(2) Notwithstanding anything to the contrary set forth in Section 3.2(b)(ii), for purposes of Section 3.2(b)(ii), the Net Sales of any given Milestone Product in any given country from and after the date that is the later of (x) the last day of the month that includes the date that is eight (8) years from the Closing Date and (y) the date that is the last day of the month that includes the first date on which such Milestone Product has suffered a Loss of Exclusivity in such country, shall be deemed to be reduced to zero (0), and for the avoidance of doubt, no further Initial Sales-Based Payments or Sales-Based Payments will be due on the sales of such Milestone Product in such country as of such date.

(v) Third Party Intellectual Property.

(1) If Buyer believes, in its reasonable discretion, that it is necessary for Buyer to obtain a license from a Third Party to a patent or patent

application in connection with the manufacture, use, sale or other exploitation of a Development Product, and Buyer is required to pay to such Third Party a royalty, milestone payments or other monetary compensation in consideration for the grant or maintenance of such license ("Third Party Compensation"), then for the period during which Buyer owes any Initial Sales-Based Payments or Sales-Based Payments to Seller hereunder with respect to such Development Product, the amounts that would otherwise have been payable as Initial Sales-Based Payments or Sales-Based Payments to Seller under this Agreement shall be reduced by fifty percent (50%) of all Third Party Compensation payable by or on behalf of Buyer to such Third Party; provided that, the foregoing royalty reduction shall not act to reduce the Initial Sales-Based Payments or Sales-Based Payments payable by Buyer to less than fifty percent (50%) of the amounts payable by Buyer for a given Calendar Quarter pursuant to Section 3.2(b).

(c) Reporting Obligations.

(i) Buyer shall provide Seller with a quarterly report, within thirty (30) days of the end of each Calendar Quarter beginning with the first full Calendar Quarter after the Closing Date and until the payment of all Milestone Payments and Initial Sales-Based Payments and Sales-Based Payments in full pursuant to this Agreement (each such report, an "Update Report"). Each Update Report shall (A) describe in reasonable detail the Milestone Product Parties' commercial progress towards achievement of the Milestone events resulting in each Milestone Payment (including, for the first Calendar Quarter of each Calendar Year until 2031, whether or not there exists a Loss of Exclusivity with respect to the Product), (B) the total amount of Net Sales during the applicable quarter, (C) the calculation of Initial Sales-Based Payments or Sales-Based Payments due for such quarter, including the exchange rates used, if any, (D) if any Loss of Exclusivity has occurred with respect to any Milestone Product in that Calendar Quarter, documents providing the basis for such claim of Loss of Exclusivity, and (E) for each Update Report delivered with respect to the fourth quarter of any applicable Calendar Year, such Update Report shall also include an annual report, setting forth in reasonable detail the calculation of the annual Net Sales for such applicable Calendar Year and an annual forecast for the following Calendar Year that details the Net Sales estimates per quarter, including gross to net sales calculations and assumptions, together with reasonable information and documentation supporting Buyer's calculations therefor (but excluding, for clarity, any related budget). In addition, from time to time, but no more than once per Calendar Year, upon Seller's reasonable request, Buyer shall provide Seller with a reasonable update setting forth a high-level overview of Buyer's development activities, if any, with respect to the Product and/or the Development Product and/or any other Milestone Product, as applicable, including related regulatory activities.

(ii) If after delivery of an Update Report, Seller requests in writing a meeting with representatives of Buyer to discuss such Update Report, Buyer shall make available in person or by phone for such a meeting appropriate representative(s) involved (including employees of Buyer or its Affiliates who are responsible for managing the business related to the Milestone Products and knowledgeable about its operations) with representatives of Seller. Unless otherwise agreed by Seller, any such meeting shall occur with fifteen (15) days of the applicable request by Seller.

(iii) Buyer shall permit Seller, by an independent qualified public accounting firm of international reputation engaged by Seller and reasonably acceptable to Buyer (such accounting firm, the "Auditors"), to examine the books and records relating to the Milestone Products at any reasonable time at Buyer's principal place of business to assess the accuracy of the reports, accountings and payments made by Buyer hereunder. Such Auditors may be required by Buyer to enter into a reasonably acceptable confidentiality agreement. The opinion of the Auditors regarding such reports, accountings and payments shall be furnished to Buyer and Seller and shall be Confidential Information of Buyer and binding on the Parties other than in the case of clear error. If it is determined by the Auditors that additional Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments are owed by Buyer to Seller in respect of any period, Buyer will pay Seller the additional payments, including interest calculated at the Interest Rate in accordance with Section 3.2(a), owed to Seller within thirty (30) days of the date the written report of the Auditors is received by Buyer. If it is determined by the Auditors that Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments were overpaid during any period, Buyer will credit such overpayments to future Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments, as applicable, owed to Seller. The fees charged by the Auditors in connection with this Section 3.2(c) will be paid by Seller, unless any additional Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments owed by Buyer to Seller exceed $50,000 of the amounts paid for the period subject to such audit, in which case Buyer will pay the fees charged by the Auditors. No period, once audited, may be re-audited by or on behalf of Seller.

(d) Buyer Obligations. Buyer shall, and shall cause its Affiliates and the other Milestone Product Parties, to use Commercially Reasonable Efforts to (A) achieve each Milestone set forth in Table 3.2(a)(i) with respect to the Product in a prompt and expeditious manner, (B) use Commercially Reasonable Efforts to commercialize the Product in countries where Buyer has obtained Regulatory Approval for such Product, and (C) evaluate the Development Product, in its sole discretion, in accordance with Section 3.2(e). Without limiting the generality of the foregoing, Buyer shall not, and shall not authorize or permit its Affiliates or other Milestone Product Parties to, take any action, or omit to take any action, with the intent of avoiding, delaying or reducing the payment of any Milestone Payment(s), Sales-Based Payments or Initial Sales-Based Payments. In the event that a Milestone Product Party determines that a Milestone will not be achieved, Buyer shall promptly notify Seller in writing of such determination (a "Milestone Abandonment Notice") and shall provide Seller with access to any information, data, books, records, work papers or personnel that could be reasonably expected to assist in evaluating such determination. The Milestone Abandonment Notice shall specify in reasonable detail the reasons the applicable determination was made.

(e) Buyer will at a time that Buyer deems suitable, in its sole discretion, after the Closing use Commercially Reasonable Efforts to evaluate further development of the Development Product. If Buyer determines, in its sole discretion, through such analysis, that further development of the Development Product is warranted, Buyer will employ Commercially Reasonable Efforts with respect to the development of such Development Product; provided, however, that if at any time

Buyer reasonably determines, in its sole discretion, that continued development of the Development Product is no longer warranted, Buyer may discontinue such development. Notwithstanding any other provision of this Agreement, any such discontinuance or determination not to develop the Development Product will not result in a breach by Buyer of any obligation, warranty, representation, or covenant under this Agreement, provided that Buyer used Commercially Reasonable Efforts in its initial evaluation of the development potential of the Development Product, and Buyer has and will have no obligations under this Agreement with respect to the Development Product other than those specifically described herein.

(f) Transition Services. The Parties shall enter into that certain Transition Services Agreement, substantially in the form attached hereto as Exhibit G (the "Transition Services Agreement").

(g) Acceleration of Milestone Payments. Notwithstanding anything to the contrary herein, in the event that any of the following events occur, the maximum amount of each Milestone Payment and/or [***] that have not yet been satisfied or deemed to have been satisfied shall be immediately due and payable: (i) Buyer commences any Proceeding in bankruptcy or for dissolution, liquidation, or winding-up; (ii) any such Proceeding is commenced against Buyer or a receiver or trustee is appointed for Buyer or a substantial part of its respective property, and such Proceeding or appointment is not dismissed or discharged within thirty (30) days after its commencement; or (iii) Buyer (x) makes an assignment for the benefit of creditors, or (y) petitions or applies to any tribunal for the appointment of a custodian, receiver or trustee for all or substantially all of its assets or (z) has a receiver, custodian or trustee appointed for all or substantially all of its assets and such receiver, custodian or trustee is not discharged within thirty (30) days thereafter.

(h) For clarity, the achievement of a Milestone, Initial Sales-Based Payment and/or Sales-Based Payment by or under authority of any Milestone Product Party shall be deemed the achievement of such Milestone, Initial Sales-Based Payment and/or Sales-Based Payment by Buyer, and Buyer (not the Milestone Product Party) shall be obligated to pay or cause to be paid the corresponding Milestone Payment, Initial Sales-Based Payment and/or Sales-Based Payment as set forth in this Section 3.2.

(i) For purposes of this Section 3.2 and where otherwise used in this Agreement:

(i) "Net Sales" means the gross amounts invoiced for sales of Milestone Products by any Milestone Product Party to any unrelated third parties less the following deductions: (a) normal and customary trade, quantity and cash discounts allowed; (b) discounts, refunds, rebates, chargebacks, retroactive price adjustments, and any other allowances which effectively reduce the net selling price; (c) sales, excise taxes, duties, and other government charges on the sales of Milestone Products; (d) freight, postage, shipping, insurance, and other transportation costs but only up to an amount equal to [***] percent ([***]%) of the gross amounts invoiced for sales for the applicable period, in the aggregate;

(e) Milestone Product returns and allowances and related allowances or credits, billing corrections, and bad debt; and (f) any other customary adjustments in accordance with U.S. GAAP.

(ii) Combination Products.

(1) In the event that any Milestone Product is sold as part of a Combination Product, the Net Sales of the Milestone Product, for the purposes of determining Milestone Payments, Initial Sales-Based Payments and Sales-Based Payments, as the case may be, shall be determined by multiplying the Net Sales of the Combination Product by the fraction, A / (A+B) where A is the weighted average sale price of the applicable Milestone Product when sold separately in finished form, and B is the weighted average sale price of the other product(s) sold separately in finished form. "Combination Product" means any pharmaceutical product which comprises any Milestone Product and other active compound(s) and/or ingredients).

(2) In the event that the weighted average sale price of the applicable Milestone Product can be determined but the weighted average sale price of the other product(s) cannot be determined, Net Sales for purposes of determining Milestone Payments, Initial Sales-Based Payments and Sales-Based Payments, as the case may be, shall be calculated by multiplying the Net Sales of the Combination Product by the fraction A / C where A is the weighted average sale price of the applicable Milestone Product when sold separately in finished form and C is the weighted average sale price of the Combination Product.

(3) In the event that the weighted average sale price of the other product(s) can be determined but the weighted average sale price of the applicable Milestone Product cannot be determined, Net Sales for purposes of determining Milestone Payments, Initial Sales-Based Payments and Sales-Based Payments, as the case may be, shall be calculated by multiplying the Net Sales of the Combination Product by the following formula: one (1) minus (B / C) where B is the weighted average sale price of the other product(s) when sold separately in finished form and C is the weighted average sale price of the Combination Product.

(4) In the event that the weighted average sale price of both the applicable Milestone Product and the other product(s) in the Combination Product cannot be determined, the parties will negotiate in good faith the appropriate allocation percentage of Net Sales of the Combination Product to the applicable Milestone Product.

(5) The weighted average sale price for a Milestone Product, other product(s), or Combination Product shall be calculated once each Calendar Year and such price shall be used during all applicable royalty reporting periods for the entire following Calendar Year. When determining the weighted average sale price of a Milestone Product, other product(s), or Combination Product, the

weighted average sale price shall be calculated by dividing the sales dollars (translated into U.S. dollars) by the units of active ingredient sold during the twelve (12) months (or the number of months sold in a partial calendar year) of the preceding Calendar Year for the respective Milestone Product, other product(s), or Combination Product. In the initial Calendar Year, a forecasted weighted average sale price will be used for the Milestone Product, other product(s), or Combination Product. Any over or under payment due to a difference between forecasted and actual weighted average sale prices will be paid or credited in the first Milestone Payments, Initial Sales-Based Payments and Sales-Based Payments, as the case may be, of the following Calendar Year or Calendar Quarter, as applicable.

(iii) Such amounts shall be determined from the books and records of the Milestone Product Parties maintained in accordance with U.S. GAAP consistently applied. Buyer further agrees in determining such amounts, it will use Buyer's then current standard procedures and methodology, including Buyer's then current standard exchange rate methodology for the translation of foreign currency sales into U.S. Dollars.

(iv) Sales or commercial dispositions of Milestone Products between or among Milestone Product Parties and their Affiliates shall be excluded from the computation of Net Sales (except where such Milestone Product Parties or Affiliates are end users of the Product), but Net Sales shall include the subsequent final sales to third parties by such Milestone Product Parties or their Affiliates. Notwithstanding the foregoing, if a Milestone Product is sold or otherwise commercially disposed of for consideration other than cash or in a transaction that is not at arm's length between buyer and seller, then the gross amount to be included in the calculation of Net Sales shall be the amount that would have been invoiced had the transaction been conducted at arm's length and for cash. Such amount that would have been invoiced shall be determined, wherever possible, by reference to the average selling price of such Milestone Product in arm's length transactions in the relevant country.

Section 3.3. Intended Tax Treatment. The Parties will treat the Milestone Payments, Initial Sales-Based Payments, Sales-Based Payments and the [***] as an adjustment to the Purchase Price and such payments will be recognized by Seller (as proceeds of the sale of the Transferred Assets) and Buyer (as an adjustment to the tax basis of the Transferred Assets) at such time and in such amounts as finally determined hereunder, in each case, for U.S. federal, state, and local income and foreign tax purposes.

Section 3.4. Allocation of Purchase Price. The Purchase Price will be allocated among the relevant classes of Transferred Assets in accordance with Exhibit J (the "Allocation Statement"). From time to time, Seller shall send to Buyer an updated Allocation Statement to reflect any adjustments to the Purchase Price (including as a result of any Initial Sales-Based Payments and Sales-Based Payments, [***] or Milestone Payments made by Buyer pursuant to this Agreement). The Parties (a) shall allocate the Purchase Price in accordance with the Allocation Statement, (b) shall, unless otherwise required a final "determination" as defined under Section 1313(a) of the Code, prepare and file, or cause to be prepared and filed, all Tax Returns (including IRS Form 8594 and any amendments thereto) and reports in a manner consistent with the Allocation Statement and (c) shall not take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with such allocation. If the values set forth on the

Allocation Statement are disputed by any tax authority, the Party hereto receiving notice of such dispute shall make reasonable efforts to notify the other Party hereto concerning the existence of such dispute and the Parties shall, where and when practicable, consult with each other with respect to all issues related to the Allocation Statement in connection with such dispute. Any adjustments to the consideration payable pursuant to this Agreement shall be allocated in a manner consistent with the Allocation Statement.

Section 3.5. Withholding Taxes.

(a) Except as otherwise provided in Section 3.5(b), Buyer shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement such amounts as are required to be deducted or withheld therefrom under any applicable Law. To the extent such amounts are so deducted or withheld and paid over to the applicable Governmental Authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. Buyer shall use commercially reasonable efforts to provide Seller a notice of its intention to make such deduction or withholding five (5) Business Days prior to making such deduction or withholding on amounts paid on the Closing.

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

Section 3.6. [***]. All capitalized terms used or referenced in this Section 3.6 shall have the meaning set forth in the [***], other than the terms [***] and [***].

(a) [***].

(b) [***].

ARTICLE IV

THE CLOSING

Section 4.1. Closing Date. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place remotely via the electronic exchange of documents and signature pages (or such other location as shall be mutually agreed upon by Seller and Buyer) commencing at 10:00 am eastern standard time on a date (the "Closing Date") that is the third (3rd) Business Day following the date on which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in ARTICLE X (other than conditions that by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and

be effective, and title to and risk of loss associated with the Acquired Assets, shall be deemed to occur at 11:59 pm, New York City time, on the Closing Date.

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

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

(b) a counterpart of the Bill of Sale, duly executed by Seller;

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

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

(e) a letter to the FDA, substantially in the form attached hereto as Exhibit I-1 (the "Seller FDA Letter"), executed by Seller, informing the FDA of the transfer of the Product NDA to Buyer;

(f) a list of the Contracts that constitute Non-Transferable Assets as of the Closing Date; and

(g) a duly executed IRS Form W-9 by Seller.

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

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

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

(c) a counterpart of the Bill of Sale, duly executed by Buyer;

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

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

(f) a letter to the FDA, substantially in the form attached hereto as Exhibit I-2 (the "Buyer FDA Letter"), executed by Buyer, accepting the transfer of the Product NDA to Buyer.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer that, except as set forth in the Seller Schedules:

Section 5.1. Seller Organization; Good Standing.

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

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

Section 5.2. Authority; Enforceability. Seller has the requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other Transaction Agreements by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized. This Agreement has been duly executed and delivered by Seller, and upon execution and delivery thereof, the other Transaction Agreements will have been duly executed and delivered by Seller, and assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes, and upon the due authorization, execution and delivery thereof by Buyer, the other Transaction Agreements will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with the terms hereof, subject to the effect of any applicable Laws relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar applicable Laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity, regardless of whether considered in a Proceeding in equity or at law (the "Enforceability Exceptions").

Section 5.3. No Conflicts. The execution, delivery and performance by Seller of the Transaction Agreements and the consummation by Seller of the transactions contemplated hereby and thereby do not, and will not (i) conflict with or violate any Law or Governmental Order applicable to Seller or the Business, (ii) conflict with or violate, in any material respect, any provision of the articles of incorporation or by-laws (or similar organizational document) of Seller, (iii) result in any breach of, or constitute a default under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any of the Transferred Assets pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which Seller (with respect to the Transferred Assets) is a party or by which any Transferred Asset is bound, except, with respect to the foregoing clauses (i) and (iii), for (x)

such violations or conflicts which would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Product and the Development Product, taken as a whole, or (y) any consents, approvals, authorizations and other actions described in Section 5.4.

Section 5.4. Consents and Approvals. The execution, delivery and performance by Seller of the Transaction Agreements and the consummation by Seller of the transactions contemplated hereby and thereby do not and will not require any material consent, approval, authorization or other action by, or any material filing with or notification to, any Governmental Authority by Seller, except (a) as contemplated by Section 4.2 and Section 8.2, (b) in connection, or in compliance, with the notification and waiting period requirements of the HSR Act and applicable filings or approvals under non-U.S. antitrust and competition Laws, require any approval, authorization, consent, license, exemption, filing or registration with any Governmental Authority or, (c) where the failure to obtain such consent, approval, authorization, or action or to make such filing or notification would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or would not prevent or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 5.5. Title to Transferred Assets. Seller has good and valid title to all of the tangible Transferred Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

Section 5.6. Litigation. As of the date hereof, there is no Proceeding pending or, to the Knowledge of Seller, threatened in writing, against Seller (with respect to the Business, the Product or the Development Product) that would reasonably be expected to result in (i) damages exceeding $50,000, based on a reasonable analysis of counsel or (ii) any injunctive, declaratory, or other equitable relief or remedy affecting the ownership right of or in any Transferred Asset or that involves an investigation or suit by any Governmental Authority relating to the Product, the Business or the Development Product.

Section 5.7. Compliance with Laws. Seller (with respect to the Business) is not in violation of any Laws or Governmental Orders applicable to the conduct of the Business, the Development Product, or the Product, except for such violations the existence of which would not reasonably be expected to have a Material Adverse Effect or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 5.8. Regulatory Approvals.

(a) Except as set forth in Section 5.8(a) of the Seller Schedule, Seller is the registered or beneficial holder of each of the material Regulatory Approvals, including all of the Transferred Regulatory Documentation. All Regulatory Approvals held by Seller are in full force and effect, except, in each case, where the failure to so be in full force and effect would not reasonably be expected to be material to the Business, the Product and the Development Product, taken as a whole.

(b) Seller has not received, as of the date hereof, any written or, to the Knowledge of Seller, oral notice that any Governmental Authority with jurisdiction over the Business has commenced or will commence any action to (i) withdraw any Regulatory Approval of any Milestone Product or (ii) enjoin production, marketing or sale of the Product except, in each case, where such action would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Product and the Development Product, taken as a whole.

(c) To the Knowledge of Seller, the Product is being distributed, manufactured, sold and marketed in compliance in all material respects with all requirements under applicable Law. As of the date hereof, Seller has not received any unresolved written or, to the Knowledge of Seller, oral notice from any Governmental Authority that with respect to the Product, Seller is not in material compliance with any requirement under applicable Law.

(d) The Seller has not made an untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority or failed to disclose a material fact expressly required to be disclosed to the FDA or any other Governmental Authority, that, at the time of the relevant disclosure or failure to disclose, as applicable, would reasonably be excepted to provide a basis for the FDA or any other Governmental Authority to invoke the FDA Application Integrity Policy respecting "Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities," set forth in FDA's Compliance Policy Guide Sec. 120.100 (CPG 7150.09) or any similar policy, in each case, as related to the Product.

(e) Neither Seller, nor to the Knowledge of Seller, any officers, employees, clinical investigator or distributor of Seller has been suspended or debarred or convicted of any crime or engaged in any conduct that would reasonably be expected to result in (i) debarment under 21 U.S.C. Section 335a or any similar applicable Law, (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar applicable Law or (iii) other action arising from the exploitation of the Product or the Development Product, and, to the Knowledge of Seller, no such action is proposed or pending as of the date hereof.

(f) All application and renewal fees due and payable with respect to all material Regulatory Approvals have been paid, except where the failure to make such payment would not reasonably be expected to have a Material Adverse Effect or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 5.9. Brokers. Except for Evercore Group L.L.C. ("Evercore"), 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 between Seller and Evercore and any such arrangements, including compensation, shall be the sole responsibility of Seller.

Section 5.10. Permits. Seller holds or has the right to use all Permits. Seller is not in default under, or violating, any of the Permits, except for such defaults or violations as would not reasonably be expected to have a Material Adverse Effect or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 5.11. Transferred Contracts. As of the date hereof (i) each Transferred Contract is a legal, valid and binding obligation of Seller, and, to the Knowledge of Seller, each other party to such material Transferred Contract, and is enforceable against Seller, and, to the Knowledge of Seller, each such other party thereto in accordance with its terms subject, in each case, to the Enforceability Exceptions and (ii) there does not exist any material breach or material default on the part of Seller, under the terms of any Transferred Contract, and to the Knowledge of Seller, no other party to any Transferred Contract is in material breach or default thereunder.

Section 5.12. Taxes.

(a) Seller has timely filed or caused to be timely filed all material Tax Returns exclusively relating to the Business or the Transferred Assets that are required to be filed, and has timely paid or caused to be timely paid all material amounts of Taxes shown as due on such Tax Returns.

(b) No deficiency has been assessed by a Governmental Authority in writing against Seller with respect to a material amount of Taxes exclusively relating to the Business.

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

(d) No Transferred Contract is a Tax allocation, Tax sharing, Tax indemnification or similar Contract that would, in any manner, bind, obligate or restrict Buyer or its Affiliates (or the Business or the Transferred Assets), other than a Transferred Contract entered into in the ordinary course of business the primary purpose of which is not Tax.

Section 5.13. Intellectual Property.

(a) Section 5.13(a) of the Seller Schedules sets forth a list of all Seller Intellectual Property and material Licensed Intellectual Property that is registered or for which an application for registration has been filed, in each case under the authority of any Governmental Authority (collectively, the "Registered Intellectual Property"), including (i) the jurisdiction in which such item of Registered Intellectual Property has been registered or filed and the applicable registration or serial number; (ii) the current owner thereof; and (iii) the applicable application, registration or serial number and the expiration date thereof.

(b) To the Knowledge of Seller, the Intellectual Property includes all intellectual property that exclusively relates to, and all material intellectual property

that is necessary to, the operation of the Business as conducted on the date of this Agreement, and includes all patent applications and patents including claims that exclusively Cover the Product or the Development Product; provided, that this Section 5.13(b) shall not be deemed to be breached (i) as a result of any action for which Buyer has provided its consent in writing (including pursuant to Section 7.1), or (ii) in the event that Seller does not take action as a result of Buyer not providing consent following the written request of Seller therefor pursuant to Section 7.1.

(c) Seller solely and exclusively owns all right, title and interest in the Seller Intellectual Property, and Seller Controls all other Intellectual Property, in each case, free and clear of Encumbrances other than Permitted Encumbrances. As of the date hereof, to the Knowledge of Seller, the Seller Intellectual Property and material Licensed Intellectual Property, is valid and enforceable. Except as set forth in Section 5.13(c) of the Seller Schedules, neither Seller nor any of its Affiliates has abandoned, canceled or forfeited any Intellectual Property (including by failing to pay any filing or renewals fees), and Seller has not taken any actions that would render a Patent invalid or unenforceable.

(d) Seller has the full and legal right and authority to grant Buyer a license under the Seller Licensed Intellectual Property.

(e) To the Knowledge of Seller, Seller has accurately and completely disclosed to the US Patent and Trademark Office all references or other evidence that Seller is obligated to disclose to comply with the duty of candor.

(f) Other than in the PIV Challenge, no Third Party, except a patent examiner or patent authority in the ordinary course of patent prosecution, has notified Seller in writing, or to the Knowledge of Seller, otherwise alleged, that any claim of a Patent is invalid, unpatentable, or unenforceable. Seller has not received any written notice (or, to the Knowledge of Seller, oral notice) from any Third Party challenging the validity, enforceability or ownership of any of the Intellectual Property.

(g) As of the date hereof, there is no, and for the past three (3) years there has been no, material judicial, administrative or arbitral action, suit, hearing, inquiry, investigation or other Proceeding (public or private) before any Governmental Authority alleging that the development, manufacture, sale or commercialization of the Product, or the development of the Development Product, constitutes infringement, misappropriation or other violation of any intellectual property of any Third Party. Except as set forth in Section 5.13(g) of the Seller Schedules, (i) to the Knowledge of Seller, there is no reasonable basis for any such allegation of infringement, misappropriation or violation; (ii) Seller has not received any written notice (or, to the Knowledge of Seller, oral notice) from any Third Party making any such allegation, and (iii) to the Knowledge of Seller, no Third Party is infringing, misappropriating or otherwise violating any of the Intellectual Property and to the Knowledge of Seller, no Third Party has infringed, misappropriated or otherwise violated any of the Intellectual Property in the past three (3) years.

(h) Other than as set forth on Section 5.13(h) of the Seller Schedules, none of Seller or any of its Affiliates has granted any outbound licenses under the Seller Intellectual Property, other than non-exclusive licenses granted to manufacturers, suppliers, distributors or other Persons performing manufacturing, supply, marketing or other services on behalf of Seller or any of its Affiliates, in each case to the extent necessary to perform such services in the Ordinary Course of Business.

(i) Except as set forth on Section 5.13(i) of the Seller Schedules, all Persons named as inventors on any Patents included in the Seller Intellectual Property, or who should have been listed as such in accordance with applicable Law, have executed and delivered to Seller or its Affiliate, as applicable, a Contract providing for the present assignment by such Person to Seller or its Affiliate, as applicable, of all rights in such Patents.

(j) Notwithstanding anything to the contrary, Buyer acknowledges and agrees that the only representations and warranties given in relation to matters relating to the Intellectual Property specifically addressed in this Section 5.13, are those set out in this Section 5.13, and no other representation or warranty is given in relation to such matters.

(k) Seller does not Control any trademarks, trademark applications, service marks, trade names, certification marks, service names, industrial designs, brand marks, trade dress rights, identifying symbols, logos, emblems, signs, insignia or domain names, or any registrations for any of the foregoing, other than those set forth in Exhibit F, that are exclusively related to the Business, the Product or the Development Product as of the Closing Date.

Section 5.14. Development Product. The development of the Product and the Development Product and the production of the Transferred Inventory have been carried out in accordance with all applicable Laws in all material respects, including GLP, GCP and GMP, as applicable. As of the date hereof, Seller has not received any written notice or other communication indicating that there are any material safety issues, including any facts, data, finding, analysis, information, or belief that there is a substantial risk that (a) the Product presents an unacceptable (i) risk of death, (ii) a life-threatening condition, or (iii) a serious safety or health concern to patients, (b) Regulatory Approval for the Product has been terminated or suspended in any country, or (c) a Regulatory Authority with jurisdiction over the Product has directed or requested discontinuance of development, distribution, use, sale, or importation of the Product, and to the Knowledge of Seller, there is no reasonable basis for any findings related to any of the foregoing (a)-(c).

Section 5.15. Conduct in the Ordinary Course of Business. Neither Seller nor any of its Affiliates has, with respect to the Business, made any change in the selling, distribution, advertising, terms of sale or collection practices in the period twelve (12) months before this Agreement that is inconsistent with the Ordinary Course of Business and would be material to the Business, taken as a whole. In the past twelve (12) months, neither Seller nor any of its Affiliates has, with respect to the Business, (i) entered into any business practices, programs or

long-term allowances not previously used in the Ordinary Course of Business that would be material to the Business, taken as a whole, or (ii) engaged in the practice of "channel stuffing" or any program, activity or other action (including any rebate, discount, chargeback or refund policy or practice, any acceleration of a Transferred Contract), in the case of this clause (ii), that would reasonably be expected to result, directly or indirectly, in a trade buy-in that is significantly in excess of normal customer purchasing patterns consistent in all material respects with the past practices of the Business during the previous twelve (12) months.

Section 5.16. No Other Representations. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES, IF APPLICABLE) OR IN THE ANCILLARY AGREEMENTS, NEITHER SELLER NOR ANY OTHER PERSON MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLER OR ITS AFFILIATES, THE BUSINESS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND ANY RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER AND THEREUNDER OR PURSUANT HERETO OR THERETO, AND SELLER DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES) OR IN THE ANCILLARY AGREEMENTS, SELLER HEREBY DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY REPRESENTATIVE OF SELLER OR ANY OF ITS AFFILIATES). WITHOUT LIMITING THE FOREGOING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING THE PROBABLE SUCCESS, VALUE OR PROFITABILITY OF THE TRANSFERRED ASSETS.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 6.1. Buyer's Organization; Good Standing.

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

(b) Buyer is duly qualified to conduct business as a foreign corporation and is in good standing in every jurisdiction where the nature of the

business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not prevent or materially delay the consummation of the transactions contemplated hereby.

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

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

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

Section 6.5. Absence of Restraints; Compliance with Laws.

(a) To the Knowledge of Buyer, there exist no facts or circumstances that would reasonably be expected to prevent or delay the ability of Buyer or its applicable Affiliates to consummate the transactions contemplated by, or to perform their respective obligations under, the Transaction Agreements.

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

Section 6.6. Litigation. As of the date hereof, there is no Proceeding pending or, to the Knowledge of Buyer, threatened against Buyer or any of its Affiliates which, if adversely determined, would materially interfere with the ability of Buyer to perform its obligations hereunder.

Section 6.7. No Brokers. Buyer will be solely responsible for any commission, finder's fee or other fees and expenses for services rendered by any broker, finder, financial advisor or investment bank in connection with the transactions contemplated hereby based on arrangements made by Buyer or any of its Affiliates.

Section 6.8. Availability of Funds. Buyer (a) has, and will have at the Closing, sufficient immediately available funds available and the financial ability to pay the Purchase Price and any expenses incurred by, on behalf of, or for the account of Buyer in connection with the transactions contemplated by the Transaction Agreements, and (b) has, and will have at the Closing, the resources and capabilities (financial and otherwise) to perform its obligations hereunder and thereunder. Buyer has not incurred any obligation, commitment, restriction or liability of any kind, and is not contemplating or aware of any obligation, commitment, restriction or Liability of any kind, in each case which would prevent, impair or adversely affect such resources and capabilities

Section 6.9. Solvency. Immediately after giving effect to the consummation of the transactions contemplated by this Agreement (including any financings being entered into in connection therewith):

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

(b) Buyer will be able to pay its debts and obligations in the ordinary course of business as they become due except where the failure to make such

payment would not reasonably be expected to have a material adverse effect on Buyer's ability to perform its obligations under this Agreement; and

(c) Buyer will have adequate capital to carry on its businesses and all businesses in which it is about to engage.

Section 6.10. Investigation.

BUYER ACKNOWLEDGES AND AGREES THAT IT (I) HAS MADE ITS OWN INQUIRY AND INVESTIGATION INTO, AND, BASED THEREON, HAS FORMED AN INDEPENDENT JUDGMENT CONCERNING THE BUSINESS AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND ANY OTHER ASSETS, RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER OR THEREUNDER OR PURSUANT HERETO OR THERETO, AND (II) HAS BEEN FURNISHED WITH, OR GIVEN ADEQUATE ACCESS TO, SUCH INFORMATION ABOUT THE BUSINESS AND ALL RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER OR THEREUNDER OR PURSUANT HERETO OR THERETO, AS IT HAS REQUESTED. EXCEPT FOR THE SPECIFIC REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY SELLER IN ARTICLE V, (A) BUYER ACKNOWLEDGES AND AGREES THAT (Y) SELLER IS NOT MAKING AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE BUSINESS OR THE TRANSFERRED ASSETS, OR SELLER'S OR ITS AFFILIATES' RESPECTIVE BUSINESSES, ASSETS, LIABILITIES, OPERATIONS, PROSPECTS, OR CONDITION (FINANCIAL OR OTHERWISE), INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY ASSETS, THE NATURE OR EXTENT OF ANY LIABILITIES, THE PROSPECTS OF THE BUSINESS, THE EFFECTIVENESS OR THE SUCCESS OF ANY OPERATIONS, OR THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION MEMORANDA, MANAGEMENT PRESENTATION, DOCUMENTS, PROJECTIONS, MATERIAL OR OTHER INFORMATION (FINANCIAL OR OTHERWISE) REGARDING THE BUSINESS, OR THE TRANSFERRED ASSETS, OR SELLER OR ITS AFFILIATES FURNISHED TO BUYER OR ITS REPRESENTATIVES OR MADE AVAILABLE TO BUYER AND ITS REPRESENTATIVES IN ANY "DATA ROOMS," "VIRTUAL DATA ROOMS," MANAGEMENT PRESENTATIONS OR IN ANY OTHER FORM IN EXPECTATION OF, OR IN CONNECTION WITH, THE TRANSACTIONS CONTEMPLATED HEREBY, OR IN RESPECT OF ANY OTHER MATTER WHATSOEVER, AND (Z) NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF THE BUSINESS HAS ANY AUTHORITY, EXPRESS OR IMPLIED, TO MAKE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT AND SUBJECT TO THE LIMITED REMEDIES HEREIN PROVIDED; (B) BUYER SPECIFICALLY DISCLAIMS THAT IT IS RELYING UPON OR HAS RELIED UPON ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES THAT MAY HAVE BEEN MADE BY ANY PERSON, AND ACKNOWLEDGES AND AGREES THAT THE SELLER HAS SPECIFICALLY DISCLAIMED AND DO HEREBY SPECIFICALLY DISCLAIM ANY SUCH OTHER REPRESENTATION OR WARRANTY MADE BY ANY PERSON; AND (C) BUYER IS

ACQUIRING THE TRANSFERRED ASSETS AND THE ASSUMED LIABILITIES IN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, SUBJECT ONLY TO THE SPECIFIC REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES, AS IT MAY BE SUPPLEMENTED OR AMENDED IN ACCORDANCE WITH THIS AGREEMENT). BUYER ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO CONDUCT DUE DILIGENCE AND INVESTIGATION WITH RESPECT TO THE TRANSFERRED ASSETS, THE BUSINESS AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND ANY OTHER ASSETS, RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER OR THEREUNDER OR PURSUANT HERETO OR THERETO, AND IN NO EVENT SHALL SELLER OR ANY OF ITS AFFILIATES HAVE ANY LIABILITY TO BUYER WITH RESPECT TO A BREACH OF REPRESENTATION, WARRANTY OR COVENANT UNDER THIS AGREEMENT OR ANY ANCILLARY AGREEMENT TO THE EXTENT THAT BUYER HAD KNOWLEDGE OF SUCH BREACH AS OF THE CLOSING DATE.

Section 6.11. Disclaimer of Other Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE VI AND IN THE ANCILLARY AGREEMENTS, NEITHER BUYER NOR ANY OTHER PERSON MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO BUYER OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND BUYER DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ANY OTHER REPRESENTATIONS AND WARRANTIES, WHETHER MADE BY BUYER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES.

ARTICLE VII

ADDITIONAL COVENANTS AND AGREEMENTS

Section 7.1. Conduct of Business Prior to the Closing.

(a) Except as required by applicable Law or as otherwise contemplated by or necessary to effectuate the Transaction Agreements and except for matters identified in Section 7.1 of the Seller Schedules, from the date of this Agreement through the Closing (or until earlier termination of this Agreement), unless Buyer otherwise consents in advance (which consent shall not be unreasonably withheld, conditioned or delayed), Seller will (x) conduct the Business in the Ordinary Course of Business, (y) use Commercially Reasonable Efforts to preserve intact, in all material respects, its business organization (to the extent exclusively related to the Business) and (z) with respect solely to the Business, not to do any of the following:

(i) grant any Encumbrance on any Transferred Assets other than in the Ordinary Course of Business;

(ii) sell, transfer, lease, sublease or otherwise dispose of any Transferred Assets (other than Inventory in the Ordinary Course of Business);

(iii) amend any material term of, or waive any material right under, any Transferred Contract;

(iv) enter into any settlement or release with respect to any Proceeding that will be a Transferred Asset or Assumed Liability (including, for clarity, the PIV Challenge);

(v) omit to act so as to prevent stocks of Inventory to fall below those maintained in the Ordinary Course of Business in any material respects (other than any actions or omissions taken at the request of Buyer); or

(vi) enter into any legally binding commitment with respect to any of the foregoing.

(b) Notwithstanding anything to the contrary herein, including the provisions of Section 7.1(a), Seller may take reasonable actions in compliance with applicable Law with respect to any operational emergencies (including any restoration measures in response to any hurricane, strong winds, ice event, fire, tornado, tsunami, flood, earthquake or other natural disaster or severe weather-related event, circumstance or development), equipment failures, outages or an immediate and material threat to the health or safety of natural Persons (including any reasonable good faith action taken to address an event stemming from or arising out of the COVID-19 pandemic, including any action by Seller reasonably necessary to comply with any guidelines, advice or decree of any Governmental Authority in connection with or related to COVID-19 (including COVID-19 Measures) and any action taken by Seller in the operation of the Business in its reasonable discretion in connection with or related to COVID-19 or similar pandemic); provided, that Seller shall provide Buyer with notice of any such action taken that would have any impact with respect to the Transferred Assets or the Transaction Agreements as soon as reasonably practicable thereafter (and in no event later than ten (10) Business Days after such action is taken).

Section 7.2. Access to Information.

(a) From the date of this Agreement until the Transition Period (or until earlier termination of this Agreement), upon reasonable prior notice, and except as determined in good faith by Seller to be appropriate to ensure compliance with any applicable Laws and subject to any applicable privileges (including the attorney-client privilege) and contractual confidentiality obligations, Seller shall (i) afford the Representatives of Buyer reasonable access, during normal business hours, to the books and records that will be Transferred Records and Transferred Regulatory Documentation and (ii) furnish to the Representatives of Buyer such additional financial and operating data and other information related to the Business, in each case to the extent readily available to Seller, and prepared or gathered in the ordinary course of business, as Buyer may from time to time reasonably request for purposes

of preparing to operate the Business following the Transition Period; provided, however, that the provision of such access and such data and information shall not (y) unreasonably interfere with any of the businesses, personnel or operations of Seller, or (z) that the Auditors and accountants of Seller or its Affiliates, as applicable, shall not be obliged to make any work papers available to any Person except in accordance with such Auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such Auditors or accountants. From the date of this Agreement until the Closing, except for the parties listed in Section 7.2 of the Seller Schedules or such other parties for whom Seller provides prior written consent (not to be unreasonably withheld, conditioned or delayed), neither Buyer, its Affiliates nor any of their respective Representatives shall contact any employees of, suppliers to, or customers of, Seller in connection with or with respect to this Agreement, any other Transaction Agreement or the transactions contemplated hereby and thereby, or (other than in the ordinary course of business consistent with past practice) to otherwise discuss the business or operations of any of the Business; provided, further, however, that neither Buyer, its Affiliates nor any of their respective Representatives shall have any contact or discussion with any party (including those parties listed on Section 7.2 of the Seller Schedules or such other party for whom Seller has otherwise provided prior written consent) during the referenced period, without first consulting Seller and its Affiliates, and the applicable Representatives of Seller and its Affiliates shall be copied on all written correspondence and present for all oral communications and meetings; provided, further, that, with respect to the parties listed on Section 7.2 of the Seller Schedules, any contact or discussion shall be limited to the topics set forth on such Schedule.

(b) Notwithstanding anything in this Agreement to the contrary, Seller shall not be required, prior to the Closing, to disclose, or cause or seek to cause the disclosure, to Buyer or its Affiliates or Representatives (or provide access to any properties, books or records of Seller that would reasonably be expected to result in the disclosure to such Persons or others) of (i) any competitively sensitive information or any confidential information relating to Know-How, processes or Patent, Trademark, trade name, service mark or copyright applications or product development, or pricing and marketing plans, nor shall Seller be required to permit or cause or seek to cause others to permit Buyer or its Affiliates or Representatives to have access to or to copy or remove from the properties of Seller any documents, drawings or other materials that might reveal any such confidential information or (ii) any Personal Information of any data subjects for which any necessary notices and/or consents have not been received.

Section 7.3. Confidentiality. The terms of that certain confidential disclosure agreement dated October 29, 2020 (the "Confidentiality Agreement") between Seller and Buyer are incorporated into this Agreement by reference and shall continue in full force and effect (and the confidentiality obligations thereunder shall be binding upon Buyer and its Affiliates and their respective Representatives) until the Closing, at which time the confidentiality obligations under the Confidentiality Agreement shall terminate; provided, however, that Buyer's confidentiality obligations shall terminate only in respect of that portion of the Confidential Information (as

defined in the Confidentiality Agreement) exclusively relating to the Business or otherwise constituting a Transferred Asset, and for all other Confidential Information, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms. If, for any reason, the Closing does not occur, then, irrespective of its terms, the Confidentiality Agreement shall continue in full force and effect for a period of two (2) years following the termination of this Agreement. Upon Closing, all Confidential Information as it relates to the Business, the Product, the Development Product and the Transferred Assets shall solely and exclusively vest with the Buyer and notwithstanding any conflicting provision of the Confidentiality Agreement, except in connection with the performance of Seller's obligations under any of the Transaction Agreements, Seller and its Affiliates and their respective Representatives will be obligated to maintain the confidentiality of any of such Confidential Information and to not use such Confidential Information after the Closing without the express written consent of Buyer, as the receiving Party of such Confidential Information, for a period of two (2) years after the Closing; provided that, with respect to any such Confidential Information that constitutes a trade secret under applicable Law such confidentiality obligations shall continue so long as the Confidential Information maintains its status as a trade secret. Notwithstanding anything to the contrary in the Confidentiality Agreement, the terms of this Agreement shall be deemed the Confidential Information of both Parties, and each Party shall maintain the confidentiality of such information in accordance with the terms of the Confidentiality Agreement and this Section 7.3; provided, that, each Party shall have the right to disclose the terms of this Agreement (a) as may be required by Law (including any disclosure obligations under the federal securities Laws or applicable accounting principles), the rules and regulations of any national securities exchange upon which the securities of Seller, Buyer or their respective Affiliates are listed or to any Governmental Authority (including federal, state, or foreign taxing authorities) with jurisdiction over such Party upon request by such Governmental Authority or (b) to any bona fide potential or actual investor, acquiror, merger partner, or other financial or commercial partner for the sole purpose of evaluating or carrying out an actual or potential investment, acquisition or other business relationship, in each case, involving the Product, Development Product, other Milestone Products, the Transferred Assets or the Assumed Liabilities; provided, that in connection with such disclosure, such Party shall inform each disclosee of the confidential nature of such information and require each disclosee to execute a customary non-disclosure agreement pursuant to which such disclosee agrees to treat such information as confidential.

Section 7.4. Insurance. Buyer acknowledges and agrees that, upon Closing, all insurance coverage provided under Seller's insurance policies or otherwise in relation to the Transferred Assets pursuant to policies, risk funding programs or arrangements maintained by Seller or by any Affiliate of Seller (whether such policies are maintained in whole or in part with Third Party insurers or with Seller or its Affiliates and including any captive policies or fronting arrangements, and including any "occurrence" based insurance policies provided in relation to Seller and its Affiliates with respect to any occurrences prior to Closing) shall cease, and no further coverage shall be available in respect of any Transferred Asset or Assumed Liability under any such policies, programs or arrangements; provided, that, if a material Transferred Asset suffers a casualty loss prior to the Closing Date that is covered by insurance maintained by Seller or its Affiliates, Seller shall cause any insurance proceeds actually received in respect of such casualty loss, net of any expenses (including any deductibles retained by Seller) incurred in connection with the receipt of such proceeds, to be applied to restore or replace such Transferred Asset.

Section 7.5. Regulatory and Other Authorizations; Consents.

(a) Buyer shall, and shall cause its Affiliates to, take any and all reasonable steps to (i) promptly obtain all Governmental Approvals that may be, or become, necessary for the execution and delivery of, and performance of its obligations pursuant to, the Transaction Agreements (including the consummation of the transactions contemplated thereby), and to furnish promptly any additional information and documentary material that may be requested by a Governmental Authority (including to promptly make available any information and appropriate personnel in response to any queries made by a Governmental Authority, which may include information regarding this Agreement, Buyer's capabilities as the potential purchaser of the Transferred Assets or other matters), (ii) promptly secure the issuance, reissuance or transfer of all licenses and permits that may be or become necessary to operate the Business following the Closing; (iii) take all such actions as may be requested by any such Governmental Authority to obtain such Governmental Approvals, licenses and permits and (iv) avoid the entry of, or effect the dissolution of, any permanent, preliminary or temporary Governmental Order, that would otherwise have the effect of preventing or materially delaying the consummation of the transactions contemplated by this Agreement. Seller will cooperate with the reasonable requests of Buyer in seeking promptly to obtain all such Governmental Approvals and the issuance, reissuance or transfer of such licenses and permits. Buyer shall, and shall cause its Affiliates to, pay all fees or make other payments required by applicable Law to any Governmental Authority in order to obtain any such Governmental Approvals, licenses and permits, except for any and all past due amounts that were either (i) due and payable prior to or on the Closing Date, or (ii) are a result, whether direct or indirect, of Seller's failure to timely, and fully, pay such fees or other payments as required by Applicable Law that become due and payable prior to or on the Closing Date, including any penalties, fees or interest. Buyer shall not undertake any actions that would reasonably be likely to have the effect of preventing or materially delaying the consummation of the transactions contemplated by this Agreement.

(b) Each of Seller and Buyer agrees to make or cause to be made the necessary filing of a notification and report form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable after the date of this Agreement (but in no event later than ten (10) Business Days after the date of this Agreement, unless agreed to in writing by the Parties) and to furnish as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act. In addition, each of Seller and Buyer agrees to make promptly any filing or notice that may be required with respect to the transactions contemplated by this Agreement or by the other Transaction Agreements under any other applicable antitrust or competition Laws or by any other Governmental Authority. Buyer shall have sole responsibility for the filing fees associated with the HSR Act filings and all other filing fees associated with any other filings required by any other applicable Laws or Governmental Order in any other jurisdictions. Each Party shall be responsible for its respective legal fees associated with the filing of a notification and report as it relates to the HSR Act.

Buyer shall not (i) withdraw its HSR notification and report form or (ii) enter into any agreement with any Governmental Authority to delay consummation of the transactions contemplated by this agreement without the prior written consent of the Seller.

(c) The Parties shall, and shall cause each of its Affiliates to, apply Commercially Reasonable Efforts to avoid or eliminate each and every impediment under any antitrust, competition, trade regulation or foreign investment regulation Law that may be asserted by any antitrust or competition or any other Governmental Authority or any other Person so as to enable the Parties to close the transactions contemplated hereby and by the other Transaction Agreements.

(d) Each of Buyer and Seller shall promptly notify the other of any oral or written communication it or any of its Representatives receives from any Governmental Authority relating to the matters that are the subject of this Section 7.5, permit the other Party and its Representatives to review in advance any communication relating to the matters that are the subject of this Section 7.5 proposed to be made by such Party to any Governmental Authority and provide the other Party with copies of all substantive correspondence, filings or other communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, relating to the matters that are the subject of this Section 7.5, provided, however, that materials may be redacted (i) to remove references concerning the valuation of the Business, (ii) as necessary to comply with contractual arrangements or applicable Law and (iii) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns. Neither Buyer nor Seller shall agree to participate in any meeting or discussion with any Governmental Authority in respect of any such filings, investigation or other inquiry unless it consults with the other party in advance and, to the extent permitted by such Governmental Authority, gives the other party the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, Section 7.2(b), and any other applicable terms and conditions of this Agreement the Parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other party may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods.

(e) Notwithstanding anything in this Agreement to the contrary (including Section 7.1), Buyer acknowledges on behalf of itself and its Affiliates and its and their Representatives, successors and assigns that the operation of the Business shall remain in the dominion and control of Seller until the Closing and that none of Buyer, any of its Affiliates or its or their respective successors or assigns will provide, directly or indirectly, any directions, orders, advice, aid, assistance or information to any director, officer or employee of any of Seller or its Affiliates, except as specifically contemplated or permitted by this ARTICLE VII or as otherwise consented to in writing in advance by an executive officer of Seller.

Section 7.6. Third Party Consents. Each of Buyer and Seller agrees to cooperate to obtain any consents and approvals from any third person other than a Governmental Authority that may be required in connection with the transactions contemplated by the Transaction Agreements, which, with respect to Seller, shall include the consents and approvals identified in Section 9.1(c) of the Seller Schedules (collectively, the "Third Party Consents"). Notwithstanding anything in this Agreement to the contrary, Seller shall not be required to compensate any Third Party, commence or participate in any Proceeding or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain secondarily liable or contingently liable for any Assumed Liability) to any Third Party (x) to obtain any such Third Party Consent or (y) in connection with Seller's obligations under Section 2.4.

Section 7.7. Further Action.

(a) Each of Seller and Buyer shall execute and deliver, or cause to be executed and delivered, such documents and other instruments and take, or cause to be taken, such further actions as may be reasonably required to carry out the provisions of the Transaction Agreements and give effect to the transactions contemplated hereby or thereby.

(b) Each of Seller and Buyer shall keep each other reasonably apprised of the status of the matters relating to the completion of the transactions contemplated hereby, including matters relating to the satisfaction of the conditions set forth in ARTICLE IX.

ARTICLE VIII

CERTAIN COVENANTS AND AGREEMENTS

Section 8.1. Access. In addition to the provisions of Section 8.2, from and after the Closing Date, in connection with any reasonable business purpose, including in connection with the preparation of Tax Returns, claims relating to Excluded Liabilities, the preparation of financial statements, SEC reporting obligations, or any Proceeding to which a Party or any of its Affiliates is a party, the requirements of any Laws applicable to the Party and its Affiliates or the determination of any matter relating to the rights or obligations of the Party and/or its Affiliates under any of the Transaction Agreements, upon reasonable prior notice, and except as determined in good faith by the other Party to be necessary to (a) ensure compliance with any applicable Law, (b) preserve any applicable privilege (including the attorney-client privilege), or (c) comply with any contractual confidentiality obligations, the other Party shall, and shall cause each of its Affiliates and Representatives to (i) afford the Representatives of the Party and its Affiliates reasonable access, during normal business hours, to the properties, electronically stored data and information, books and records of the other Party and its Affiliates in respect of the Business, the Transferred Assets (and related liabilities), the Product and the Development Product, and permit copies of such materials to be made for the Party and its Affiliates solely for use in connection with the reasonable business purposes described in this paragraph, (ii) furnish to the Representatives of the Party and its Affiliates such additional financial and other information regarding the Business, the Transferred Assets (and Assumed Liabilities), as the

Party, its Affiliates or their respective Representatives may from time to time reasonably request, (iii) make available to the Representatives of the Party and its Affiliates those employees of the other Party and its Affiliates whose assistance, expertise, testimony, notes and recollections or presence may be necessary to assist Seller and its Affiliates in connection with their inquiries for any of the purposes referred to above, including the presence of such persons as witnesses in hearings or trials for such purposes, and (iv) assist in providing or obtaining any necessary notice or consent for disclosure of Personal Information where required; provided, however, that the provision or such access and such data and information shall not unreasonably interfere with the business or operations of the other Party or any of its Affiliates; and provided, further, that the auditors and accountants of the other Party or its Affiliates shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants.

Section 8.2. Books and Records. Seller and its Affiliates shall have the right to retain copies of all Transferred Records relating to periods ending on or prior to the Closing Date. For a period of six (6) years after the Closing, Buyer shall: (a) retain the Transferred Records and all other books and records related to the Transferred Assets held by Buyer or any of its Affiliates; and (b) upon Seller's reasonable notice to Buyer and during normal business hours, cooperate with and provide Seller, any of Seller's Affiliates, and the officers, employees, agents and Representatives of Seller and Seller's Affiliates reasonable access (including the right to make copies at Seller's expense or the expense of any Affiliate of Seller) to such Transferred Records, including as may be necessary for the preparation of financial statements, regulatory filings, Tax Returns, or in connection with any Proceedings. Seller and its Affiliates shall be entitled, at their expense and subject to reasonable and customary confidentiality undertakings, to make copies of the books and records to which they are entitled access pursuant to this Section 8.2. For the sake of clarity, any Confidential Information in the Transferred Records or otherwise in the Transferred Assets shall become Buyer's Confidential Information upon Closing.

Section 8.3. Transfer and Assumption of Regulatory Commitments.

(a) From and after the Closing Date, Buyer will assume control of, and responsibility for all costs and Liabilities arising from or related to any Transferred Regulatory Documentation, including, but not limited to, any commitments or obligations to any Governmental Authority involving the Products arising after the Closing Date. Seller and Buyer acknowledge that the transfer of Regulatory Approvals to Buyer may be subject to the approval of applicable Governmental Authorities, and that, notwithstanding anything in this Agreement to the contrary, each Regulatory Approval shall continue to be held by Seller from and after the Closing Date until the date upon which the relevant Governmental Authority approves the Regulatory Approval naming Buyer or one of its Affiliates as the holder of such Regulatory Approval in the relevant country or territory covered by such Regulatory Approval. Each of Buyer and Seller shall cooperate to transfer to Buyer the Transferred Regulatory Documentation as quickly as possible following the Closing.

(b) As soon as practicable following the transfer of the Product NDA from Seller to Buyer, Seller shall transfer and Buyer shall assume the Seller NDC Numbers. Following the transfer of the Seller NDC Numbers to Buyer, Buyer shall assume any and all reporting obligations arising from or related to the Seller NDC Numbers, including any required reporting calculations to a Governmental Authority (such as MDRP, 340B CP and Non-FAMP). Upon Buyer's request, Seller shall provide Buyer with sales data from any pre-Closing period included in the Calendar Quarter in which the Closing occurs and other historical data required in connection with Buyer's reporting obligations to a Governmental Authority, in each case in accordance with Section 8.1. Each of Buyer and Seller shall cooperate to transfer the Seller NDC Numbers as quickly as possible following the transfer of the Product NDA.

Section 8.4. Certain Tax Matters.

(a) Transfer Taxes. Seller and Buyer shall equally share all stamp, documentary, filing, recording, registration, sales, use, transfer, value added, and other non-income or non-capital gains Taxes and all fees, duties, assessments and governmental charges imposed under applicable Law in connection with the transactions contemplated hereby (collectively, "Transfer Taxes") and (i) Seller shall prepare and timely file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes and, if required by applicable Law, Buyer shall join in the execution of any such Tax Returns and other documentation in connection therewith, (ii) Seller shall deliver an invoice to Buyer and (iii) Buyer shall within thirty (30) days of receipt of such invoice reimburse Seller for the amount of Transfer Taxes for which Buyer is liable under this Section 8.4(a).

(b) Tax Adjustments. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Transferred Assets (including real estate Taxes, personal property Taxes and similar Taxes) for the tax period in which the Closing occurs (the "Proration Period") will be apportioned and prorated between Seller and Buyer as of the Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the Closing Date, and Seller shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Buyer and Seller, and Buyer or Seller, as the case may be, promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Seller.

Section 8.5. PIV Challenge. From and after the Closing Date, Buyer shall (a) use Commercially Reasonable Efforts to defend and litigate the PIV Challenge, (b) perform Seller's obligations under the Rose U Related Agreements, in accordance with the terms thereunder and (c) keep Seller informed of the entry into a settlement in connection with the PIV Challenge (as promptly as practicable, but in any event within five (5) Business Days of entering into such settlement). For the avoidance of doubt, Buyer shall have the right, in its sole discretion, to select counsel with respect to the PIV Challenge and, subject to clause (a) of the preceding sentence, the right to control the PIV Challenge, and if deemed by Buyer to be consistent with Buyer's use of Commercially Reasonable Efforts as described in this Section 8.5, to settle the PIV Challenge.

Section 8.6. Further Assurances.

(a) From time to time following the Closing, Seller and Buyer shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all reasonable further conveyances, notices, assumptions, releases and acquittances and instruments, and shall take such reasonable actions as may be necessary or appropriate, to make effective the transactions contemplated hereby as may be reasonably requested by the other party hereto (including (i) transferring back to Seller or its designated Affiliates (and having Seller or its Affiliate assume) any asset or liability not contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which asset or liability was transferred to Buyer or its Affiliates at or after the Closing, and (ii) transferring to Buyer or its designated Affiliates (and having Buyer or its Affiliate assume) any asset or liability contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which was not transferred to or assumed by Buyer or its Affiliates at the Closing.

(b) In the event that, notwithstanding the provisions of this Agreement, any Third Party attempts to collect an Assumed Liability from Seller or its Affiliates, or an Excluded Liability from Buyer or its Affiliates, and (i) any claim or demand is made by such Third Party in respect of any such liability against Seller or its Affiliates or Buyer or its Affiliates, respectively or (ii) any investigation, suit or Proceeding is commenced against Seller or its Affiliates or Buyer or its Affiliates, respectively, in respect of any such liability, then, in each such case, (y) the Party receiving such claim or demand, or notice of such investigation, suit or Proceeding, shall promptly notify the other party and send such party any relevant documentation received in connection therewith, and (z) the Party whose liability such liability was intended to be hereunder (*e.g.*, if such liability was specifically contemplated by this Agreement to be an Assumed Liability, then Buyer, or if such liability was specifically contemplated by this Agreement to be an Excluded Liability, then Seller) shall assume the defense and control of any such claim, demand, investigation, suit or Proceeding, and the other Party shall provide reasonably requested necessary support in connection therewith. For the avoidance of doubt, (1) Seller shall not be authorized to consent to a settlement of, or the entry of any judgment arising from, any Assumed Liability, without the consent of Buyer, (2) Buyer shall not be authorized to consent to a settlement of, or the entry of any judgment arising from, any Excluded Liability, without the consent of Seller; provided, that Buyer or Seller,

respectively, shall (A) pay all amounts arising out of such settlement or judgment concurrently with the effectiveness thereof and (B) obtain, as a condition of such settlement or other resolution, a complete release of Seller and its Affiliates or Buyer and its Affiliates, respectively and (3) any Losses incurred by Seller or its Affiliates in respect of any such Assumed Liability, or any Losses incurred by Buyer or its Affiliates in respect of any such Excluded Liability, shall be deemed to be Assumed Liabilities and Excluded Liabilities, respectively, and Buyer and Seller, shall reimburse Seller and Buyer, respectively, for any such reasonable and documented Losses.

Section 8.7. Corporate Existence. Until the date that is three (3) years from the Closing Date, the Seller shall maintain its corporate existence and will not liquidate, dissolve or otherwise wind up its affairs. At all times, until the first anniversary of the Closing Date, the Seller shall maintain at least $500,000 in unrestricted cash in its bank account. From the Closing Date until the date that is three (3) years from the Closing Date, if a Buyer Indemnified Party has (1) an undisputed, finally adjudicated or settled indemnification claim for which Seller has not made payment, (2) a pending indemnification claim against Seller under Article XI that is then subject to a Proceeding or (3) an indemnification claim made in good faith against Seller for which Buyer has properly notified Seller in accordance with Section 11.5 (the "Open Claims"), Seller shall not (i) dividend, distribute, or transfer or (ii) encumber, with the intention to frustrate a Buyer Indemnified Party's ability to enforce its indemnification rights, any cash received by Seller at a time when one or more Open Claims exist [***], Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments in an amount so as to cause Seller's available cash balances to be less than the amount of Losses then owed or reasonably claimed to be then owing to a Buyer Indemnified Party pursuant to any Open Claim then in existence.

Section 8.8. No Setoff. Unless otherwise provided herein to the contrary, all payments to be made under this Agreement shall be made at the time and in the amounts provided for in this Agreement without set-off or deduction.

ARTICLE IX

CONDITIONS PRECEDENT

Section 9.1. Conditions to Each Party's Obligations. The obligation of Buyer to consummate the transactions contemplated by this Agreement and the obligations of Seller to consummate the transactions contemplated by this Agreement will be subject to the satisfaction prior to the Closing of the following conditions:

(a) Governmental Approvals. Any applicable waiting period under the HSR Act (and any extensions thereof, including any agreement with any Government Authority to delay consummation of the transactions contemplated by the Transaction Agreements) shall have expired or been terminated.

(b) No Governmental Order. There shall be no Governmental Order in existence that prohibits the sale of the Transferred Assets or the assumption of the Assumed Liabilities or other transactions contemplated by the Transaction

Agreements, and there shall be no proceeding pending by any Governmental Authority seeking such a Governmental Order.

(c) Third Party Consents. All Third Party consents listed on Section 9.1(c) of the Seller Schedules shall have been obtained.

Section 9.2. Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction on and as of the Closing of each of the following additional conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of Seller contained in ARTICLE V (other than as set forth in clause (ii) of this Section 9.2(a)) shall be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers therein) as of the Closing Date as though made on the Closing Date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (other than any representations and warranties made as of a specific date, which representations and warranties shall have been true and correct as of such date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect as of such date); (ii) each of the Seller Fundamental Representations shall be true and correct in all material respects as of the Closing Date as though made on the Closing Date, other than any Seller Fundamental Representations made as of a specific date, which representations and warranties shall have been true and correct in all material respects as of such date; and (iii) the covenants contained in this Agreement required to be complied with by Seller on or before the Closing shall have been complied with in all material respects. Buyer shall have received a certificate signed by an authorized officer of Seller, dated as of the Closing Date, with respect to the matters set forth in the foregoing clauses (i) through (iii) (such certificate, the "Seller Officer's Certificate").

(b) Deliveries. Seller will have duly executed and delivered to Buyer each of the items required under Section 4.2.

Section 9.3. Conditions to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction on and as of the Closing of each of the following additional conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of Buyer contained in ARTICLE VI (other than as set forth in clause (ii) of this Section 9.3(a)) shall be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers therein) as of the Closing as if made on the Closing Date, other than representations and warranties made as of a specific date, which representations and warranties shall have been true and correct as of such date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement and any other Transaction Agreement

to which it or any of its Affiliates is a party or to consummate the transactions contemplated hereby or thereby; (ii) each of the Buyer Fundamental Representations shall be true and correct in all material respects as of the Closing Date as though made on the Closing Date, other than any Buyer Fundamental Representation made as of a specific date, which representations and warranties shall have been true and correct in all material respects as of such date; and (iii) the covenants contained in this Agreement required to be complied with by Buyer on or before the Closing shall have been complied with in all material respects. Seller shall have received a certificate signed by an authorized officer of Buyer, dated as of the Closing Date, with respect to the matters set forth in the foregoing clauses (i) through (iii) (such certificate, the "Buyer Officer's Certificate").

(b) Deliveries. Buyer will have duly executed and delivered to Seller each of the items required under Section 4.3.

Section 9.4. Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in this ARTICLE IX to be satisfied if such failure was caused by such Party's failure to act in good faith or to use reasonable best efforts to cause the conditions to Closing of the other party to be satisfied, including as required by Section 7.5.

ARTICLE X

TERMINATION, AMENDMENT AND WAIVER

Section 10.1. Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Buyer;

(b) by Seller, if Buyer shall have breached any of its representations or warranties under this Agreement or failed to, or failed to cause its Affiliates to, comply with any covenant or agreement applicable to Buyer and/or its Affiliates that would cause any of the conditions set forth in Section 9.3 not to be satisfied, and such condition is incapable of being satisfied by the Outside Date; provided, however, that Seller is not then in material breach of its obligations under this Agreement;

(c) by Buyer, if Seller shall have breached any of its representations or warranties under this Agreement or failed to comply with any covenant or agreement applicable to Seller that would cause any of the conditions set forth in Section 9.2 not to be satisfied, and such condition is incapable of being satisfied by the Outside Date; provided, however, that Buyer is not then in material breach of its obligations under this Agreement;

(d) by either Seller or Buyer if the Closing shall not have occurred on or before [***] (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any Party whose breach of this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to such Outside Date; or

(e) by either Seller or Buyer in the event that any Governmental Authority of competent jurisdiction shall have issued a final, non-appealable Governmental Order permanently restraining or prohibiting the transactions contemplated by this Agreement; provided, however, that the right to terminate this Agreement under this Section 10.1(e) shall not be available to any party whose action or failure to fulfill any obligation under this Agreement has been the cause of, or has resulted in, the issuance of such Governmental Order.

Section 10.2. Notice of Termination. Any Party hereto desiring to terminate this Agreement pursuant to this ARTICLE X shall give written notice of such termination to the other Party to this Agreement.

Section 10.3. Effect of Termination. In the event this Agreement is terminated pursuant to this ARTICLE X, this Agreement shall forthwith become null and void and be of no further force and effect and there shall be no liability on the part of any Party to this Agreement, except that this Section 10.3, and Sections 7.3 and 10.1 and ARTICLE XI shall survive any such termination in accordance with their terms and shall be enforceable hereunder. Nothing in this Section 10.3 shall be deemed to release any Party hereto from any Liability for any breach by such Party prior to the termination of this Agreement of any term of this Agreement; provided, however, that, if this Agreement is validly terminated pursuant to this ARTICLE X, no Party hereto shall have any remedy or right to recover for any Liabilities resulting from any breach of any representation or warranty contained herein unless such breach was a Willful Breach committed by the breaching Party.

Section 10.4. Event of Termination. In the event of termination of this Agreement pursuant to this ARTICLE X, written notice thereof will forthwith be given to the other party and the transactions contemplated by this Agreement will be terminated, without further action by any party. If the transactions contemplated by this Agreement are terminated as provided herein:

(a) Buyer will return all documents and other material received from Seller relating to the Products or the Transferred Assets or the transactions contemplated hereby, whether so obtained before or after the execution hereof, to Seller; and

(b) all confidential information received by Buyer with respect to Seller, the Products or the Transferred Assets will be treated in accordance with the Confidentiality Agreement as modified by this Agreement, which will remain in full force and effect in accordance with its terms notwithstanding the termination of this Agreement.

ARTICLE XI

INDEMNIFICATION

Section 11.1. Survival.

(a) All representations and warranties of Seller and Buyer contained herein or made pursuant hereto (other than the Seller Fundamental Representations,

Seller Special Representations and the Buyer Fundamental Representations) and the covenants in this Agreement that by their terms apply or are to be performed in whole or in part prior to the Closing Date will remain operative and in full force and effect until the expiration of the nine (9) month period following the Closing Date. The Seller Fundamental Representations and the Buyer Fundamental Representations will remain operative and in full force and effect until 90 days following the applicable statute of limitations. The Seller Special Representations will remain operative and in full force and effect until the expiration of the eighteen (18) month period following the Closing Date. The covenants and agreements of the Parties contained in this Agreement that by their terms apply or are to be performed in whole or in part after the Closing Date shall survive the Closing for the period provided in such covenants and agreements.

(b) Notwithstanding anything herein to the contrary, any breach of any representation, warranty, covenant or agreement in respect of which indemnification may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to Section 11.1(a) if notice of the breach thereof giving rise to such right of indemnification shall have been given in accordance with Section 11.5 at or prior to the time at which such representation, warranty, covenant or agreement would have otherwise expired pursuant to Section 11.1(a).

Section 11.2. Indemnification by Seller. Subject to Section 11.4, Seller hereby agrees that, from and after the Closing Date, Seller shall indemnify Buyer and its Affiliates and their respective directors, officers and employees (the "Buyer Indemnified Parties") against, and hold them harmless from, and pay and reimburse such parties for, any Losses to the extent such Losses arise from or in connection with the following:

(a) any breach by Seller of any representation or warranty made by Seller in ARTICLE V of this Agreement;

(b) any breach by Seller of any of its covenants, agreements or obligations to be performed following the Closing contained in this Agreement; and

(c) any and all Excluded Liabilities.

Section 11.3. Indemnification by Buyer. Subject to Section 11.4, Buyer hereby agrees that, from and after the Closing Date, Buyer shall indemnify Seller and its Affiliates and their respective directors, officers and employees (the "Seller Indemnified Parties") against, and hold them harmless from, and pay and reimburse such parties for, any Losses to the extent such Losses arise from or in connection with the following:

(a) any breach by Buyer of any representation or warranty made by Buyer in ARTICLE VI of this Agreement;

(b) any breach by Buyer of any of its covenants, agreements or obligations to be performed following the Closing contained in this Agreement; and

(c) any and all Assumed Liabilities.

Section 11.4. Limitations.

(a) The amount of any Losses for which either Seller or Buyer, as the case may be, is liable under this ARTICLE XI shall be reduced by (i) the amount of any insurance proceeds actually paid to the Indemnified Party (as defined herein) and (ii) the amount of any cash Tax benefit actually realized by the Indemnified Party in connection with such Loss and any of the circumstances giving rise thereto prior to the indemnification payment.

(b) Seller shall not be required to indemnify any Person for any Losses pursuant to Section 11.2(a) (other than with respect to the Seller Fundamental Representations) until the aggregate amount of an Indemnified Party's Losses exceed $[***] (the "Deductible"), after which Seller shall only be obligated for such aggregate Losses in excess of the Deductible.

(c) Seller shall not be required to indemnify any Person under Section 11.2(a) for an aggregate amount of Losses exceeding $[***] (other than for breaches of the Seller Fundamental Representations and Seller Special Representations). Seller shall not be required to indemnify any Person under Section 11.2(a) for an aggregate amount of Losses exceeding (i) $[***] for breaches of the Seller Special Representations and (ii) the Purchase Price actually paid to Seller under this Agreement at the time the claim is finally adjudicated or settled for breaches of the Seller Fundamental Representations.

(d) Subject to Section 11.4(g), the right of the Buyer Indemnified Parties and the Seller Indemnified Parties under this ARTICLE XI shall be the sole and exclusive monetary remedy of the Buyer Indemnified Parties and the Seller Indemnified Parties, as the case may be, with respect to matters covered hereunder, including claims relating to the Product, the Transferred Assets, Assumed Liabilities or Excluded Liabilities.

(e) Notwithstanding anything contained herein or elsewhere to the contrary, all "material" or similar materiality type qualifications contained in the representations and warranties set forth in this Agreement shall be ignored and not given any effect for the indemnification provisions of this ARTICLE XI, solely for purposes of determining the amount of any Losses incurred with respect to the indemnification provisions hereof.

(f) Notwithstanding anything herein to the contrary in this Agreement, a Party shall not be liable pursuant to this ARTICLE XI for any Loss incurred by the other Party hereto:

(i) relating to any Liability which is contingent only, unless and until such contingent Liability gives rise (within the time periods contemplated by Section 11.1) to an actual obligation to make payment;

(ii) to the extent that mitigation by the other party and its Affiliates (or its or their respective Representatives) as required by applicable Law would have eliminated or reduced such Loss; or

(iii) to the extent the Liability giving rise to the Loss is attributable to, or the amount of such Loss is increased as a result of, any: (A) applicable Law not in force at the date of this Agreement; or (B) any change of applicable Law (or any change in interpretation on the basis of applicable Law) or in applicable accounting standards, principles or interpretations.

(g) Notwithstanding anything herein to the contrary in this Agreement, nothing shall limit any remedy that a Buyer Indemnified Party may have against any Person for Fraud.

(h) Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that any and all due diligence conducted with respect to the transaction, the Assets or the Business shall not in any way limit the rights of the Buyer Indemnified Parties to make a claim for indemnification hereunder.

Section 11.5. Procedure.

(a) Any Person to seeking indemnification provided for under this ARTICLE XI (an "Indemnified Party") in respect of, arising out of or involving a claim made by any Person (other than a party hereto) against an Indemnified Party (a "Third Party Claim"), shall promptly notify the indemnifying Party in writing of the Third Party Claim stating the amount of the Loss claimed, if known, and method of computation thereof, the facts and circumstances giving rise to such claim in reasonable detail, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed to arise within ten (10) Business Days after receipt by such Indemnified Party of written notice of the Third Party Claim (or sooner, to the extent the nature of the Third Party Claim requires a response in a shorter period of time); provided, that failure to give such notice shall not affect the right to indemnification provided hereunder except to the extent the indemnifying Party shall have been actually and materially prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the indemnifying Party, as promptly as reasonably practicable following such Indemnified Party's receipt thereof, copies of all written notices and documents (including any court papers) received by such Indemnified Party relating to the Third Party Claim.

(b) If a Third Party Claim is made against an Indemnified Party, the indemnifying Party shall be entitled at its election and its cost to assume the defense of such Third Party Claim with counsel selected by the indemnifying Party; provided, that, should, following any such election, the indemnifying Party determine that it will contest its obligation to indemnify the Indemnified Party, it may do so only if the cessation of its control of the defense can be effected in a manner that does not materially prejudice the Indemnified Party's ability to conduct a defense of such matter. If the indemnifying Party assumes such defense, the Indemnified Party shall

nonetheless have the right to employ counsel separate from the counsel employed by the indemnifying Party; provided, that the indemnifying Party shall not be liable to such Indemnified Party for any fees of such separate counsel with respect to the defense of such Third Party Claim, unless the employment and reimbursement of such separate counsel is authorized by the indemnifying Party in writing. If the indemnifying Party does not assume such defense, and for any period during which the indemnifying Party has not assumed such defense, the indemnifying Party shall be liable for the reasonable fees and expenses of one (1) single counsel (in addition to reasonable fees and expenses of local counsel required in jurisdictions not central to the Third Party Claim) employed (and reasonably acceptable to the indemnifying Party) by such Indemnified Party (which reasonable fees and expenses shall be considered Losses for purposes of this Agreement). If the indemnifying Party chooses to defend a Third Party Claim or prosecute a claim in connection therewith, each Indemnified Party shall provide all cooperation as is reasonably requested by the indemnifying Party in such defense or prosecution.

(c) Notwithstanding anything to the contrary in this Section 11.5, no party may settle, compromise or discharge (and in doing so, make any reasonable admission of liability with respect to) such Third Party Claim other than for money damages only without the prior written consent of the other party, subject to such party paying or causing to be paid all amounts arising out of such settlement or obtaining and delivering to such other party, prior to the execution of such settlement, a general release prepared and executed by all Persons bringing such Third Party Claim.

(d) An indemnifying Party shall not be entitled to assume or continue control of the defense of any Third Party Claim if the Third Party Claim (A) relates to or arises in connection with any criminal proceeding, (B) seeks an injunction or other equitable relief against any Indemnified Party, or (C) if unsuccessful, would reasonably be expected to exceed the cap applicable to such a claim in Section 11.4(c) of this Agreement.

(e) In the event an Indemnified Party has a claim against an indemnifying Party under Sections 11.2 or 11.3 that does not involve a Third Party Claim, such Indemnified Party shall deliver notice of such claim to the indemnifying Party stating the amount of the Loss, if known, and method of computation thereof, the facts and circumstances giving rise to such claim in reasonable detail and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed to arise, within ten (10) Business Days of becoming aware of the facts or circumstances giving rise to such claim; provided, that failure to give such notice shall not affect the indemnification provided hereunder except to the extent the indemnifying Party shall have been actually prejudiced as a result of such failure. The Indemnified Party and the indemnifying Party shall, for a period of not less than twenty (20) Business Days following receipt by the indemnifying Party of the notice of such claim, negotiate, in good faith, to resolve the claim, and such Indemnified Party shall not commence Proceedings with respect to such claim prior to the end of such period.

Section 11.6. Tax Treatment of Indemnification Payments. Seller and Buyer agree to treat any indemnification payment made pursuant to this ARTICLE XI as an adjustment to the Purchase Price for U.S. federal, state, local and foreign income tax purposes.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Expenses. Except as may be otherwise specified in the Transaction Agreements, all costs and expenses, including fees and disbursements of counsel, financial advisers and accountants, incurred in connection with the Transaction Agreements and the transactions contemplated thereby shall be paid by the Party incurring such costs and expenses (or the Party on whose behalf such costs and expenses have been incurred), irrespective of when incurred or whether or not the Closing occurs or this Agreement is terminated.

Section 12.2. Notices. All notices and other communications under or by reason of the Transaction Agreements shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed or (c) upon delivery by overnight courier service, in each case to the addresses and attention Parties indicated below (or such other address, e-mail address or attention Party as the recipient Party has specified by prior notice given to the sending Party in accordance with this Section 12.2):

if to Seller, to:

Dermira, Inc.
[***]

[***]:

[***]

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Raymond O. Gietz, Esq.
Email: raymond.gietz@weil.com

if to Buyer, to:

Journey Medical Corporation
9237 E Via De Ventura Blvd.
Suite 105
Scottsdale, Arizona 85258
Attention: President & CEO
Email: cmaraoui@jmcderm.com

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

Journey Medical Corporation
9237 E Via De Ventura Blvd.
Suite 105
Scottsdale, Arizona 85258
Attention: General Counsel
Email: ralloush@jmcderm.com

and

Cooley LLP
Reston Town Center
11951 Freedom Drive, 14th Floor
Reston, VA 20190
Attention: Kenneth Krisko
Email: kkrisko@cooley.com

Section 12.3. Public Announcements. The press release regarding this Agreement shall be a press release mutually acceptable to each of Seller and Buyer. Following the release of such aforementioned press release, neither Seller nor Buyer (nor any of their respective Affiliates) shall issue any other press release or make any other public announcement with respect to any of the Transaction Agreements without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed), except as may be required by Law (including any disclosure obligations under the federal securities Laws or applicable accounting principles) or the rules and regulations of any national securities exchange upon which the securities of Seller, Buyer or their respective Affiliates are listed, in which case the Party proposing or required to issue such press release or make such public announcement shall use its commercially reasonable efforts to consult in good faith with the other Party before making any such public announcements; provided, that neither Seller nor Buyer will be required to obtain the prior approval of or consult with the other Party in connection with any such press release or public announcement if such press release or public announcement consists solely of information previously disclosed in all material respects in a previously distributed press release or public announcement.

Section 12.4. Severability. If any term or other provision of this Agreement is held invalid, illegal or incapable of being enforced under any applicable Law or as a matter of public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. If the final judgement of a court of competent jurisdiction or other Governmental Authority declares that any term or other provision hereof is invalid, illegal or unenforceable, Seller and Buyer agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and

enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

Section 12.5. Counterparts. This Agreement may be executed in one or more counterparts, and signature pages may be delivered by facsimile, portable document format (PDF), DocuSign or any other electronic signature complying with the U.S. federal ESIGN Act of 2000 or the Electronic Signatures and Records Act of the State of New York, each of which shall be deemed an original, but all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart.

Section 12.6. Entire Agreement. This Agreement (including the Schedules) and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) and the Confidentiality Agreement collectively constitute and contain the entire agreement and understanding of Seller and Buyer with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties and thereto respecting the subject matter hereof and thereof.

Section 12.7. Assignment. This Agreement shall not be assigned by (a) Buyer without the prior written consent of Seller, and (b) Seller, without the prior written consent of Buyer, except that each of Buyer and Seller may assign this Agreement to any of its Affiliates, upon prior written notice to the other party; provided, that no such assignment shall release Buyer or Seller, as applicable, from any Liability or obligation under this Agreement. Following the Closing, neither Buyer nor its Affiliates shall transfer, sell or assign to any Person who is not an Affiliate of Buyer, all or substantially all of Buyer's rights related to the Product or Development Product or the Transferred Assets or its rights and obligations under this Agreement, except as provided in the next sentence. Notwithstanding the foregoing, following the Closing Buyer may transfer, sell or assign this Agreement together with Buyer's rights related to the Product, the Development Product and the Transferred Assets (a "Sale Transaction") as follows: either (x) in connection with any sale of all or substantially all of the assets of Buyer (whether pursuant to sale of assets, stock, merger or reorganization of Buyer) to any Third Party successor, assignee or transferee or (y) in connection with a Sale Transaction that is not a transaction contemplated by clause (x), to any Third Party that is a publicly listed pharmaceutical company with a market capitalization at the time of such sale of at least $[***], provided, that in each case of clauses (x) and (y), the successor, assignee, or transferee expressly assumes in writing the obligations of Buyer under this Agreement, including Buyer's diligence obligations under this Agreement, payment of the Milestone Payments, Initial Sales-Based Payments, Sales-Based Payments and [***] (except to the extent previously paid). For the avoidance of doubt, this Section 12.7 shall not restrict or prevent in any way Buyer from entering into a license or sublicense agreement, distribution agreement or other development, research, commercial or similar agreement with any Third Party in connection with the Product, Development Product or other Milestone Product, or in connection with any of the Transferred Assets. Buyer shall deliver a copy of the written definitive agreements related to any Sale Transaction to Seller within five (5) Business Days following the consummation of such transaction, including such agreements pursuant to which the successor, assignee, or transferee expressly assumes Buyer's obligations as set forth in

the preceding sentence. Any attempted assignment in violation of this Section 12.7 shall be void ab initio. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the Parties and their permitted successors and assigns.

Section 12.8. No Third-Party Beneficiaries and Affiliates. Except as provided for herein, this Agreement is for the sole benefit of the Persons specifically named in the preamble to this Agreement as Parties and their permitted successors and assigns, no Party hereto is acting as an agent for any other Person not named herein as a Party hereto, and nothing in this Agreement or any other Transaction Agreements, express or implied, is intended to or shall confer upon any other Person, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 12.9. Amendment; Waiver. No provision of this Agreement or any other Transaction Agreement may be amended, supplemented or modified, including any Exhibits or Schedules thereto, except by a written instrument making specific reference hereto or thereto signed by all the parties to such agreement. No consent from any Indemnified Party under Section 11.5 (in each case other than the Parties) shall be required to amend this Agreement. At any time before the Closing, either Seller or Buyer may (a) extend the time for the performance of any obligation or other acts of the other Person, (b) waive any breaches or inaccuracies in the representations and warranties of the other Person contained in this Agreement or in any document delivered pursuant to this Agreement or (c) waive compliance with any covenant, agreement or condition contained in this Agreement, but such waiver of compliance with any such covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Any such waiver shall be in a written instrument duly executed by the waiving Party. No failure on the part of either Person to exercise, and no delay in exercising, any right, power or remedy under any Transaction Agreement except as expressly set forth in this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Person preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 12.10. Schedules. Any disclosure with respect to a Section of this Agreement, including any Section of the Schedules, shall be deemed to be disclosed for purposes of other Sections of this Agreement, including any Section of the Schedules, to the extent that the relevance of such disclosure would be reasonably apparent to a reader of this Agreement and such disclosure. Matters reflected in any Section of the Schedules are not necessarily limited to matters required by this Agreement to be so reflected and such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. No reference to or disclosure of any item or other matter in any Section of this Agreement, including any Section of the Schedules, shall be construed as an admission of Liability or an indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in this Agreement. Without limiting the foregoing, no such reference to or disclosure of a possible breach or violation of any contract, Law or Governmental Order shall be construed as an admission or indication that breach or violation exists or has actually occurred.

Section 12.11. Governing Law; Submission to Jurisdiction.

(a) This Agreement and each other Transaction Agreement and all Proceedings (whether at Law, in contract, tort or otherwise, or in equity) that may be based upon, arise out of or relate to this Agreement, or any other Transaction Agreement or the negotiation, execution or performance of this Agreement or any other Transaction Agreement or the inducement of any party to enter into any Transaction Agreement, whether for breach of contract, tortious conduct or otherwise, and whether now existing or hereafter arising (each, a "Transaction Dispute"), shall be governed by and enforced in accordance with the internal laws of the State of New York applicable to contracts made and performed in such State without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied.

(b) The Parties hereby irrevocably submit to the exclusive jurisdiction the U.S. District Court for the Southern District of New York (where federal jurisdiction exists) or the Commercial Division of the Courts of the State of New York sitting in the County of New York (where federal jurisdiction does not exist), and the appellate courts having jurisdiction of appeals in such courts, in each case, over any Transaction Dispute and each Party hereby irrevocably agrees that all claims in respect of any Transaction Dispute shall be heard and determined in such courts. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Transaction Dispute brought in such court or any defense of inconvenient forum for the maintenance of such Transaction Dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the Parties hereby consents to process being served by any party to this Agreement in any Proceeding by the delivery of a copy thereof in accordance with the provisions of Section 12.2.

(d) The foregoing consent to jurisdiction will not constitute submission to jurisdiction or general consent to service of process in the State of New York for any purpose except with respect to any Transaction Dispute.

Section 12.12. Specific Performance. Each Party hereto acknowledges and agrees that irreparable damage would occur, damages would be difficult to determine and would be an insufficient remedy and no adequate remedy other than specific performance would exist at law or in equity in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached (or any party hereto threatens such a breach). Therefore, it is agreed that each Party shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which it may be entitled, at Law or in equity. Such remedies shall, however, be cumulative with and not exclusive of and shall be in addition to any other remedies which any party may have under this Agreement, or at Law or in equity or otherwise, and the exercise by a party hereto of any one remedy shall not preclude the

exercise of any other remedy. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to applicable Law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy for any such breach or that Seller or Buyer otherwise have an adequate remedy at Law. If any Party hereto brings any claim to enforce specifically the performance of the terms and provisions of this Agreement, in accordance with the terms of this Agreement, then, notwithstanding anything to the contrary contained herein, the Outside Date shall automatically be extended by the period of time between the commencement of such claim and the date on which such claim is fully and finally resolved.

Section 12.13. Mitigation. Each Party hereto shall, and shall cause its applicable Affiliates and Representatives to, to the extent required by applicable Law, take reasonable steps to mitigate their respective Losses upon and after becoming aware of any fact, event, circumstance or condition that has given rise to or would reasonably be expected to give rise to, any Losses for which it would have the right to seek damages hereunder.

Section 12.14. Limitation on Liability. Notwithstanding anything in this Agreement or in any other Transaction Agreement to the contrary, in no event shall either Seller or Buyer have any Liability under any Transaction Agreement (including under this Section 12.14) for any consequential, special, incidental, indirect or punitive damages, lost profits or similar items (including loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to a breach or alleged breach of this Agreement), or damages calculated on multiples of earnings or other metrics approaches (except that special and punitive damages shall not be excluded with respect to any such damages payable in connection with a Third Party Claim).

Section 12.15. Rules of Construction. Interpretation of this Agreement (except as specifically provided in this Agreement, in which case such specified rules of construction shall govern with respect to this Agreement) shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Article, Section, paragraph and Exhibit are references to the Articles, Sections, paragraphs and Exhibits to this Agreement unless otherwise specified; (c) the terms “hereof”, “herein”, “hereby”, “hereto” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; (d) references to “$” shall mean U.S. dollars; (e) the word “including” and words of similar import shall mean “including without limitation,” unless otherwise specified; (f) the word “or” shall not be exclusive unless clearly indicated and the occasional inclusion of "and/or" will not change this interpretation; (g) references to “written” or “in writing” include in electronic form; (h) provisions shall apply, when appropriate, to successive events and transactions; (i) the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (j) Seller and Buyer have each participated in the negotiation and drafting of this Agreement and if an ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or burdening any party by virtue of the authorship of any of the provisions in this Agreement; (k) a reference to any Person includes such Person’s permitted successors and permitted assigns; (l) any reference to “days” means calendar days unless Business Days are expressly specified; (m)

when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and, if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; (n) each of the representations and warranties of the Parties set forth herein shall be deemed to have been made as of the date such representation and warranty is made hereunder; and (o) an item arising with respect to a specific representation or warranty shall be deemed to be "reflected on" or "set forth in" a balance sheet or financial statements, to the extent Further, prior drafts of this Agreement or the other Transaction Agreements or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement or any of the other Transaction Agreements shall not be used as an aid of construction or otherwise constitute evidence of the intent of the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of such prior drafts.

Section 12.16. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY TRANSACTION DISPUTE. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF A DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION AGREEMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.16.

Section 12.17. Admissibility into Evidence. All offers of compromise or settlement among the Parties or their Representatives in connection with the attempted resolution of any Transaction Dispute (a) shall be deemed to have been delivered in furtherance of a Transaction Dispute settlement, (b) shall be exempt from discovery and production and (c) shall not be admissible into evidence (whether as an admission or otherwise) in any proceeding for the resolution of the Transaction Dispute.

Section 12.18. Privilege. Buyer, for itself and its Affiliates, and its and its Affiliates' respective successors and assigns, hereby irrevocably and unconditionally acknowledges and agrees that all attorney-client privileged communications between Seller and its respective current or former Affiliates or Representatives and their counsel, including Weil, Gotshal & Manges LLP, made before the Closing Date in connection with the negotiation, preparation, execution, delivery and Closing under any Transaction Agreement, any Transaction Dispute or, before the Closing, any other matter, shall continue after the Closing to be privileged communications with such counsel and neither Buyer nor any of its former or current Affiliates or Representatives nor any Person purporting to act on behalf of or through Buyer or any of its current of former Affiliates or Representatives, shall seek to obtain the same by any process on the grounds that the privilege attaching to such communications belongs to Buyer or the Business or on any other grounds.

Section 12.19. Non-Recourse. All Proceedings (whether at Law, in contract, tort or otherwise, or in equity) that may be based upon, arise out of or relate to this Agreement or the other Transaction Agreements, or the negotiation, execution or performance of this Agreement or the other Transaction Agreements (including any representation or warranty made in or in connection with this Agreement or the other Transaction Agreements or as an inducement to enter into this Agreement or the other Transaction Agreements), may be made only against the entities that are expressly identified as Parties hereto and parties thereto. No Person who is not a named party to this Agreement or the other Transaction Agreements, including any past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of any named party to this Agreement or the other Transaction Agreements ("Non-Party Affiliates"), shall have any liability (whether at Law, in contract, tort or otherwise, or in equity, or based upon any theory that seeks to impose liability of an entity party against its owners or affiliates) for any obligations or liabilities arising under, in connection with or related to this Agreement or such other Transaction Agreement (as the case may be) or for any claim based on, in respect of, or by reason of this Agreement or such other Transaction Agreement (as the case may be) or the negotiation or execution hereof or thereof; and each party hereto waives and releases all such liabilities, claims and obligations against any such Non-Party Affiliates. Non-Party Affiliates are expressly intended as third party beneficiaries of this provision of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be signed by their respective representatives thereunto duly authorized, all as of the date first written above.

DERMIRA, INC.

By: _____
Name:
Title:

JOURNEY MEDICAL CORPORATION

By: _____
Name:
Title:

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

Exhibit 31.1

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Lindsay A. Rosenwald, M.D., certify that:

(1) I have reviewed this Quarterly Report on Form 10-Q of Fortress Biotech, Inc. (the "Registrant");

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

(4) The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15 (f)) for the Registrant and have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

(5) The Registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b. any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal controls over financial reporting.

Dated: May 17, 2021

By: /s/ Lindsay A. Rosenwald, M.D.
Lindsay A. Rosenwald, M.D.
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Robyn M. Hunter, certify that:

(1) I have reviewed this Quarterly Report on Form 10-Q of Fortress Biotech, Inc. (the "Registrant");

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

(4) The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15 (f)) for the Registrant and have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

(5) The Registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b. any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal controls over financial reporting.

Dated: May 17, 2021

By: /s/ Robyn M. Hunter
Robyn M. Hunter
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Fortress Biotech, Inc. (the "Company") for the quarterly period ended March 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Lindsay A. Rosenwald, M.D., Chairman, President, and Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company, as of, and for, the periods presented in the Report.

Dated: May 17, 2021

By: /s/ Lindsay A. Rosenwald, M.D.
Lindsay A. Rosenwald, M.D.
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Fortress Biotech, Inc. (the "Company") for the quarterly period ended March 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robyn M. Hunter, Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company, as of, and for, the periods presented in the Report.

Dated: May 17, 2021

By: /s/ Robyn M. Hunter
Robyn M. Hunter
Chief Financial Officer
(Principal Financial Officer)