

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q**

(Mark One)
 QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the Quarterly Period Ended June 30, 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: 001-39450

HARMONY BIOSCIENCES HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)
630 W. Germantown Pike, Suite 215, Plymouth Meeting, PA
(Address of principal executive offices)

82-2279923
(I.R.S. Employer
Identification No.)
19462
(Zip Code)

(484) 539-9800
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.00001 value per share	HRMY	The Nasdaq Stock Market LLC (Nasdaq Global 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, a 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

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

As of August 5, 2021, there were 57,008,474 shares of the registrant's common stock, par value \$0.00001 value per share, outstanding.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

HARMONY BIOSCIENCES HOLDINGS, INC. AND SUBSIDIARY
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	June 30, 2021	December 31, 2020
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 159,686	\$ 228,631
Trade receivables, net	31,196	22,176
Inventory, net	4,951	3,823
Prepaid expenses	7,322	6,959
Other current assets	1,559	1,302
Total current assets	<u>204,714</u>	<u>262,891</u>
NONCURRENT ASSETS:		
Property and equipment, net	944	938
Restricted cash	750	750
Intangible assets, net	153,135	162,343
Other noncurrent assets	152	152
Total noncurrent assets	<u>154,981</u>	<u>164,183</u>
TOTAL ASSETS	<u>\$ 359,695</u>	<u>\$ 427,074</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Trade payables	\$ 2,006	\$ 2,556
Accrued compensation	6,043	8,942
Accrued expenses	26,653	122,727
Other current liabilities	1,893	314
Total current liabilities	<u>36,595</u>	<u>134,539</u>
NONCURRENT LIABILITIES:		
Long term debt, net	195,610	194,250
Other noncurrent liabilities	939	1,105
Total noncurrent liabilities	<u>196,549</u>	<u>195,355</u>
TOTAL LIABILITIES	<u>233,144</u>	<u>329,894</u>
COMMITMENTS AND CONTINGENCIES (Note 9)		
STOCKHOLDERS' EQUITY:		
Preferred stock - \$0.00001 par value; 10,000,000 shares and 0 shares authorized at June 30, 2021 and December 31, 2020, respectively; 0 shares issued and outstanding at June 30, 2021 and December 31, 2020, respectively	—	—
Common stock—\$0.00001 par value; 500,000,000 shares authorized at June 30, 2021 and December 31, 2020, respectively; 57,000,139 shares and 56,890,569 issued and outstanding at June 30, 2021 and December 31, 2020, respectively	1	1
Additional paid in capital	593,242	585,374
Accumulated deficit	(466,692)	(488,195)
TOTAL STOCKHOLDERS' EQUITY	<u>126,551</u>	<u>97,180</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 359,695</u>	<u>\$ 427,074</u>

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

HARMONY BIOSCIENCES HOLDINGS, INC. AND SUBSIDIARY
UNAUDITED CONDENSED CONSOLIDATED
STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(In thousands, except share and per share data)

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	2021	2020	2021	2020
Net product revenues	\$ 73,821	\$ 38,005	\$ 133,495	\$ 57,845
Cost of product sold	12,687	6,456	23,097	9,930
Gross profit	61,134	31,549	110,398	47,915
Operating expenses:				
Research and development	6,498	4,169	11,177	7,600
Sales and marketing	17,022	12,443	32,529	25,697
General and administrative	14,302	7,628	28,848	15,772
Total operating expenses	37,822	24,240	72,554	49,069
Operating income (loss)	23,312	7,309	37,844	(1,154)
Loss on debt extinguishment	—	—	—	(22,639)
Other income (expense), net	4	(400)	(15)	(1,546)
Interest expense, net	(7,227)	(6,936)	(14,354)	(13,308)
Income (loss) before income taxes	16,089	(27)	23,475	(38,647)
Income taxes	(1,972)	—	(1,972)	—
Net income (loss) and comprehensive income (loss)	\$ 14,117	\$ (27)	\$ 21,503	\$ (38,647)
Accumulation of dividends on preferred stock	—	(10,446)	—	(20,891)
Net income (loss) available to common stockholders	\$ 14,117	\$ (10,473)	\$ 21,503	\$ (59,538)
EARNINGS (LOSS) PER SHARE:				
Basic	\$ 0.25	\$ (1.34)	\$ 0.38	\$ (7.63)
Diluted	\$ 0.24	\$ (1.34)	\$ 0.37	\$ (7.63)
Weighted average number of shares of common stock - basic	56,940,840	7,805,848	56,916,282	7,798,928
Weighted average number of shares of common stock - diluted	58,592,876	7,805,848	58,635,195	7,798,928

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

HARMONY BIOSCIENCES HOLDINGS, INC. AND SUBSIDIARY
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
(In thousands, except share and per share data)

	Common Stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
Balance as of December 31, 2020	56,890,569	\$ 1	\$ 585,374	\$ (488,195)	\$ 97,180
Net income	—	—	—	21,503	21,503
Exercise of stock options	109,570	—	660	—	660
Stock-based compensation	—	—	7,208	—	7,208
Balance as of June 30, 2021	57,000,139	\$ 1	\$ 593,242	\$ (466,692)	\$ 126,551

	Common Stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount			
Balance as of March 31, 2021	56,892,406	\$ 1	\$ 588,687	\$ (480,809)	\$ 107,879
Net income	—	—	—	14,117	14,117
Exercise of options	107,733	—	648	—	648
Stock-based compensation	—	—	3,907	—	3,907
Balance as of June 30, 2021	57,000,139	\$ 1	\$ 593,242	\$ (466,692)	\$ 126,551

	Convertible Preferred Stock Series A, B, & C		Common Stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2019	318,510,205	\$ 411,275	7,787,470	\$ —	\$ —	\$ (422,862)	\$ (422,862)
Net loss	—	—	—	—	—	(38,647)	(38,647)
Preferred stock dividend, Series A	—	17,688	—	—	(1,048)	(16,640)	(17,688)
Preferred stock accretion, Series A	—	1,551	—	—	—	(1,551)	(1,551)
Preferred stock dividend, Series B	—	604	—	—	—	(604)	(604)
Preferred stock accretion, Series B	—	12	—	—	—	(12)	(12)
Preferred stock dividend, Series C	—	2,599	—	—	—	(2,599)	(2,599)
Preferred stock accretion, Series C	—	280	—	—	—	(280)	(280)
Exercise of stock options	—	—	30,553	—	251	—	251
Stock-based compensation	—	—	—	—	797	—	797
Repurchase and cancellation of common units	—	—	(12,175)	—	—	(167)	(167)
Balance as of June 30, 2020	318,510,205	\$ 434,009	7,805,848	\$ —	\$ —	\$ (483,362)	\$ (483,362)

	Convertible Preferred Stock Series A, B, & C		Common Stock		Additional paid-in capital	Accumulated deficit	Total stockholders' equity (deficit)
	Shares	Amount	Shares (1)	Amount			
Balance as of March 31, 2020	318,510,205	\$ 422,642	7,805,848	\$ —	\$ —	\$ (472,330)	\$ (472,330)
Net loss	—	—	—	—	—	(27)	(27)
Preferred stock dividend, Series A	—	8,844	—	—	(529)	(8,315)	(8,844)
Preferred stock accretion, Series A	—	775	—	—	—	(775)	(775)
Preferred stock dividend, Series B	—	302	—	—	—	(302)	(302)
Preferred stock accretion, Series B	—	6	—	—	—	(6)	(6)
Preferred stock dividend, Series C	—	1,300	—	—	—	(1,300)	(1,300)
Preferred stock accretion, Series C	—	140	—	—	—	(140)	(140)
Exercise of options	—	—	12,175	—	100	—	100
Stock-based compensation	—	—	—	—	429	—	429
Repurchase and cancellation of common units	—	—	(12,175)	—	—	(167)	(167)
Balance as of June 30, 2020	318,510,205	\$ 434,009	7,805,848	\$ —	\$ —	\$ (483,362)	\$ (483,362)

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

HARMONY BIOSCIENCES HOLDINGS, INC. AND SUBSIDIARY
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands, except share and per share data)

	Six Months Ended June 30,	
	2021	2020
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income (loss)	\$ 21,503	\$ (38,647)
<i>Adjustments to reconcile net loss to net cash used in operating activities:</i>		
Depreciation	200	194
Intangible amortization	9,208	3,693
Stock-based and employee stock purchase compensation expense	7,208	797
Stock appreciation rights market adjustment	(130)	139
Warrant expense	—	1,584
Debt issuance costs amortization	1,361	680
Loss on debt extinguishment	—	22,639
<i>Change in operating assets and liabilities:</i>		
Trade receivables	(9,019)	(10,984)
Inventory	(1,128)	(995)
Prepaid expenses and other assets	(622)	(2,987)
Other non-current assets	—	789
Trade payables	(550)	(4,287)
Accrued expenses and other current liabilities	2,606	5,456
Other non-current liabilities	(37)	59
Net cash provided by (used in) operating activities	<u>30,600</u>	<u>(21,870)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	(205)	(2)
Milestone and acquisition of intangible asset	(100,000)	—
Net cash used in investing activities	<u>(100,205)</u>	<u>(2)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from long term debt	—	200,000
Debt issuance costs	—	(5,804)
Extinguishment of debt	—	(102,538)
Extinguishment of debt exit fees	—	(18,047)
Proceeds from exercised options	660	251
Repurchase of common stock	—	(167)
Net cash provided by financing activities	<u>660</u>	<u>73,695</u>
NET (DECREASE) INCREASE IN CASH, CASH EQUIVALENTS, AND RESTRICTED CASH	<u>(68,945)</u>	<u>51,823</u>
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH—Beginning of period	<u>229,381</u>	<u>25,207</u>
CASH, CASH EQUIVALENTS, AND RESTRICTED CASH—End of period	<u>\$ 160,436</u>	<u>\$ 77,030</u>
Supplemental Disclosure of Cash Flow Information:		
Cash paid during the year for interest	\$ 13,092	\$ 12,698
Cash paid during the year for milestones	100,000	—
Supplemental Disclosures of Noncash Investing and Financing Activities:		
Series A Preferred Stock accrued return	—	17,688
Series A accretion of issuance costs	—	1,551
Series B Preferred Stock accrued return	—	604
Series B accretion of issuance costs	—	12
Series C Preferred Stock accrued return	—	2,599
Series C accretion of issuance costs	—	280
Warrant financing	—	2,359

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

HARMONY BIOSCIENCES HOLDINGS, INC. AND SUBSIDIARY
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except share and per share data)

1. ORGANIZATION AND DESCRIPTION OF BUSINESS

The Company

Our operating subsidiary, Harmony Biosciences, LLC (“Harmony”), was formed on May 17, 2017. Harmony Biosciences Holdings, Inc. (the “Company”) was founded on July 25, 2017 as Harmony Biosciences II, LLC, a Delaware limited liability company, and the Company converted to a Delaware corporation named Harmony Biosciences II, Inc. on September 19, 2017. On February 3, 2020, the Company changed its name to Harmony Biosciences Holdings, Inc. The Company is a holding company and has no operations. The Company’s operations are conducted in its wholly owned subsidiary, Harmony. The Company is a commercial-stage, rare disease pharmaceutical company focused on developing and commercializing innovative therapies for patients living with rare neurological disorders who have unmet medical needs. The Company is headquartered in Plymouth Meeting, Pennsylvania.

Initial Public Offering

On August 21, 2020, the Company completed its initial public offering (“IPO”) of common stock, in which it sold 6,151,162 shares, including 802,325 shares pursuant to the underwriters’ over-allotment option. The shares began trading on the Nasdaq Global Market on August 19, 2020. The shares were sold at an IPO price of \$24.00 per share for net proceeds of approximately \$135,435, after deducting underwriting discounts and commissions and offering expenses of approximately \$12,193 payable by the Company. Upon the closing of the IPO, all outstanding shares of the Company’s convertible preferred stock were automatically converted into shares of common stock and the accrued dividend payable to holders of the convertible preferred stock was paid out in shares of common stock, resulting in a total of 42,926,630 shares of common stock being issued to former holders of the Company’s convertible preferred stock. Warrants exercisable for convertible preferred stock were automatically converted into warrants exercisable for a total of 410,239 shares of common stock.

Reverse Stock Split

On August 11, 2020, the Company implemented a 1-for-8.215 reverse stock split of the Company’s common stock. All share and per share data shown in the accompanying financial statements and related notes have been retroactively revised to reflect the reverse stock split. Shares of common stock underlying outstanding stock options and other equity instruments were proportionately reduced and the respective exercise prices, if applicable, were proportionately increased in accordance with the terms of the agreements governing such securities. Shares of common stock reserved for issuance upon the conversion of the Company’s Preferred Stock and preferred dividend were proportionately reduced. All references in the accompanying condensed consolidated financial statements and related notes to the number of shares of common stock, convertible preferred stock, warrants and options to purchase common stock and per share data reflect the effect of the reverse stock split.

2. LIQUIDITY AND CAPITAL RESOURCES

The unaudited condensed consolidated financial statements have been prepared as though the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The Company has an accumulated deficit of \$466,692 and \$488,195, as of June 30, 2021 and December 31, 2020, respectively. As of June 30, 2021, the Company had cash and cash equivalents of \$159,686.

On August 21, 2020, the Company received aggregate proceeds from a common stock offering of approximately \$135,435, net of underwriting discounts and commissions and other estimated offering expenses (see Note 11). Additionally, on January 9, 2020, the Company received aggregate proceeds of approximately \$200,000 through the loan agreement with OrbiMed Royalty & Credit Opportunities, LP. This capital raise and debt issuance has resolved the Company’s significant risks and uncertainties regarding sources of liquidity, which previously raised substantial doubt about the Company’s ability to continue as a going concern.

The Company believes that its anticipated cash from operating and financing activities and existing cash and cash equivalents will enable the Company to meet its operational liquidity needs and fund its planned investing activities for the next twelve months from the date of issuance of these unaudited condensed consolidated financial statements.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The unaudited condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP") and include all adjustments necessary for the fair presentation of the Company's financial position for the periods presented. All intercompany accounts and transactions have been eliminated in consolidation. The condensed consolidated balance sheet as of June 30, 2021, the condensed consolidated statements of cash flows for the six months ended June 30, 2021 and 2020, and the condensed consolidated statements of operations and comprehensive income (loss) and the condensed consolidated statements of convertible preferred stock and shareholders' equity (deficit) for the three and six months ended June 30, 2021 and 2020, are unaudited. The balance sheet as of December 31, 2020 was derived from audited financial statements as of and for the year ended December 31, 2020. The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the audited annual financial statements as of and for the year ended December 31, 2020, and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for the fair presentation of the Company's financial position as of June 30, 2021, and the results of its operations and its cash flows for the three and six months ended June 30, 2021 and 2020. The condensed consolidated results of operations are not necessarily indicative of the results that may occur for the full fiscal year. Certain information and note disclosures of the Company normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted under the SEC's rules and regulations. These condensed consolidated financial statements should be read in conjunction with the audited financial statements and accompanying notes thereto for the year ended December 31, 2020.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts and disclosures in the Condensed Consolidated Financial Statements, including the notes thereto, and elsewhere in this report. Uncertainties related to the magnitude and duration of COVID-19, the extent to which it will impact our estimated future financial results, worldwide macroeconomic conditions including interest rates, employment rates, consumer spending and health insurance coverage, the speed of the anticipated recovery and governmental and business reactions to the pandemic have increased the complexity of developing these estimates, including the carrying amounts of long-lived assets, and the intangible asset. Actual results may differ significantly from our estimates, including as a result of COVID-19.

Fair Value of Financial Instruments

The Company's unaudited condensed consolidated financial statements include cash, cash equivalents, restricted cash, accounts payable, and accrued liabilities, all of which are short term in nature and, accordingly, approximate fair value. Additionally, prior to the IPO, the Company's condensed consolidated financial statements included a warrant liability that was carried at fair value and was re-measured at each balance sheet date until it would be exercised or expired. In connection with the IPO, the Warrants were re-evaluated under the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 480 *Distinguishing Liabilities from Equity* and reclassified to equity. See Note 13 for a further discussion of the warrants.

It is the Company's policy, in general, to measure non-financial assets and liabilities at fair value on a nonrecurring basis. The instruments are not measured at fair value on an ongoing basis but are subject to fair value adjustments in certain circumstances (such as evidence of impairment), which, if material, are disclosed in the accompanying footnotes.

The Company measures certain assets and liabilities at fair value in accordance with ASC 820, *Fair Value Measurements and Disclosures*. ASC 820 defines fair value as the price that would be received to sell an asset or paid to transfer a liability (the exit price) in an orderly transaction between market participants at the measurement date. The guidance in ASC 820 outlines a valuation framework and creates a fair value hierarchy that serves to increase the consistency and comparability of fair value measurements and the related disclosures. In determining fair value, the Company maximizes the use of quoted prices and observable inputs. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from independent sources. The fair value hierarchy is broken down into three levels based on the source of inputs as follows:

Level 1—Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities.

Level 2—Valuations based on observable inputs and quoted prices in active markets for similar assets and liabilities.

Level 3—Valuations based on unobservable inputs and models that are supported by little or no market activity.

Cash, Cash Equivalents and Restricted Cash

Cash and cash equivalents and restricted cash consist of cash and, if applicable, highly liquid investments with an original maturity of three months or less when purchased, including investments in Money Market Funds. The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported within the balance sheet that equal the amount reflected in the statements of cash flows.

	As of	
	June 30, 2021	December 31, 2020
Cash and cash equivalents	\$ 159,686	\$ 228,631
Restricted cash	750	750
Total cash, cash equivalents, and restricted cash shown in the statements of cash flows	\$ 160,436	\$ 229,381

Amounts included in restricted cash represent those amounts required to be held as a security deposit in the form of letters of credit for the Company's credit card program and the fleet program.

Concentrations of Risk

Substantially all of the Company's cash and money market funds are held with a single financial institution. Due to its size, the Company believes this financial institution represents minimal credit risk. Deposits in this institution may exceed the amount of insurance provided on such deposits by the Federal Deposit Insurance Corporation for U.S. institutions. The Company has not experienced any losses on its deposits of cash and cash equivalents. Management believes that the Company is not exposed to significant credit risk due to the financial position of the depository institutions in which those deposits are held.

The Company is also subject to credit risk from its trade receivables related to its product sales. The Company monitors its exposure within accounts receivable and records a reserve against uncollectible accounts receivable as necessary. The Company extends credit to specialty pharmaceutical distribution companies within the United States. Customer creditworthiness is monitored and collateral is not required. Historically, the Company has not experienced credit losses on its accounts receivable. As of June 30, 2021, three customers accounted for 100% of gross accounts receivable; Caremark LLC ("CVS Caremark"), which accounted for 35% of gross accounts receivable; PANTHERx Specialty Pharmacy LLC ("Pantherx"), which accounted for 35% of gross accounts receivable; and Accredo Health Group, Inc. ("Accredo"), which accounted for 30% of gross accounts receivable. As of December 31, 2020, three customers accounted for 100% of gross accounts receivable; CVS Caremark, which accounted for 44% of gross accounts receivable; Pantherx, which accounted for 23% of gross accounts receivable; and Accredo, which accounted for 33% of gross accounts receivable.

For the six months ended June 30, 2021, three customers accounted for 100% of gross product revenues; CVS Caremark accounted for 37% of gross product revenues; Pantherx accounted for 35% of gross product

revenues; and Accredo accounted for 28% of gross product revenues. For the six months ended June 30, 2020 three customers accounted for 100% of gross product revenues; CVS Caremark accounted for 42% of gross product revenues; Pantherx accounted for 33% of gross product revenues; and Accredo accounted for 25% of gross product revenues.

The Company depends on a single source supplier for its product and active pharmaceutical ingredient.

Cost of Product Sold

Cost of product sold includes manufacturing and distribution costs, the cost of drug substance, FDA program fees, royalties due to third parties on net product sales, freight, shipping, handling, storage costs, and salaries of employees involved with production. The Company began capitalizing inventory upon FDA approval of WAKIX®. Excluded from cost of product sold shown and included in general and administrative expenses on the condensed consolidated statements of operations and comprehensive loss is amortization of acquired developed technology of \$4,629 and \$1,907 for the three months ended June 30, 2021 and 2020, respectively, and \$9,208 and \$3,693 for the six months ended June 30, 2021 and 2020, respectively.

Recently Issued Accounting Pronouncements

In February 2016, the FASB issued amended guidance to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities in the balance sheet and disclosing key information about leasing arrangements. The new guidance clarifies the criteria for distinguishing between a finance lease and operating lease, as well as classification between the two types of leases, which is substantially unchanged from the previous lease guidance. Further, the new guidance requires a lessee to recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset, initially measured at the present value of the lease payments. For finance leases, a lessee should recognize interest on the lease liability separately from amortization of the right-of-use asset. For operating leases, a lessee should recognize a single lease cost, calculated so that the cost of the lease is allocated over the lease term on a generally straight-line basis. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election not to recognize lease assets and lease liabilities. The new standard will become effective for the Company's fiscal year ending December 31, 2021. The Company is currently assessing the impact of this amended guidance and the timing of adoption.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. ASU No. 2016-13 introduces an approach, based on expected losses, to estimate credit losses on certain types of financial instruments and modifies the impairment model for available-for-sale debt securities. The new standard is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2022 for companies deemed to be small reporting companies as of November 15, 2019, with early adoption permitted. The Company is currently evaluating the potential impact of adoption of this standard on its results of operations, financial position and cash flows and related disclosures.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which simplifies the accounting for income taxes by removing certain exceptions to the general principles in the existing guidance for income taxes and making other minor improvements. The amendments are effective for annual reporting periods beginning after December 15, 2020 with early adoption permitted. The Company is currently evaluating the impact of adopting this new accounting guidance.

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848)*, which provides guidance related to reference rate reform. The pronouncement provides temporary optional expedients and exceptions to the current guidance on contract modifications and hedge accounting to ease the financial reporting burden related to the expected market transition from the London Interbank Offered Rate ("LIBOR") and other interbank offered rates to alternative reference rates. The guidance was effective upon issuance and generally can be applied to applicable contract modifications through December 31, 2022. The Company is currently evaluating the impact of the transition from LIBOR to alternative reference rates but does not expect a significant impact to its condensed consolidated financial statements.

In May 2021, the FASB issued ASU No. 2021-04, *Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain*

Modifications or Exchanges of Freestanding Equity-Classified Written Call Options (a consensus of the FASB Emerging Issues Task Force), which clarifies and reduces diversity in an issuer's accounting for modifications or exchanges of freestanding equity-classified written call options (for example, warrants) that remain equity classified after modification or exchange. The amendments are effective for annual periods beginning after December 15, 2021, including interim periods within those periods with early adoption permitted. The Company is currently evaluating the impact of adopting this new accounting guidance.

4. INVENTORY

Inventory, net consisted of the following:

	As of	
	June 30, 2021	December 31, 2020
Raw materials	\$ 712	\$ 396
Work in process	2,361	2,660
Finished goods	2,013	941
Inventory, gross	5,086	3,997
Reserve for obsolescence	(135)	(174)
Total inventory, net	\$ 4,951	\$ 3,823

5. INTANGIBLE ASSETS

On August 15, 2019, the Company received FDA approval of WAKIX (pitolisant) for the treatment of excessive daytime sleepiness ("EDS") in adult patients with narcolepsy. This event triggered a milestone payment of \$75,000 associated with the License Agreement (discussed below) which the Company capitalized as an intangible asset and paid in November of 2019. The Company determined a useful life of 10 years for such intangible asset, and, as of June 30, 2021, the remaining useful life was 8.25 years. Prior to this event, all other milestones associated with the License Agreement were expensed through research and development as they did not meet the criteria to be recognized as an intangible asset.

On October 13, 2020, the Company received notice that the FDA approved the New Drug Application ("NDA") for WAKIX for the treatment of cataplexy in adult patients with narcolepsy. This event triggered a milestone payment of \$100,000 associated with the License Agreement which the Company capitalized as an intangible asset and paid in January of 2021. The Company determined a useful life of 9 years for such intangible asset, and, as of June 30, 2021, the remaining useful life was 8.25 years. Amortization expense was \$4,629 and \$1,907 for the three months ended June 30, 2021 and 2020, respectively, and \$9,208, and \$3,693, for the six months ended June 30, 2021 and 2020 respectively, and is recorded in general and administrative expenses on the condensed consolidated statements of operations and comprehensive income (loss).

The Company expects the future annual amortization expense for the unamortized intangible assets to be as follows:

Years ending December 31,	
2021 (excluding the six months ended June 30, 2021)	\$ 9,285
2022	18,569
2023	18,569
2024	18,569
2025	18,569
Total	\$ 83,561

The gross carrying amount and net book value of the intangible assets is as follows:

	As of	
	June 30, 2021	December 31, 2020
Gross Carrying Amount	\$ 175,000	\$ 175,000
Accumulated Amortization	(21,865)	(12,657)
Net Book Value	<u>\$ 153,135</u>	<u>\$ 162,343</u>

6. LICENSE AGREEMENT

On July 28, 2017, Harmony entered into the License Agreement (“the License Agreement”) with Bioprojet Société Civile de Recherche (“Bioprojet”) whereby Harmony acquired the exclusive right to commercialize the pharmaceutical compound pitolisant for the treatment, and/or prevention, of narcolepsy, obstructive sleep apnea, idiopathic hypersomnia, and Parkinson’s disease as well as any other indications unanimously agreed by the parties in the United States and its territories. A milestone payment of \$50,000 was due upon acceptance by the FDA of pitolisant’s NDA, which was achieved on February 12, 2019 and was expensed within research and development for the year ended December 31, 2019. A milestone payment of \$77,000, which included a \$2,000 fee that is described below, was due upon FDA approval of WAKIX (pitolisant) for treatment of EDS in adult patients with narcolepsy, which was achieved on August 14, 2019. The \$2,000 payment and \$75,000 milestone payment were paid in August and November 2019, respectively. In addition, a milestone payment of \$102,000, which included a \$2,000 fee was due upon the FDA approval of the NDA for WAKIX for the treatment of cataplexy in adult patients with narcolepsy. The \$2,000 payment was paid in October 2020 and a \$100,000 milestone payment was paid in January 2021. An additional \$40,000 milestone payment is due to Bioprojet upon WAKIX attaining \$500,000 in aggregate net sales in the United States. The License Agreement also requires sales-based milestone payments, a fixed trademark royalty and a tiered royalty, all based on net sales, which become due and payable to Bioprojet on a quarterly basis. The Company incurred \$11,812 and \$6,000 for the three months ended June 30, 2021 and 2020, respectively, and \$21,359 and \$9,277 for the six months ended June 30, 2021 and 2020, respectively, for sales-based, trademark and tiered royalties recognized as cost of product sold. As of June 30, 2021 and December 31, 2020, the Company had accrued \$11,811 and \$9,006, respectively, for sales-based, trademark and tiered royalties. At December 31, 2020, the Company had accrued \$100,000 for the milestone payment to Bioprojet.

7. ACCRUED EXPENSES

Accrued expenses consist of the following:

	As of	
	June 30, 2021	December 31, 2020
Royalties due to third parties	11,811	9,006
Rebates and other sales deductions	10,173	7,803
Selling and marketing	1,472	1,905
Research and development	1,280	2,186
Professional fees, consulting, and other services	1,067	1,081
Other expenses	850	746
Milestone payment	—	100,000
	<u>\$ 26,653</u>	<u>\$ 122,727</u>

8. DEBT

Credit Agreements

On February 28, 2019, the Company entered into a multi-draw loan agreement with CRG Servicing LLC for an aggregate of \$200,000 (the “CRG Loan”), which would have matured in March 2025. The CRG Loan bore a fixed rate of 12%. The CRG Loan required compliance with certain financial covenants. The Company could draw three tranches of the CRG Loan based on achieving specific milestones and dates. The Company could elect to pay the interest on the outstanding principal amount as follows: (i) only 7.5% of the 12% per annum in cash, paid quarterly, starting in March 2019, and (ii) 4.5% of the 12% per annum interest as compounded interest, added to the aggregate outstanding principal balance quarterly; the amount of any such compounded interest being a paid-in-kind loan.

As of December 31, 2019, the Company had borrowed \$100,000, resulting in cash proceeds received of \$94,816, net of issuance costs. The issuance costs of \$5,184 were being amortized over the six-year loan term of the CRG Loan.

On January 9, 2020, the Company entered into a credit agreement with OrbiMed Royalty & Credit Opportunities, LP for an aggregate amount of \$200,000 (the "OrbiMed Loan"), which matures in January 2026. Borrowings under the OrbiMed Loan are collateralized by all of the Company's assets, excluding the intellectual property licensed through the License Agreement. The OrbiMed Loan bears an interest rate equal to the sum of (i) the greater of (a) 1-month LIBOR or (b) 2.00% per annum, plus (ii) 11.00% per annum, paid in cash monthly in arrears on the last day of each month starting in January 2020. At the time of prepayment or repayment of all or any portion of the principal of the OrbiMed Loan, the Company is required to pay an exit fee of 7.0% of the principal amount of the OrbiMed Loan prepaid, repaid, or required to be prepaid or repaid. The Company recorded the exit fee as a liability and debt discount at the origination of the term loan.

In addition to entering into the OrbiMed Loan, the Company extinguished the CRG Loan which required a payoff amount of \$120,893 consisting of principal repayment, interest, and exit fees. In connection with extinguishment of the CRG Loan, the Company recognized a loss on extinguishment of \$22,639, which included an exit fee of \$18,047 and the write-off of the remaining unamortized debt issuance costs of \$4,592. The loss on extinguishment of debt was recorded in loss on debt extinguishment within the Company's condensed consolidated statements of operations. The net cash received as a result of the transaction, less debt issuance costs of \$5,804, was \$73,313. These debt issuance costs will be amortized as additional interest expense over the six-year loan term of the OrbiMed Loan. The fair value of the OrbiMed loan as of June 30, 2021 was \$257,568.

In connection with the OrbiMed Loan, the Company issued warrants (the "Warrants") to OrbiMed Royalty & Credit Opportunities, LP on January 9, 2020. See Note 13 for further discussion of the Warrants. Pursuant to the Warrants, OrbiMed Royalty & Credit Opportunities, LP, may purchase up to 410,239 shares of the Company's Common Stock for an initial exercise price of \$16.10 at any time from the date of execution of the Warrants through the expiration date, defined within the Warrants as the earlier of (i) January 9, 2027 and (ii) the closing date of a Corporate Reorganization. The fair value of the Warrants using the Black-Scholes option-pricing model was \$2,359 at January 9, 2020. The portion of the OrbiMed Loan proceeds allocated to the warrant liability resulted in a debt discount, which is presented in the condensed consolidated balance sheets as a direct deduction from the carrying value of the debt and is being amortized as additional interest expense over the six-year loan term of the OrbiMed Loan. The unamortized debt discount as of June 30, 2021 is \$1,957 and is presented in the condensed consolidated balance sheets as a direct deduction from the carrying value of the debt.

The balances of the OrbiMed Loan as of June 30, 2021 and December 31, 2020 were as follows:

	June 30, 2021	December 31, 2020
Liability component - principal	\$ 200,000	\$ 200,000
Exit fee	14,000	14,000
Unamortized debt discount associated with the exit fee, debt financing costs and discount with warrant financing	(18,390)	(19,750)
Liability component - net carrying value	<u>\$ 195,610</u>	<u>\$ 194,250</u>

Interest expense related to the OrbiMed Loan and CRG Loan were included in interest expense, net in the condensed consolidated statements of operations and comprehensive income (loss) as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Interest on principal balance	\$ 6,582	\$ 6,681	\$ 13,092	\$ 12,894
Amortization of deferred financing costs	697	340	1,361	680
Total term loan interest expense	<u>\$ 7,279</u>	<u>\$ 7,021</u>	<u>\$ 14,453</u>	<u>\$ 13,574</u>

9. COMMITMENTS AND CONTINGENCIES

Litigation

From time to time, the Company is subject to claims and suits arising in the ordinary course of business. The Company accrues such liabilities when they are known, if they are deemed probable and can be reasonably estimated.

Lease Agreements

In April 2018, the Company entered into an operating lease for approximately nine thousand square feet of office space in Northbrook, IL, which expired in January 2020.

In June 2018, the Company entered into an operating lease for approximately fifteen thousand square feet of office space in Plymouth Meeting, PA, which expires in May 2024.

In December 2020, the Company entered into an operating lease for approximately thirteen thousand square feet of additional office space in Plymouth Meeting, PA, which expires in May 2024. The term will not commence until the Company takes occupancy in mid-2021.

The terms of the lease payments provide for rental payments on a monthly basis and on a graduated scale. The Company recognizes rent expense on a straight-line basis over the lease period and has accrued for rent expense incurred but not paid. In addition, tenant improvement allowances recorded are amortized as a reduction to rent expense on a straight-line basis over the lease term. Rent expense was \$217 and \$353 for the three and six months ended June 30, 2021, respectively, compared to \$151 and \$355 for the three and six months ended June 30, 2020, respectively. The following table sets forth the lease payment obligations as of June 30, 2021, for the periods indicated below:

Years ending December 31,	
2021 (excluding the six months ended June 30, 2021)	\$ 267
2022	875
2023	892
2024	334
2025	—
Thereafter	—
Total	\$ 2,368

10. CONVERTIBLE PREFERRED STOCK

Upon the closing of the IPO, all outstanding shares of the Company's convertible preferred stock were automatically converted into shares of common stock and the accrued dividend payable to holders of the convertible preferred stock was paid out in shares of common stock, resulting in a total of 42,926,630 shares of common stock being issued to former holders of the Company's convertible preferred stock.

Series A Preferred Stock

On September 22, 2017, the Company issued 270,000,000 shares of Series A convertible preferred stock for a purchase price of \$1.00 per share, or \$270,000 in the aggregate. On January 8, 2018, the Company issued an additional 15,000,000 shares of Series A convertible preferred stock for a purchase price of \$1.00 per share, or \$15,000 in the aggregate. As of June 30, 2020, there were 286,000,000 Series A convertible preferred stock authorized of which 285,000,000 were issued and outstanding. Each outstanding share of Series A convertible preferred stock accrued dividends at 10% per annum of the Series A original issue price, subject to adjustment for stock splits, combinations, recapitalizations, stock dividends and similar transactions. Preferred dividends on the Series A convertible preferred stock were cumulative and were compounded annually.

Series B Preferred Stock

On January 8, 2018, the Company issued 8,000,000 shares of Series B convertible preferred stock for a purchase price of \$1.25 per share, or \$10,000 in the aggregate. As of June 30, 2020, there were 8,030,000 shares of Series B convertible preferred stock authorized, of which 8,000,000 were issued and outstanding. Each

outstanding share of Series B convertible preferred stock accrued dividends at 10% per annum of the Series B original issue price, subject to adjustment for stock splits, combinations, recapitalizations, stock dividends and similar transactions. Preferred dividends on the Series B convertible preferred stock were cumulative and were compounded annually.

Series C Preferred Stock

On August 9, 2019, the Company issued 25,510,205 shares of Series C convertible preferred stock for a purchase price of \$1.96 per share, or \$50,000 in the aggregate. As June 30, 2020, there were 25,600,000 shares of Series C convertible preferred stock authorized, of which 25,510,205 were issued and outstanding. Each outstanding share of Series C convertible preferred stock accrued dividends at 10% per annum of the Series C original issue price, subject to adjustment for stock splits, combinations, recapitalizations, stock dividends and similar transactions. Preferred dividends on the Series C convertible preferred stock were cumulative and were compounded annually.

Dividends

The holders of Series A, Series B, and Series C convertible preferred stock were entitled to receive, when and if declared by the board of directors of the Company, cumulative dividends equal to a 10% per annum of Series A, Series B, and Series C convertible preferred stock. In addition, the holders of the outstanding shares of Series A, Series B, and Series C convertible preferred stock were entitled to receive, when and if declared by the board of directors of the Company, a dividend at least equal to any dividend payable on the Company's common stock as if all convertible preferred stock had been converted to common stock. No dividends were declared as of December 31, 2019. As part of the Company's IPO, the Company's accrued cumulative dividend was paid out to holders of Series A, Series B, and Series C convertible preferred stock in shares of the Company's common stock and reflects the reverse stock split in connection with the mandatory conversion of the Series A, Series B, and Series C convertible preferred stock into shares of the Company's common stock.

11. STOCKHOLDERS' EQUITY (DEFICIT)

Common Stock

On August 11, 2020, the Company implemented a 1-for-8.215 reverse stock split of the Company's common stock. All share and per share data shown in the accompanying financial statements and related notes have been retroactively revised to reflect the reverse stock split with the exception of the preferred stock. Shares of common stock underlying outstanding stock options and other equity instruments were proportionately reduced and the respective exercise prices, if applicable, were proportionately increased in accordance with the terms of the agreements governing such securities. Shares of common stock reserved for issuance upon the conversion of the Company's Preferred Stock were proportionately reduced. As of August 11, 2020, all outstanding shares of preferred stock and preferred stock dividend were convertible into shares of common stock on a 1-for-8.215 basis. On August 21, 2020, the Company completed its IPO of common stock, in which it sold 6,151,162 shares, including 802,325 shares pursuant to the underwriters' over-allotment option. The shares began trading on the Nasdaq Global Market on August 19, 2020. The shares were sold at an IPO price of \$24.00 per share for net proceeds of approximately \$135,435, after deducting underwriting discounts and commissions and offering expenses of approximately \$12,193 incurred by the Company.

The holders of common stock are entitled to one vote for each share held on all matters submitted to a vote of the Company's stockholders. The holders of common stock do not have any cumulative voting rights. Holders of common stock are entitled to receive ratably any dividends declared by the Company's board of directors out of funds legally available for that purpose, subject to any preferential dividend rights of any outstanding preferred stock. The Company's common stock has no preemptive rights, conversion rights or other subscription rights or redemption or sinking fund provisions.

12. STOCK INCENTIVE PLAN AND STOCK-BASED COMPENSATION

Stock Incentive Plan

On August 7, 2017, the Company adopted an equity incentive plan (the "2017 Plan"). Under the 2017 Plan, directors, officers, employees, consultants, and advisors of the Company can be paid incentive compensation measured by the value of the Company's common shares through grants of stock options, stock appreciation rights ("SARs"), or restricted stock.

In connection with the Company's IPO, the board of directors adopted, and its stockholders approved, the 2020 Incentive Award Plan (the "2020 Plan"), in order to facilitate the grant of cash and equity incentives to directors, employees (including the Company's named executive officers) and consultants of the Company and its subsidiaries. Upon the effectiveness of the 2020 Plan, no further grants will be made under the 2017 Plan. However, the 2017 Plan will continue to govern the terms and conditions of outstanding awards granted under it. The 2020 Plan provides for the grant of stock options, including incentive stock options ("ISOs") and non-qualified stock options ("NSOs"), SARs, restricted stock, dividend equivalents, restricted stock units ("RSUs") and other stock or cash-based awards.

Stock options and stock appreciation rights under the 2017 Plan and the 2020 Plan have a 10-year contractual term and vest over the vesting period specified in the applicable award agreement, at achievement of a performance requirement, or upon change of control (as defined in the applicable plan). RSUs vest over the vesting period specified in the applicable award agreement, at achievement of a performance requirement, or upon change of control (as defined in the applicable plan).

Changes in stock options granted under the 2017 and 2020 Plans for the six months ended June 30, 2021 is as follows:

	Number of Awards	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term
Awards outstanding—December 31, 2020	5,210,832	\$ 17.66	8.63
Awards issued	1,298,690	\$ 34.90	
Awards exercised	(124,461)	\$ 8.22	
Awards forfeited	(301,278)	\$ 21.81	
Awards outstanding—June 30, 2021	<u>6,083,783</u>	<u>\$ 21.32</u>	<u>8.47</u>

Changes in SARs granted under the 2017 Plan for the three months ended June 30, 2021 is as follows:

	Number of Awards	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term
Awards outstanding—December 31, 2020	49,294	\$ 9.24	8.29
Awards issued	—	\$ —	
Awards exercised	—	\$ —	
Awards forfeited	—	\$ —	
Awards outstanding—June 30, 2021	<u>49,294</u>	<u>\$ 9.24</u>	<u>7.79</u>

Changes in RSUs granted under the 2020 Plan for the three months ended June 30, 2021 is as follows:

	Number of Awards	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term
Awards outstanding—December 31, 2020	—	\$ —	—
Awards issued	60,000	\$ 29.03	
Awards exercised	—	\$ —	
Awards forfeited	—	\$ —	
Awards outstanding—June 30, 2021	<u>60,000</u>	<u>\$ 29.03</u>	<u>9.75</u>

As of June 30, 2021 and December 31, 2020, stock awards issued under the 2017 and 2020 Plans of 1,074,133 and 987,538 common shares, respectively, were vested. The Company has elected early adoption of ASU No. 2016-09 to recognize forfeitures as they occur. As a result of the adoption, for the six months ended June 30, 2020 the Company reversed \$10 out of stock-based compensation previously recorded.

Value of Stock Options and SARs

The Company has valued awards for each of the plans included herein using the Black-Scholes option-pricing model. The Company historically has been a private company and lacks company-specific historical and implied volatility information. Therefore, the Company estimates its expected stock volatility based on historical volatility of peer companies and expects to continue to do so until such time as it has adequate historical data regarding the volatility of its own traded stock price. For options with service-based vesting conditions, the expected term of the Company's stock options has been determined utilizing the "simplified" method for awards that qualify as "plain-vanilla" options. For SARs, the expected term is based upon the weighting of certain future events. The risk-free interest rate is determined by reference to the U.S. Treasury yield curve in effect at the time of grant of the award for the time periods approximately equal to the expected term of the award. Expected dividend yield is based on the fact that the Company has never paid cash dividends and does not expect to pay any cash dividends in the foreseeable future.

The assumptions used to value the awards are summarized in the following table.

	As of	
	June 30, 2021	December 31, 2020
Dividend yield	0.00 %	0.00 %
Expected volatility	60.00 %	55.00 - 95.80 %
Risk-free interest rate	0.66 - 1.19 %	0.32 - 0.56 %
Lack of marketability discount	0.00 %	0.00 - 20.48 %
Expected term (years)	4.6 - 6.3	5.4 - 6.5

Value of RSUs

The fair value of RSUs is equal to the value of the Company's common stock on the grant date.

The weighted average per share fair value of awards issued under the 2017 Plan and 2020 Plan was \$12.24 and \$10.06 on June 30, 2021 and December 31, 2020, respectively.

Stock-based compensation expense, net for the three and six months ended June 30, 2021 and 2020, respectively, was recorded in the condensed consolidated statements of operations and comprehensive income (loss) in the following line items:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Research and development expense	\$ 549	\$ 89	\$ 969	\$ 169
Sales and marketing expense	777	111	1,396	219
General and administrative expense	2,481	261	4,693	548
	<u>\$ 3,807</u>	<u>\$ 461</u>	<u>\$ 7,058</u>	<u>\$ 936</u>

Options and RSUs issued under the 2017 Plan and 2020 Plan are reflected as a component of equity in these condensed consolidated financial statements. Stock appreciation rights are reflected as other non-current liability. The Company will recognize compensation expense for these awards as summarized in the following table.

Years Ending December 31,	Stock Compensation Expense
2021 (excluding the six months ended June 30, 2021)	\$ 9,584
2022	17,682
2023	16,695
2024	15,716
2025	6,046

Employee Stock Purchase Plan

The 2021 Employee Stock Purchase Plan (“ESPP”) was adopted by the Company’s Board of Directors on April 30, 2021. The ESPP permits eligible employees to purchase shares of the Company’s common stock at a 15% discount from the lesser of the fair market value per share of the Company’s common stock on the first day of the offering period or the fair market value of the Company’s common stock on the purchase date. Funds are collected from employees through after-tax payroll deductions. The total number of shares reserved for issuance under the ESPP was initially 629,805. It is intended that the ESPP meet the requirements for an “employee stock purchase plan” under Section 423 of the Internal Revenue Code. For the three and six months ended June 30, 2021, there were no shares issued under the ESPP, respectively. The discount on the ESPP for the three and six months ended June 30, 2021 is nominal.

13. WARRANTS

In connection with the OrbiMed Loan, the Company issued Warrants to OrbiMed Royalty & Credit Opportunities, LP on January 9, 2020. Pursuant to the Warrants, OrbiMed Royalty & Credit Opportunities, LP, may purchase up to 410,239 shares of the Company’s Common Stock for an initial exercise price of \$16.10 at any time from the date of execution of the Warrants through the expiration date, defined within the Warrants as the earlier of (i) January 9, 2027 and (ii) the closing date of a Corporate Reorganization. The fair value of the Warrants using the Black-Scholes option-pricing model was \$2,359 on January 9, 2020 and was initially recorded as a warrant liability which was included in warrant liability in the condensed consolidated balance sheet. The portion of the OrbiMed Loan proceeds allocated to the warrant liability resulted in a debt discount, which is presented in the condensed consolidated balance sheets as a direct deduction from the carrying value of the debt and is being amortized as additional interest expense over the six-year loan term of the OrbiMed Loan. The unamortized debt discount as of June 30, 2021 and December 31, 2020 was \$1,957 and \$2,102, respectively, and is presented in the condensed consolidated balance sheet as a direct deduction from the carrying value of the debt. During the three and six months ended June 30, 2020, a loss of \$438 and \$1,584 was recorded in other expense in the condensed consolidated statements of operations due to the change in the fair value of the warrant liability.

In connection with the IPO, the financial instrument underlying the warrants was converted from the Company’s Series C Preferred Stock to the Company’s Common Stock. As a result of this conversion the Warrants were re-evaluated under ASC 480 Distinguishing Liabilities from Equity and ASC 815 Derivatives and Hedging and reclassified to equity.

14. EARNINGS PER SHARE

For the three and six months ended June 30, 2020, the Company used the two-class method to compute net loss per common share because the Company has issued securities (convertible preferred stock) that entitle the holder to participate in dividends and earnings of the Company. Under this method, net income is reduced by the amount of any dividends earned and the accretion of convertible preferred stock to its redemption value during the period. The remaining earnings (undistributed earnings) are allocated to common stock and each series of convertible preferred stock to the extent that each preferred security may share in the earnings as if all of the earnings for the period had been distributed. The total earnings allocated to common stock is then divided by the number of outstanding shares to which the earnings are allocated to determine the earnings per share. The two-class method is not applicable during periods with a net loss, as the holders of the convertible preferred stock have no obligation to fund losses.

The Company has reported a net loss for the three and six months ended June 30, 2020, and the weighted average number of shares utilized for basic and diluted net loss per share attributable to common stockholders are the same for these periods because all convertible preferred stock and stock options have been excluded from the computation of diluted weighted-average shares outstanding because such securities would have an antidilutive impact. Additionally, the fair value adjustment for the warrants was excluded from the computation of diluted net loss for the three and six months ended June 30, 2020 since the additional income would have an antidilutive impact.

The Company has reported net income for the three and six months ended June 30, 2021. Diluted net income (loss) per common share is computed under the treasury stock method by using the weighted average number of shares of common stock outstanding, plus, for periods with net income attributable to common stockholders, the potential dilutive effects of stock options, stock appreciation rights, restricted stock units and

warrants. In addition, the Company analyzes the potential dilutive effects of the outstanding convertible preferred stock under the 'if-converted' method when calculating diluted earnings per share, in which it is assumed that the outstanding convertible preferred stock converts into common stock at the beginning of the period or when issued if later. The Company reports the more dilutive of the approaches (treasury stock or 'if converted') as their diluted net income per share during the period.

The following table sets forth the computation of basic and diluted net loss per share:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Numerator				
Net income (loss)	\$ 14,117	\$ (27)	\$ 21,503	\$ (38,647)
Accumulation of dividends on preferred stock	—	(10,446)	—	(20,891)
Net income (loss) available to common shareholders	\$ 14,117	\$ (10,473)	\$ 21,503	\$ (59,538)
Denominator				
Net income (loss) per common share - basic	\$ 0.25	\$ (1.34)	\$ 0.38	\$ (7.63)
Net income (loss) per common share - diluted	\$ 0.24	\$ (1.34)	\$ 0.37	\$ (7.63)
Weighted average number of shares of common stock - basic	56,940,840	7,805,848	56,916,282	7,798,928
Weighted average number of shares of common stock - diluted	58,592,876	7,805,848	58,635,195	7,798,928

Securities outstanding that are included in the computation above, utilizing the treasury stock method are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Stock options, SARs, and RSUs to purchase common stock	1,461,958	—	1,511,899	—
Warrants	190,078	—	207,013	—
Total	1,652,036	—	1,718,912	—

Potential common shares issuable upon conversion of preferred stock, exercise of stock options, and exercise of warrants that are excluded from the computation of diluted weighted-average shares outstanding as well as the warrant fair value adjustments excluded from the numerator are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Stock options, SARs, and RSUs to purchase common stock	4,731,119	2,413,507	4,681,177	2,413,507
Convertible preferred stock	—	39,141,451	—	39,141,451
Warrants	220,161	410,239	203,226	410,239
Total	4,951,280	41,965,197	4,884,403	41,965,197
Adjustment for warrants	\$ —	\$ 438	\$ —	\$ 1,584

15. RELATED-PARTY TRANSACTIONS

The Company was party to a management agreement for professional services provided by a related party, Paragon Biosciences, LLC ("Paragon"). The related party is an entity that shares common ownership with the Company. In addition, the Chairman of the Company's board of directors was the President and owner of the entity. The Company incurred \$71 and \$1,744 for the three months ended June 30, 2021 and 2020, respectively, and \$142 and \$3,474 for the six months ended June 30, 2021 and 2020, respectively, in management fee expense and other expenses to this related party, which are included in general and

administrative expense in the condensed consolidated statements of operations and comprehensive loss. The Company terminated the Management Services Agreement upon the consummation of its IPO. The Company is also party to a right of use agreement with the related party whereby it has access to and the right to use certain office space leased by the related party in Chicago, Illinois. In addition, the Company had participated in certain transactions with separate related parties that also share common ownership with the Company, primarily related to combined employee health plans. As of June 30, 2021 and December 31, 2020 the amounts due to related parties included in current liabilities was \$0 and \$0, respectively, and the amount included in prepaid expenses and other assets was \$0 and \$1, respectively.

16. SUBSEQUENT EVENTS

On August 9, 2021, the Company entered into a Credit Agreement (the “New Credit Facility”) with Blackstone Alternative Credit Advisors LP and the other lenders party thereto from time to time and Wilmington Trust, National Association, as administrative agent, that provides for (i) a senior secured term loan facility in an aggregate original principal amount of \$200,000 and (b) a senior secured delayed draw term loan facility in an aggregate principal amount up to \$100,000. In connection with the New Credit Facility, on August 9, 2021, the Company also sold 1,048,951 shares of the Company’s common stock at a price per share of \$28.60 for gross proceeds of \$30,000.

The OrbiMed Loan was repaid in full and all commitments thereunder were terminated on August 9, 2021 in connection with the execution of the New Credit Facility. In connection with the payment of the OrbiMed Loan, we paid an exit fee of 7.0% and a repayment premium of 4.0% of the principal amount of the OrbiMed Loan repaid.

*Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.***Cautionary Note Regarding Forward-Looking Statements**

This Quarterly Report on Form 10-Q contains forward-looking statements. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations and financial position, the anticipated impact of the novel coronavirus ("COVID-19") pandemic on our business, business strategy, products, prospective products, product approvals, research and development costs, anticipated timing and likelihood of success of clinical trials, expected timing of the release of clinical trial data, the plans and objectives of management for future operations and future results of anticipated products, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Important factors that could cause such differences include, but are not limited to, statements about:

- our commercialization efforts and strategy for WAKIX;
- the rate and degree of market acceptance and clinical utility of pitolisant in additional indications, if approved, and any other product candidates we may develop or acquire, if approved;
- our research and development plans, including our plans to explore the therapeutic potential of pitolisant in additional indications;
- our ongoing and planned clinical trials;
- our ability to expand the scope of our license agreement with Bioprojet Société Civile de Recherche ("Bioprojet");
- the availability of favorable insurance coverage and reimbursement for WAKIX;
- the impact of the COVID-19 pandemic;
- the timing of, and our ability to obtain, regulatory approvals for pitolisant for other indications as well as any other product candidates;
- our estimates regarding expenses, future revenue, capital requirements and additional financing needs;
- our ability to identify additional products or product candidates with significant commercial potential that are consistent with our commercial objectives;
- our commercialization, marketing and manufacturing capabilities and strategy;
- significant competition in our industry;
- our intellectual property position;
- loss or retirement of key members of management;
- failure to successfully execute our growth strategy, including any delays in our planned future growth;
- our failure to maintain effective internal controls; and
- the impact of government laws and regulations.

In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplate," "believe," "estimate," "predict," "potential", or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this Quarterly Report on Form 10-Q are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q and are subject to a number of important factors that could cause actual results to differ materially from those in the forward-looking

statements, including the factors described under the section in our most recent Annual Report on Form 10-K entitled “Item 1A. Risk Factors” and the sections in this Quarterly Report on Form 10-Q titled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

Moreover, we operate in an evolving environment. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties.

Unless otherwise indicated, information contained in this Quarterly Report on Form 10-Q concerning our industry, including industry statistics and forecasts, competitive position and the markets in which we operate is based on information from independent industry and research organizations, other third-party sources and management estimates. Management estimates are derived from publicly available information released by independent industry analysts and other third-party sources, as well as data from our internal research, and are based on assumptions made by us upon reviewing such data, and our experience in, and knowledge of, such industry and markets, which we believe to be reasonable. In addition, projections, forecasts, assumptions and estimates of the future performance of the industry in which we operate and our future performance are necessarily subject to uncertainty and risk due to a variety of factors, including those described in “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements.” These and other factors could cause results to differ materially from those expressed and forecasts in the estimates made by the independent parties and by us.

You should read this Quarterly Report on Form 10-Q and the documents that we reference in this Quarterly Report on Form 10-Q completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

As used herein, the terms “Harmony,” “we,” “us,” “our” and “the Company” refer to Harmony Biosciences Holdings, Inc., a Delaware corporation.

Company Overview

We are a commercial-stage, rare disease pharmaceutical company focused on developing and commercializing innovative therapies for patients living with rare neurological disorders who have unmet medical needs. Our product, WAKIX (pitolisant), is a first-in-class molecule with a novel mechanism of action (“MOA”) specifically designed to increase histamine signaling in the brain by binding to H₃ receptors. In August 2019, WAKIX was approved by the U.S. Food and Drug Administration (the “FDA”) for the treatment of excessive daytime sleepiness (“EDS”) in adult patients with narcolepsy, and its U.S. commercial launch was initiated in November 2019. On October 13, 2020, WAKIX was approved by the FDA for the treatment of cataplexy in adult patients with narcolepsy. WAKIX is the first-and-only approved product for patients with narcolepsy that is not scheduled as a controlled substance by the Drug Enforcement Administration (the “DEA”).

We plan to pursue label expansion for WAKIX in narcolepsy in pediatric patients and engage with the FDA in pursuit of pediatric exclusivity. Our strategic partner, Bioprojet is evaluating pitolisant in pediatric patients with narcolepsy in a Phase 3 trial. Bioprojet amended the protocol and increased the number of patients in the trial which has pushed out the timeline for trial completion and read out of the data. We and Bioprojet have decided to wait for the read out of the data to inform how best to advance the pediatric narcolepsy program. We believe that our strategic decision to wait for this data before advancing the pediatric program is the most prudent and thoughtful path forward from a development and financial perspective. In the meantime, we are continuing to evaluate regulatory strategies with regard to obtaining pediatric exclusivity. We anticipate providing an update on the path forward in the coming months.

We believe that pitolisant’s ability to regulate histamine gives it the potential to provide therapeutic benefit in other rare neurological disorders that are mediated through H₃ receptors and histamine signaling. Beyond narcolepsy, we are initially focusing on the treatment of EDS associated with Prader-Willi Syndrome (“PWS”) and myotonic dystrophy, otherwise known as dystrophia myotonica (“DM”). In December 2020, we initiated a Phase 2 clinical trial to evaluate pitolisant for the treatment of EDS and other key symptoms in patients with PWS and anticipate topline results from this trial in the first half of 2022. In June 2021, we initiated a Phase 2 clinical trial to evaluate pitolisant for the treatment of EDS, fatigue and cognitive dysfunction in adult patients with DM1 and anticipate topline results in the second half of 2022. In addition to these

indications, we intend to further explore pitolisant in other rare neurological disorders in which EDS, fatigue and/or cognitive impairment are prominent symptoms with significant impact on daily functioning.

We also seek to expand our pipeline through the acquisition of additional assets that focus on addressing the unmet needs of patients with rare neurological disorders. We intend to target assets that will be complementary to WAKIX and/or our expanding list of potential new indications for WAKIX, and/or target assets that will allow us to further leverage the expertise and infrastructure that we have successfully built at Harmony so we can optimize the benefit of internal synergies. Consistent with this objective, on August 4, 2021, we acquired HBS-102, a Melanin-concentrating hormone receptor 1 (MCHR1) antagonist previously developed as CSTI-100/ALB-127258(a)/ALB-127258 (the “Compound”), along with intellectual property and other assets related to the development, manufacture, and commercialization of the Compound from ConSynance Therapeutics, Inc. In connection with the acquisition, we made an upfront payment of \$3.5 million and will be required to make certain payments upon the achievement of certain development milestones, regulatory milestones, and sales milestones and pay ongoing royalties upon commercialization. We acquired full development and commercialization rights globally, but we have provided a grant-back license to ConSynance for the development and commercialization of the Compound in Greater China. We intend to focus development efforts for HBS-102 on the treatment of narcolepsy, including the symptoms of Rapid Eye Movement (“REM”) sleep dysregulation, such as cataplexy, hallucinations and sleep paralysis.

Pitolisant was developed by Bioprojet and approved by the European Medicines Agency (“EMA”) in 2016 for the treatment of narcolepsy in adult patients with or without cataplexy. We acquired an exclusive license to develop, manufacture and commercialize pitolisant in the United States pursuant to our license agreement with Bioprojet (as amended, the “Bioprojet License Agreement”) in July 2017. Pitolisant was granted Orphan Drug Designation for the treatment of narcolepsy by the FDA in 2010. It received Breakthrough Therapy designation for the treatment of cataplexy in patients with narcolepsy and Fast Track status for the treatment of EDS and cataplexy in patients with narcolepsy in April 2018.

Our operating subsidiary, Harmony Biosciences, LLC, was formed in May 2017. We were formed in July 2017 as Harmony Biosciences II, LLC, a Delaware limited liability company, and we converted to a Delaware corporation named Harmony Biosciences II, Inc. in September 2017. In February 2020, we changed our name to Harmony Biosciences Holdings, Inc. Our operations to date have consisted of building and staffing our organization, acquiring the rights to pitolisant, raising capital, opening an investigational new drug applications (“IND”) for pitolisant in narcolepsy, conducting an Expanded Access Program (“EAP”) for pitolisant for appropriate patients with narcolepsy in the United States, preparing and submitting our NDA for pitolisant, gaining NDA approval for WAKIX for the treatment of EDS or cataplexy in adult patients with narcolepsy, and launching and commercializing WAKIX in the United States. In addition, we have opened INDs for development programs in PWS and DM and have initiated clinical trials in PWS and DM in pursuit of potential new indications in those rare disease patient populations.

Liquidity and Sources of Funding

For the six months ended June 30, 2021, we generated \$133.5 million of net product revenues. We have financed our operations primarily with (a) proceeds from sales of our convertible preferred stock, (b) borrowings under (i) our multi-draw term loan agreement (the “Loan Agreement”) with CRG Servicing LLC (“CRG”) and (ii) our credit agreement (the “Credit Agreement”) with OrbiMed Royalty & Credit Opportunities III, LP (“OrbiMed”), and (c) proceeds from our initial public offering (“IPO”) in August 2020. As of June 30, 2021, we had cash, cash equivalents and restricted cash of \$160.4 million and accumulated deficit of \$466.7 million. As of June 30, 2021, we had outstanding debt, net of issuance costs, of \$195.6 million.

We believe that our anticipated cash from operating and financing activities and existing cash and cash equivalents will enable us to meet our operational liquidity needs and fund planned investing activities for the next twelve months. We have based this estimate on assumptions that may prove to be incorrect, and we could use our capital resources sooner than we expect. See “—Liquidity and Capital Resources.”

Our revenues and expenses in future quarters may differ from our expectations as we:

- commercialize WAKIX in the United States for the treatment of EDS or cataplexy in adult patients with narcolepsy;
- incur sales and marketing costs to support the commercialization of WAKIX and any additional product candidates;

- pay royalties and make milestone payments to Bioprojet for the license of pitolisant;
- incur manufacturing costs for WAKIX and any additional product candidates;
- conduct post-approval require studies for WAKIX required by the FDA;
- conduct clinical trials in PWS, DM, and other potential new indications for pitolisant or any additional product candidates;
- conduct a pediatric narcolepsy program in pursuit of an indication and extension of our patents based on pediatric exclusivity;
- conduct earlier stage research and development activities for pitolisant;
- support independent investigator-initiated research for which there is a valid scientific rationale;
- hire additional personnel;
- invest in measures to protect and expand our intellectual property;
- incur interest expenses in conjunction with our debt facility;
- seek regulatory approvals for additional indications for pitolisant or any additional product candidates that successfully complete clinical development;
- acquire or in-license other assets and technologies; and
- incur additional costs associated with being a public company.

Commercial Launch Metrics

As of June 30, 2021, over 37% of unique healthcare professionals (“HCPs”) (out of a total of approximately 8,000 HCPs who treat approximately 90% of diagnosed narcolepsy patients) have prescribed WAKIX since it became available in November 2019. The average number of patients on WAKIX at June 30, 2021 was approximately 3,200. Additionally, as of June 30, 2021, we have secured and maintained formulary access for approximately 80% of all insured lives (Commercial, Medicare and Medicaid) in the United States. Within these covered lives, we have continued to observe additional favorable access to WAKIX subsequent to the expanded approval of WAKIX for the treatment of cataplexy in adult patients with narcolepsy in October 2020.

COVID-19 Business Update

During the COVID-19 pandemic, we developed a response strategy that included establishing cross-functional response teams and implementing business continuity plans to manage the impact of the pandemic on our employees, patients, HCPs, and our business.

Despite our response strategy, the COVID-19 pandemic has had an effect on our business and the pharmaceutical industry in general. Although the pandemic has impacted the way stakeholders interact with one another, we have leveraged technology and virtual engagement initiatives to offset our reduced in-person access to HCPs. The COVID-19 pandemic also led to high unemployment and corresponding loss of medical insurance for many patients, caused a change in relationship dynamics between patients and their HCPs, and impacted the way patients took, or did not take, their medication. As a result, we were not able to adequately gauge our growth rate and believe that our growth may be adversely impacted in the future if there is a reemergence or future outbreak of COVID-19, including any COVID-19 variant.

We intend to maintain meaningful engagement, generate awareness and educate our patients, HCPs and payors to support our commercial launch performance.

Commercialization

With respect to our commercialization activities, we believe the COVID-19 pandemic has put pressure on top-line prescription demand for WAKIX, primarily due to (i) our field sales team’s reduced ability to access

HCPs in person, and (ii) fewer patients seeing HCPs for prescriptions or treatments. The impact on demand for WAKIX may have also been related to a reduced ability of prescribers to diagnose narcolepsy patients given the limitations in access to sleep testing, the reduced ability to see patients due to (i) cancelled appointments and (ii) the reprioritization of healthcare resources toward the treatment of COVID-19, both of which lead to fewer prescriptions. Despite these challenges, we continued to engage and educate HCPs virtually on the overall benefit/risk profile of WAKIX and continued to provide support for people living with narcolepsy. As offices, clinics and institutions have begun to allow in-person interactions pursuant to health authority and local government guidelines, our field teams are re-initiating in-person interactions with HCPs and customers, but the timing and level of engagement may vary by account and region and may be adversely impacted in the future where reemergence or future outbreaks of COVID-19 may occur. Although we are beginning to see increased access to HCPs for our sales team and the economy is beginning to open up, we are still in a transition phase and expect continued, but decreasing, pressure on top line demand in future quarters as the challenges presented by COVID-19 begin to subside.

During the pandemic, elevated unemployment and the corresponding loss of health insurance caused some eligible patients to shift from commercial insurance to free drug and patient assistance programs, which impacted our ability to convert demand into revenue. Given the high unemployment rates and resulting loss of employer-sponsored insurance coverage, some patients also shifted from commercial payor coverage to government payor coverage, which may have impacted, and may continue to impact, our net revenue.

Supply Chain

We currently expect to have adequate supply of WAKIX through the fourth quarter of 2022, with additional API on-hand inventory to support at least 24 months beyond this time frame. We continue to work closely with our third-party manufacturers, distributors and other partners to manage our supply chain activities and mitigate potential disruptions to our product supplies as a result of the COVID-19 pandemic. We believe that our access to the required production lines to produce additional API and WAKIX finished product throughout the next 12 to 18 months may not be directly impacted should there be a need to reprioritize manufacturing resources for the production of materials utilized for COVID-19 vaccines.

Our manufacturing partners in France and the United States continue to be operational. If there is a subsequent outbreak of COVID-19, or if it reemerges for an extended period of time and/or begins to impact essential distribution systems such as transatlantic freight, FedEx, UPS and postal delivery, we may experience disruptions to our supply chain and operations with associated delays in the manufacturing and supply of our products.

Research and Development

The COVID-19 pandemic has negatively impacted the pharmaceutical industry's ability to conduct clinical trials. While we initially experienced some challenges due to the COVID-19 pandemic, we have taken measures and put contingency plans in place in order to advance our clinical development programs. We implemented remote and virtual approaches to clinical trials, including using telemedicine for remote clinic visits to perform efficacy assessments and sending out licensed HCPs to each patient to collect safety assessments (e.g. labs, electrocardiograms) as required by the protocols. We performed and continue to perform remote site visits and data monitoring where possible. These measures were instituted with the intent of maintaining patient safety and trial continuity while preserving study integrity. One unique challenge we faced was the ability to access sleep labs during the COVID-19 pandemic in order to conduct objective sleep testing, which is required for some of our clinical trials. In addition, we relied on contract research organizations ("CROs") or other third parties to assist us with clinical trials, and we could not guarantee that they would continue to perform their contractual duties in a timely and satisfactory manner as a result of the COVID-19 pandemic. If there is a subsequent outbreak of COVID-19 or any variant thereof or if it reemerges for an extended period of time in the future, we may experience significant delays in our clinical development timelines, which would adversely affect our business, financial condition, results of operations and growth prospects.

Corporate Development and Other Financial Impacts

The COVID-19 pandemic evolved rapidly and caused a significant disruption of domestic and global financial markets. In addition, the pandemic limited our ability to conduct in-person due diligence and other interactions to identify new opportunities. If there is a subsequent outbreak of COVID-19 or any variant thereof or if it reemerges for an extended period of time, we may be unable to access additional capital, which could

negatively affect our ability to execute on certain corporate development transactions or other important investment opportunities.

The COVID-19 pandemic has also affected, and may continue to affect, our business operations and financial results. The extent of the impact of the COVID-19 pandemic or the potential impact of a reemergence or outbreak of the pandemic on our ability to generate sales of, and revenues from, our approved products, our clinical development and regulatory efforts, our corporate development objectives and the value of and market for our common stock, will depend on future developments that are highly uncertain and cannot be predicted with confidence at this time.

Corporate Responsibility Impact

We have provided support with relief efforts to our local communities, patient-focused organizations and other charitable organizations during the COVID-19 pandemic, including corporate donations, food and medical supplies and other resources. For the safety and well-being of our employees, consultants and their families, we have abided by government-issued work-from-home orders during the COVID-19 pandemic. As COVID-19 cases decrease and more individuals are vaccinated, we intend to resume an in-office flexible work schedule. We will continue to clean and sanitize our offices on a regular basis, and adhere to CDC guidelines.

Financial Operations Overview

Revenue

We did not generate any revenue from inception until the fourth quarter of 2019. Our current product, WAKIX, was approved by the FDA for the treatment of EDS in adult patients with narcolepsy in August 2019, became commercially available in November 2019 and was approved by the FDA for the treatment of cataplexy in adult patients with narcolepsy in October 2020. For the six months ended June 30, 2021 and 2020, we had \$133.5 million and \$57.8 million, respectively, of net product revenue. The increase was due to the growing commercial sales of WAKIX which was launched on November 1, 2019 and the price increase of WAKIX in connection with the cataplexy indication approval in the fourth quarter of 2020.

Total revenue consists of net sales of WAKIX. Net sales represent the gross sales of WAKIX less provisions for product sales discounts and allowances. At this time, these provisions include trade allowances, rebates to government and commercial entities, and discounts. Although we expect net sales to increase over time, the provisions for product sales discounts and allowances may fluctuate based on the mix of sales to different customer segments and/or changes in our accrual estimates.

Cost of Product Sales

Cost of product sales includes manufacturing and distribution costs, the cost of the drug substance, FDA program fees, royalties due to third parties on net product sales, freight, shipping, handling, storage costs and salaries of employees involved with production. We began capitalizing inventory upon FDA approval of WAKIX. Excluded from cost of product sold is amortization of acquired developed technology of \$9.2 million and \$3.7 million in the six months ended June 30, 2021 and 2020, respectively.

Previously expensed inventory that was manufactured in anticipation for commercialization preapproval has not had a material impact on our historical results of operations and is not expected to have a material impact on future results of operations. Further, previously expensed inventory has not had a material impact on our gross margin percentage historically, and we do not anticipate a material impact on our gross margin percentage once our previously expensed inventories have been exhausted. Our cost of product sales is increasing moderately as we continue to ramp up production and sales infrastructure to meet expected demand for WAKIX.

The shelf life of our product is three years from date of manufacture, with the earliest expiration of current inventory expected to be May 2022. We regularly review our inventory for obsolescence and expect write-offs from time to time. We will continue to assess obsolescence in future periods as demand for WAKIX and the rate of inventory turnover evolves.

Research and Development Expenses

Our research and development expenses have been applied toward the license of the rights to pitolisant, the conduct of an Expanded Access Program ("EAP") to provide appropriate patients with pitolisant at no cost as part of a clinical trial to assess safety prior to the approval of WAKIX, the preparation of the NDA, and the initiation of development programs for potential new indications for pitolisant in patients with PWS and DM.

We also have research and development expenses related to our team of Medical Science Liaisons (“MSLs”) who interact with key opinion leaders, with a focus on the science, the role of histamine in sleep-wake state stability and the novel mechanism of action of pitolisant. In addition, our MSLs support our market access team with clinical data presentations to payors upon request. Research and development costs are expensed as incurred. We have significantly increased our research and development efforts as we advance our clinical programs in PWS and DM, and assess other product candidates to expand our pipeline. Research and development expenses include:

- employee-related expenses, such as salaries, share-based compensation, benefits and travel expenses for our research and development personnel;
- direct third-party costs such as expenses incurred under agreements with CROs, and contract manufacturing organizations (“CMOs”);
- manufacturing costs in connection with producing materials for use in conducting clinical trials;
- costs related to packaging and labeling clinical supplies;
- other third-party expenses directly attributable to the development of our product candidates; and
- amortization expense for assets used in research and development activities.

Currently, WAKIX is our only product and we do not currently track our internal research and development expenses on an indication-by-indication basis. A significant portion of our research and development costs are external costs, such as fees paid to CROs and CMOs, central laboratories, contractors, and consultants in connection with our clinical development programs. Internal expenses primarily relate to personnel who are deployed across multiple programs.

Product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical trials, milestone payments, and the cost of submitting an NDA to the FDA (and/or other regulatory authorities). We expect our research and development expenses to be significant over the next several years as we advance our current clinical development programs and prepare to seek regulatory approval for additional indications for pitolisant as well as potential new product candidates.

At this time, we cannot reasonably estimate or know the nature, timing and estimated costs of the efforts that will be necessary to complete the development of any additional indications for pitolisant or other product candidates that we move forward for regulatory approval. There are numerous risks and uncertainties associated with developing product candidates, including uncertainty related to:

- the duration, costs and timing for clinical trials of our current development programs and any further clinical trials related to new product candidates;
- the sufficiency of our financial and other resources to complete the necessary preclinical studies and clinical trials;
- the impact of the COVID-19 pandemic, including any future resurgence, on the ability to initiate new clinical trials and/or maintain the continuity of ongoing clinical trials that could be impacted by future shelter-in-place orders and needs of the health care system to focus on managing patients affected by COVID-19;
- receiving Bioprojet’s consent to pursue additional indications for pitolisant;
- the acceptance of INDs for our planned clinical trials or future clinical trials;
- the successful and timely enrollment and completion of clinical trials;
- the successful completion of preclinical studies and clinical trials;
- successful data from our clinical programs that support an acceptable risk-benefit profile of our product candidates in the intended populations;

- the receipt and maintenance of regulatory and marketing approvals from applicable regulatory authorities;
- establishing agreements with third-party manufacturers for clinical supply for our clinical trials and commercial manufacturing, if any new product candidate is approved;
- entry into collaborations to further the development of our product candidates;
- obtaining and maintaining patent and trade secret protection or regulatory exclusivity for our product candidates; and
- successfully launching any new product candidates and achieving commercial sales, if and when approved.

A change in the outcome of any of these variables with respect to the development of any of our programs or any product candidate we develop would significantly change the costs, timing and viability associated with the development and/or regulatory approval of such programs or product candidates.

Sales and Marketing Expenses

Our sales and marketing expenses have primarily been limited to the market development and launch activities of WAKIX for the treatment of EDS or cataplexy in adult patients with narcolepsy. Market development and commercial launch activities account for a significant portion of the overall company operating expenses and are expensed as they are incurred. Our sales and marketing expenses are increasing in the near- and mid-term to support our indications for the treatment of EDS or cataplexy in adult patients with narcolepsy and to expand our portfolio with the anticipated growth from potential additional indications.

Sales and marketing expenses include:

- employee-related expenses, such as salaries, share-based compensation, benefits and travel expenses for our sales and marketing personnel;
- healthcare professional-related expenses, including marketing programs, healthcare professional promotional medical education, disease education, conference exhibits and market research;
- patient-related expenses, including patient awareness and education programs, disease awareness education, patient reimbursement programs, patient support services and market research;
- market access expenses, including payor education, specialty pharmacy programs and services to support the continued commercialization of WAKIX; and
- secondary data purchases (i.e. patient claims and prescription data), data warehouse development and data management.

In addition, these expenses include external costs such as website development, media placement fees, agency fees for patient, medical education and promotional expenses, market research, analysis of secondary data, conference fees, consulting fees and travel expenses.

General and Administrative Expenses

General and administrative expenses consist primarily of employee-related expenses, such as salaries, share-based compensation, benefits and travel expenses for our personnel in executive, legal, finance and accounting, human resources, investor relations, and other administrative departments. General and administrative expenses also consist of office leases, and professional fees, including legal, tax and accounting and consulting fees.

We anticipate that our general and administrative expenses will increase in the future to support our continued commercialization efforts, ongoing and future potential research and development activities, and increased costs of operating as a public company. These increases will likely include increased costs related to the hiring of additional personnel and fees paid to outside consultants, lawyers and accountants, among other expenses. Additionally, we anticipate increased costs associated with being a public company, including expenses related to services associated with maintaining compliance with the requirements of Nasdaq and the

SEC, insurance and investor relations costs. If any of our current or future indication expansion programs or new product candidates obtain U.S. regulatory approval, we expect that we would incur significantly increased expenses associated with building a sales and marketing team.

Paragon Agreements

We were party to a management services agreement (the "Management Services Agreement") with Paragon Biosciences, LLC ("Paragon"), effective on September 22, 2017 through the consummation of our IPO, pursuant to which Paragon provided us with certain professional services. In exchange for services provided to us under the Management Services Agreement, we paid Paragon a management fee of \$0.3 million per each calendar month.

We are also party to a right-of-use agreement with Paragon whereby we have access to and the right to use certain office space leased by Paragon in Chicago, Illinois. For the three months ended June 30, 2021, we paid de minimis fees pursuant to this agreement.

Loss on Debt Extinguishment

Loss on debt extinguishment consists primarily of costs of extinguishment of debt during the period related to the prepayment of the Loan Agreement with CRG.

Other Income / Expense, Net

Other income / expense, net consists primarily of costs of the fair value of the warrants associated with the Credit Agreement we entered into with OrbiMed.

Interest Income / Interest Expense

Interest income / expense, net consists primarily of interest expense on debt facilities and amortization of debt issuance costs offset by interest income earned on our cash balances.

Results of Operations

The following table sets forth selected items in our condensed consolidated statements of operations for the periods presented:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
	(In thousands)		(In thousands)	
Net product revenue	\$ 73,821	\$ 38,005	\$ 133,495	\$ 57,845
Cost of product sales	12,687	6,456	23,097	9,930
Gross profit	61,134	31,549	110,398	47,915
Operating expenses:				
Research and development	6,498	4,169	11,177	7,600
Sales and marketing	17,022	12,443	32,529	25,697
General and administrative	14,302	7,628	28,848	15,772
Total operating expenses	37,822	24,240	72,554	49,069
Operating income (loss)	23,312	7,309	37,844	(1,154)
Loss on debt extinguishment	—	—	—	(22,639)
Other expense, net	4	(400)	(15)	(1,546)
Interest expense, net	(7,227)	(6,936)	(14,354)	(13,308)
Net income (loss) before provision for income taxes	16,089	(27)	23,475	(38,647)
Provision for income taxes	(1,972)	—	(1,972)	—
Net income (loss)	\$ 14,117	\$ (27)	\$ 21,503	\$ (38,647)

Net Product Revenue

Net product revenue increased by \$35.8 million, or 94.2%, for the three months ended June 30, 2021 and \$75.7 million, or 130.8%, for the six months ended June 30, 2021 compared to the same periods in 2020. The increase was due to the growing commercial sales of WAKIX which was launched on November 1, 2019 and the price increase of WAKIX in connection with the cataplexy indication approval in the fourth quarter of 2020.

Cost of Product Sales

Cost of product sales increased by \$6.2 million, or 96.5%, for the three months ended June 30, 2021 and \$13.2 million, or 132.6%, for the six months ended June 30, 2021 compared to the same periods in 2020. The increase was due to the growing commercial sales of WAKIX, which was launched on November 1, 2019. Cost of product sales is primarily comprised of the royalty payment to Bioprojet.

Research and Development Expenses

Research and development expenses increased by \$2.3 million, or 55.9%, for the three months ended June 30, 2021 and \$3.6 million, or 47.1%, for the six months ended June 30, 2021 as compared to the same periods in 2020. The increase was primarily due to clinical development work associated with PWS and DM.

Sales and Marketing Expenses

Sales and marketing expenses increased by \$4.6 million, or 36.8% for the three months ended June 30, 2021 and \$6.8 million, or 26.6%, for the six months ended June 30, 2021 as compared to the same periods in 2020. The increase was primarily due to patient engagement and marketing activities and an increase in the number of stock-based awards.

General and Administrative Expenses

General and administrative expenses increased by \$6.7 million, or 87.5% for the three months ended June 30, 2021 and \$13.1 million, or 82.9%, for the six months ended June 30, 2021 as compared to the same periods in 2020. This is primarily due to intangible asset amortization of the milestone payment made in connection with the FDA's approval of WAKIX for the treatment of cataplexy in adult patients with narcolepsy in October 2020, stock compensation associated with new awards, and the additional cost of public company insurance, offset by fees paid to Paragon. Additionally, general expenses have increased due to an increase in headcount year-over-year as well as additional spend in 2021 following the COVID-19 pandemic in 2020.

Loss on Debt Extinguishment

Loss on debt extinguishment decreased \$22.6 million, or 100%, for the six months ended June 30, 2021 as compared to the same period in 2020 due to costs of extinguishment of debt during the period related to the prepayment of the Loan Agreement with CRG.

Other Expense, Net

Other expense decreased by \$0.4 million, or 101.0%, for the three months ended June 30, 2021 and \$1.5 million, or 99.0% for the six months ended June 30, 2021, as compared to the same periods in 2020. This is primarily due to the change in the fair value of the warranty liability in 2020.

Interest Expense, Net

Interest expense increased by \$0.3 million, or 4.2%, for the three months ended June 30, 2021 and \$1.0 million, or 7.9%, for the six months ended June 30, 2021, as compared to the same period in 2020 primarily due to payment of interest on the Loan Agreement and amortization of debt issuance costs compared to the payment of interest on the Credit Agreement and amortization of debt issuance costs.

Income Taxes

For interim periods, we estimate the annual effective income tax rate and apply the estimated rate to the year-to-date income or loss before income taxes. The effective income tax rate was 8.4% and 0.0% for the six months ended June 30, 2021 and 2020, respectively. Currently, we have recorded a full valuation allowance against our net deferred tax assets, primarily related to federal and state net operating losses.

Liquidity and Capital Resources

Overview

To date, we have financed our operations primarily with (a) proceeds from sales of our convertible preferred stock, (b) borrowings under (i) our Loan Agreement with CRG and (ii) our Credit Agreement with OrbiMed, and (c) the proceeds from our IPO. From our inception through June 30, 2021, we have received aggregate proceeds of \$345.0 million from sales of our convertible preferred stock. On August 21, 2020, we completed the IPO of our common stock, in which we sold 6,151,162 shares of our common stock, including 802,325 shares of our common stock pursuant to the underwriters' over-allotment option. The shares began trading on the Nasdaq Global Market on August 19, 2020. The shares were sold at a price of \$24.00 per share for net proceeds of approximately \$135.4 million. As of June 30, 2021, we had cash, cash equivalents and restricted cash of \$160.4 million and accumulated deficit of \$466.7 million. As of June 30, 2021, we had outstanding debt, net of issuance costs, of \$195.6 million.

On August 9, 2021, the Company entered into a Credit Agreement (the "New Credit Facility") with Blackstone Alternative Credit Advisors LP ("Blackstone") and the other lenders party thereto from time to time and Wilmington Trust, National Association, as administrative agent (the "Administrative Agent"), that provides for (i) a senior secured term loan facility in an aggregate original principal amount of \$200.0 million (the "Initial Term Loan") and (b) a senior secured delayed draw term loan facility in an aggregate principal amount up to \$100.0 million (the "DDTL" and, together with the Initial Term Loans, the "Loans"). In connection with the New Credit Facility, the Company also sold 1,048,951 shares of the Company's common stock at a price per share of \$28.60 for gross proceeds of \$30.0 million. See "Part II – Item 5 – Other Information" below for a further discussion of the New Credit Facility and sale of common stock.

The condensed consolidated financial statements have been prepared as though we will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. We have incurred operating losses and negative cash flows from operations since inception resulting in an accumulated deficit of \$466.7 million as of June 30, 2021.

We believe that our anticipated cash from operating and financing activities, including as a result of potential availability under the DDTL, and existing cash and cash equivalents will enable us to meet our operational liquidity needs and fund our planned investing activities for the next 12 months. We have based this estimate on assumptions that may prove to be incorrect, and we could use our capital resources sooner than we expect. See "—Overview—Liquidity and Sources of Funding."

OrbiMed Credit Agreement

On February 28, 2019, we entered into the Loan Agreement with CRG for an aggregate of \$200.0 million of which \$102.5 million was outstanding as of December 31, 2019. On January 9, 2020, we entered into the Credit Agreement with OrbiMed for an aggregate of \$200.0 million and paid off all of our obligations under the Loan Agreement. Borrowings under the Credit Agreement are collateralized by all of the Company's assets, excluding the intellectual property licensed through the Bioprojet License Agreement. At the time of prepayment or repayment of all or any portion of the principal of the OrbiMed Loan, the Company is required to pay an exit fee of 7.0% of the principal amount of the OrbiMed Loan prepaid, repaid, or required to be prepaid or repaid. The Credit Agreement matures on January 9, 2026 and bears an interest rate of the greater of (a) LIBOR or (b) 2.00% per annum, plus 11.00% per annum. When the LIBOR rate is no longer used post-2021, the Prime Rate will be used in the determination of the interest rate. The Credit Agreement requires compliance with certain financial covenants, including minimum net revenue thresholds and cash balance requirements (which include maintaining minimum liquidity of \$12.5 million), and financial reporting requirements. We have been in compliance with the financial covenants under the Credit Agreement since it was entered into on January 9, 2020. The Credit Agreement also contains certain negative restrictive covenants that either limit our ability to, or require a mandatory prepayment in the event we, engage in new lines of business, incur additional indebtedness or liens, make certain investments, make certain payments, pay cash dividends, merge with other companies or consummate certain changes of control, acquire other companies, transfer or dispose of certain

assets, liquidate or dissolve, amend certain material agreements, enter into sale and leaseback transactions, enter into various other specified transactions, and change our name, location, executive office or executive management without notice.

On August 9, 2021, we used substantially all of the proceeds from the New Credit Facility and the related sale of our common stock to repay the balance of the OrbiMed Loan together with the payment of fees and expenses under the OrbiMed Loan and the New Credit Facility. See “Part II – Item 5 – Other Information” below for a further discussion of the New Credit Facility and sale of common stock.

Recent Milestone Payment

Upon FDA approval of WAKIX for the treatment of cataplexy in adult patients with narcolepsy in October 2020 (the “Cataplexy Milestone Trigger Date”), we became obligated to make the \$100.0 million milestone payment (the “Cataplexy Milestone Payment”) to Bioprojet pursuant to the terms of the Bioprojet License Agreement. Subsequently, in October 2020, we made a payment to Bioprojet of \$2.0 million to extend the Cataplexy Milestone Payment due date to within 90 days of the Cataplexy Milestone Trigger Date. On January 6, 2021, we made the \$100.0 million Cataplexy Milestone Payment in full to Bioprojet.

Cash Flows

The following table sets forth a summary of our cash flows for the three months ended June 30, 2021 and 2020:

	Six Months Ended June 30,	
	2021	2020
	(In thousands)	
Selected cash flow data		
Cash provided by (used in):		
Operating activities	\$ 30,600	\$ (21,870)
Investing activities	(100,205)	(2)
Financing activities	660	73,695

Operating Activities

Net cash provided by operating activities increased to \$30.6 million for the six months ended June 30, 2021 as compared to net cash used in operating activities of \$21.9 million for the same period in 2020. This increase was primarily attributable to company revenue growth and net income associated with the commercialization of WAKIX.

Net cash provided by operating activities for the six months ended June 30, 2021 consisted of our net income of \$21.5 million adjusted for non-cash items of \$7.2 million related to stock compensation expense and \$9.2 million related to intangible amortization and fair value of warrants.

Net cash used in operating activities for the six months ended June 30, 2020 consisted of our net loss of \$38.6 million adjusted for non-cash items of \$22.6 million associated with loss on extinguishment of debt and \$3.7 million related to intangible amortization and fair value of warrants. Net working capital excluding cash decreased by \$12.9 million due to company growth and the commercial launch of WAKIX.

Investing Activities

Net cash used in investing activities increased to \$100.2 million for the six months ended June 30, 2021 as compared to \$0.0 million for the same period in 2020. This change was primarily attributable to the \$100.0 million milestone payment associated with the Bioprojet License Agreement.

Financing Activities

Net cash provided by financing activities for the six months ended June 30, 2021 was \$0.7 million, as compared to \$73.7 million for the same period in 2020. This change was primarily attributable to \$194.2 million associated with the OrbiMed Credit Agreement net of issuance, offset with \$120.6 million of repayment and exit fees associated with the CRG Loan Agreement.

Off-Balance Sheet Arrangements

For the six months ended June 30, 2021 and 2020, we did not have any off-balance sheet arrangements, as defined under SEC rules.

Critical Accounting Policies and Significant Judgments and Estimates

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

Significant estimates include assumptions used in the determination of some of our costs incurred under our services type agreements and which costs are charged to research and development and general and administrative expense. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We define our critical accounting policies as those under GAAP that require us to make subjective estimates and judgments about matters that are uncertain and are likely to have a material impact on our financial condition and results of operations, as well as the specific manner in which we apply those principles. During the quarter covered by this report, there were no material changes to the accounting policies and assumptions previously disclosed, except as disclosed in Note 3 to the unaudited condensed consolidated financial statements contained herein.

Recent Accounting Pronouncements

See Note 3 to our condensed consolidated financial statements appearing elsewhere in this Quarterly Report on Form 10-Q for more information.

The JOBS Act

We are an "emerging growth company", or EGC, as defined in the Jumpstart Our Business Startups Act, or JOBS Act, of 2012. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies.

We have elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date we (i) are no longer an EGC or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates. If we were to subsequently elect instead to comply with these public company effective dates, such election would be irrevocable pursuant to the JOBS Act.

We will remain an EGC until the earliest of (i) the last day of our fiscal year (a) following the fifth anniversary of the completion of the initial public offering of our common stock, (b) in which we have total annual gross revenues of at least \$1.07 billion or (ii) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds \$700.0 million as of the prior June 30th and (iii) the date on which we have issued more than \$1.0 billion in non-convertible debt securities over a three-year period.

Non-GAAP Financial Measures

In addition to our GAAP results, we provide certain non-GAAP metrics including adjusted net income and adjusted net income per share. We believe that the presentation of these measures provides important supplemental information to management and investors regarding our performance. These measurements are not a substitute for GAAP measurements, and the manner in which we calculate adjusted net income and adjusted

net income per share may not be identical to the manner in which other companies calculate adjusted net income and adjusted net income per share. Management uses these non-GAAP measurements as an aid in monitoring our on-going financial performance from quarter-to-quarter and year-to-year on a regular basis and for benchmarking against comparable companies.

EBITDA is intended to provide a measure of the Company's operating performance as it eliminates the effects of financing and capital expenditures. EBITDA consists of GAAP net loss excluding: (i) interest expense, (ii) income tax provision, (iii) depreciation and (iv) amortization of intangibles.

Non-GAAP adjusted net income (loss) and non-GAAP adjusted net income (loss) per share are intended to provide an enduring, normalized view of net income and our broader business operations that we expect to experience on an ongoing basis by removing items which may be irregular, one-time, or non-recurring from net income. This enables us to identify underlying trends in our business that could otherwise be masked by such items.

Non-GAAP adjusted net income (loss) consists of GAAP net loss excluding: (i) interest expense, (ii) income tax provision, (iii) depreciation, (iv) amortization of intangibles, (v) stock-based compensation, (vi) loss on debt extinguishment, and (vii) warrant expense.

A reconciliation of GAAP net loss to non-GAAP adjusted net income (loss) appears in the table below (in thousands except share and per share data):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net income (loss)	\$ 14,117	\$ (27)	\$ 21,503	\$ (38,647)
Non-GAAP Adjustments:				
Interest expense	7,227	6,936	14,354	13,308
Taxes	1,972	—	1,972	—
Depreciation	100	97	200	194
Amortization	4,629	1,907	9,208	3,693
EBITDA	28,045	8,913	47,237	(21,452)
Additional Non-GAAP Adjustments:				
Stock-based compensation expense	3,827	568	7,078	936
Loss on debt extinguishment	—	—	—	22,639
Warrant expense	—	438	—	1,584
Non-GAAP adjusted net income (loss)	\$ 31,872	\$ 9,919	\$ 54,315	\$ 3,707
Accumulation of yield on preferred stock	—	(10,446)	—	(20,891)
Non-GAAP adjusted net income (loss) available to common stockholders	31,872	(527)	54,315	(17,184)
GAAP reported net income (loss) per diluted share	\$ 0.24	\$ (1.34)	\$ 0.37	\$ (7.63)
Non-GAAP adjusted net income (loss) per diluted share	\$ 0.54	\$ (0.07)	\$ 0.93	\$ (2.20)
Weighted average number of shares of common stock used in non-GAAP diluted per share	58,592,876	7,805,848	58,635,195	7,798,928

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Interest Rate Fluctuation Risk

We are exposed to market risk related to changes in interest rates. As of June 30, 2021, our cash and cash equivalents consisted of cash and money market accounts. Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of U.S. interest rates. However, because of the short-term nature of the instruments in our portfolio, an immediate 10% change in market interest rates would not have a material impact on the fair market value of our investment portfolio or on our financial position or results of operations.

As of June 30, 2021, we had \$200.0 million in borrowings outstanding. The term loan bears interest at an interest rate of the greater of (a) LIBOR or (b) 2.00% per annum, plus 11.00% per annum. Based on the \$200.0 million of principal outstanding as of June 30, 2021, an immediate 10% change in the Prime Rate would not have a material impact on our debt-related obligations, financial position or results of operations.

Foreign Currency Fluctuation Risk

We are not currently exposed to significant market risk related to changes in foreign currency exchange rates; however, we have contracted with and may continue to contract with foreign vendors that are located in Europe. Our operations may be subject to fluctuations in foreign currency exchange rates in the future.

Inflation Fluctuation Risk

Inflation generally affects us by increasing our cost of labor and clinical trial costs. We do not believe that inflation had a material effect on our business, financial condition or results of operations for the three and six months ended June 30, 2021 or 2020.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management, including our principal executive officer and our principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of June 30, 2021. Based on that evaluation, our principal executive officer and principal financial officer concluded that, as of June 30, 2021, our disclosure controls and procedures were effective to provide reasonable assurance that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC 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

There were no changes in our internal control over financial reporting during the quarter ended June 30, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Effectiveness of Controls and Procedures

Our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our Company have been detected.

PART II. OTHER INFORMATION**Item 1. Legal Proceedings.**

From time to time, we may become involved in litigation relating to claims arising from the ordinary course of business. Our management believes that there are currently no claims or actions pending against us, the ultimate disposition of which could have a material adverse effect on our results of operations or financial condition.

Item 1A. Risk Factors.

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties set forth in our Annual Report on Form 10-K, as well as described below and the other information included or incorporated by reference in this Quarterly Report on Form 10-Q before making an investment in our common stock. Our business, financial condition, results of operations, or prospects could be materially and adversely affected if any of these risks occurs, and as a result, the market price of our common stock could decline and you could lose all or part of your investment. This Quarterly Report on Form 10-Q also contains forward-looking statements that involve risks and uncertainties. See “Part I—Management’s Discussion and Analysis of Financial Condition and Results of Operations—Cautionary Note Regarding Forward-Looking Statements.” Our actual results could differ materially and adversely from those anticipated in these forward-looking statements as a result of certain factors, including those set forth below.

Our New Credit Facility contains restrictive and financial covenants that may limit our operating flexibility.

Our New Credit Facility contains certain restrictive covenants that either limit our ability to, or require a mandatory prepayment in the event that, we or our subsidiaries engage in new lines of business, incur additional indebtedness or liens, make certain investments, make certain payments, pay cash dividends, merge with other companies or consummate certain changes of control, make certain acquisitions, transfer or dispose of certain assets, liquidate or dissolve, amend certain material agreements, enter into sale and leaseback transactions, enter into various other specified transactions, or change our name, location, or executive office without notice. We, therefore, may not be able to engage in any of the foregoing transactions unless we obtain the consent of the lenders, or in certain cases Blackstone on their behalf, or prepay the outstanding amount under the New Credit Facility. The New Credit Facility also contains a financial covenant that requires us to maintain at all times cash and cash equivalents in certain deposit accounts in an amount at least equal to \$10.0 million.

Our obligations under the New Credit Facility are secured by all of our assets, with certain exceptions. We may not be able to generate sufficient cash flow or sales to meet the financial covenants or pay the principal and interest under the New Credit Facility. Furthermore, our future working capital, borrowings or equity financing could be unavailable to repay or refinance the amounts outstanding under the New Credit Facility. In the event of a liquidation, the lenders under the facility would be repaid all outstanding principal and interest prior to distribution of assets to unsecured creditors, and the holders of our common stock would receive a portion of any liquidation proceeds only if all of our creditors then existing, including the lenders under the New Credit Facility, were first repaid in full.

Our failure to comply with the covenants or other terms of the New Credit Facility, including as a result of events beyond our control, could result in a default under the New Credit Facility that could materially and adversely affect the ongoing viability of our business.

Blackstone and the other Lenders may elect to accelerate the repayment of all unpaid principal of the Loans, accrued interest and other amounts owed under the New Credit Facility upon consummation of a specified change of control transaction or the occurrence of certain events of default (as specified in the New Credit Facility), including, among other things:

- our default in a payment obligation under the New Credit Facility;
- our breach of the restrictive covenants or other terms of the New Credit Facility;
- our breach of reporting obligations;
- our failure to properly maintain the collateral;
- the termination or materially adverse amendment of a permit or authorization related to one of our products that is not revoked within 90 days;
- a specified change of control transaction occurring under the License Agreement;

- with respect to WAKIX or another material product, a governmental authority (i) asserting that such product lacks a material authorization, which assertion is not withdrawn or resolved within 90 days or (ii) taking certain regulatory actions resulting in a discontinuance, withdrawal or delay of such product which would reasonably be expected to last for more than 90 days;
- a recall that would reasonably be expected to result in a material adverse effect;
- our entry into a settlement agreement with a government authority resulting in liability greater than \$2.0 million;
- our material breach under or the early termination of one of our key intellectual property licensing or supply chain agreements; and
- certain specified insolvency and bankruptcy-related events.

Subject to any applicable cure period set forth in the New Credit Facility, all amounts outstanding with respect to the Loans (principal and accrued interest), as well as any applicable prepayment premiums or interest “make-whole” payments, would become due and payable, and upon the occurrence of a payment event of default and following acceleration of the Loans, all past due obligations shall bear interest at a default interest rate that is 2.00% higher than the otherwise applicable rate. Our assets or cash flow may not be sufficient to fully repay our obligations under the Loans if the obligations thereunder are accelerated upon any events of default. Further, if we are unable to repay, refinance or restructure our obligations under the Loans, the Administrative Agent on behalf of the Lenders could proceed to protect and enforce their rights under the New Credit Facility and other loan documents by exercising such remedies (including foreclosure on the assets securing our obligations under the New Credit Facility and the other loan documents) as are available to the Administrative Agent and the Lenders and in respect thereof under applicable law, either by suit in equity or by action at law, or both, whether for specific performance of any covenant or other agreement contained in the New Credit Facility or other loan documents or in aid of the exercise of any power granted in the New Credit Facility or other loan documents. Such repayment could have a material adverse effect on our business, operating results and financial condition.

We have never paid dividends on our common stock and we do not intend to pay dividends for the foreseeable future. Consequently, any gains from an investment in our common stock will likely depend on whether the price of our common stock increases.

We have never declared or paid any dividends on our common stock and do not intend to pay any dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the operation of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments. Furthermore, our New Credit Facility contains negative covenants that limit our ability to pay dividends.

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

None.

Item 3. Defaults upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

New Credit Facility

On August 9, 2021 (the “Closing Date”), we entered into a Credit Agreement (the “New Credit Facility”) with Blackstone Alternative Credit Advisors LP (“Blackstone”) and the other lenders party thereto from time to time and Wilmington Trust, National Association, as administrative agent (the “Administrative Agent”), that provides for (i) a senior secured term loan facility in an aggregate original principal amount of \$200.0 million (the “Initial Term Loan”) and (b) a senior secured delayed draw term loan facility in an

aggregate principal amount up to \$100.0 million (the “DDTL” and, together with the Initial Term Loans, the “Loans”).

The Loans bear interest at a per annum rate equal to LIBOR (subject to a 1.00% floor) plus 6.50%, which shall increase by an additional 2.00% on all past due obligations if we fail to pay any amount when due or following any acceleration of the Loans, and are scheduled to mature on August 9, 2026 (the “Maturity Date”), which is the fifth anniversary of the Closing Date. In addition, on the Closing Date we paid an upfront fee of 2.0% of the aggregate principal amount of the Initial Term Loan and an upfront fee of 1.0% of the aggregate principal amount of the DDTL. We also are required to pay at the time of funding of any portion of the DDTL an upfront fee of 1.0% of the aggregate principal amount being funded. We are required to make quarterly interest payments until the Maturity Date. We are also required to make principal payments of the Initial Term Loan and of the funded principal amount of the DDTL on the last day of each quarter. Quarterly principal payments of the Initial Term Loan will commence with the quarter ending December 31, 2021, in an amount equal to \$500,000 per quarter (and increasing to \$5,000,000 per quarter commencing with the quarter ending March 31, 2024). Quarterly principal payments of the funded principal amount of the DDTL will commence with the quarter ending after the initial funding of any portion of the DDTL, in an amount equal to 0.25% (and increasing to 2.50% commencing with the quarter ending March 31, 2024) of the original principal amount of the DDTL funded prior to such principal payment. Quarterly principal payments of the Initial Term Loans and the DDTL will continue until the Maturity Date, on which date all outstanding Loans and other amounts owed under the New Credit Facility will be required to be paid in full.

Subject to certain exceptions, we are required to make mandatory prepayments of the Loans, with the proceeds of asset sales, casualty and condemnation events and prohibited debt issuances. In addition, we may make voluntary prepayments of the Loans, in whole or in part. All voluntary prepayments and mandatory prepayments (other than mandatory prepayments with the proceeds of asset sales and casualty or condemnation events) of the Loans are subject to the payment of prepayment premiums as follows: (i) if prepayment occurs on or before the second anniversary of the Closing Date, an amount equal to 2.0% of the principal prepaid plus a “make-whole” amount in respect of any such principal payments (whether mandatory or voluntary) described in this clause (i), in an amount equal to the interest that would have accrued through the second anniversary of the Closing Date but for such principal repayment, (ii) if prepayment occurs after the second anniversary of the Closing Date but on or before the third anniversary of the Closing Date, an amount equal to 2.0% of the principal prepaid, (iii) if prepayment occurs after the third anniversary of the Closing Date but on or before the fourth anniversary of the Closing Date, an amount equal to 1.0% of the principal prepaid, and (iv) if prepayment occurs after the fourth anniversary of the Closing Date, no prepayment premium is due.

The Loans are and will be guaranteed by our subsidiary Harmony Biosciences, LLC and certain of our future subsidiaries that are required to become a party thereto as guarantors (collectively, the “Guarantors”). Our obligations under the New Credit Facility and the guarantee of such obligations are secured by a pledge of substantially all of our assets and will be secured by a pledge of substantially all of the assets of the Guarantors pursuant to the terms of the Pledge and Security Agreement dated as of the Closing Date by and among us, the Administrative Agent and the Guarantors from time to time party thereto (the “Security Agreement”).

The New Credit Facility contains affirmative and negative covenants customary for financings of this type, including limitations on our and our subsidiaries’ abilities, among other things, to incur additional debt, grant or permit additional liens, make investments and acquisitions, merge or consolidate with others, dispose of assets, pay dividends and distributions and enter into affiliate transactions, in each case, subject to certain exceptions. In addition, the New Credit Facility contains a financial covenant that requires us to maintain at all times cash and cash equivalents in certain deposit accounts in an amount at least equal to \$10.0 million.

The New Credit Facility also contains representations and warranties of us and of the Guarantors customary for financings of this type. Such representations and warranties (i) are intended not as statements of fact, but rather as a way of allocating the risk between the parties to the New Credit Facility and (ii) may apply standards of materiality in a way that is different from what may be viewed as material by our stockholders or other investors. The foregoing summary of the New Credit Facility is included with this filing only to provide investors with information regarding the terms of the transaction, and not to provide stockholders or other investors with any other factual information regarding us. Stockholders should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of us or any of our subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the New Credit Facility, which subsequent information may or may not be fully reflected in public disclosures.

The New Credit Facility also includes events of default customary for financings of this type, in certain cases subject to customary periods to cure, following which the Administrative Agent may accelerate all amounts outstanding under the Loan.

Additionally, in connection with the New Credit Facility, on the Closing Date, we sold to certain of the lenders under the New Credit Facility an aggregate of 1,048,951 shares of our common stock, par value \$0.00001 per share, for an aggregate cash consideration of \$30.0 million, or \$28.60 per share. This sale did not involve a public offering and was therefore exempt from registration under Section 4(a)(2) of the Securities Act of 1933, as amended, and Regulation D thereunder as a transaction not involving any public offering.

Termination of the OrbiMed Credit Agreement

On January 9, 2020, we entered into a credit agreement with OrbiMed Royalty & Credit Opportunities, LP for an aggregate amount of \$200 million (the "OrbiMed Loan"), which was scheduled to mature in January 2026. Borrowings under the OrbiMed Loan were collateralized by all of the Company's assets, excluding the intellectual property licensed through the License Agreement. The OrbiMed Loan had an interest rate equal to the sum of (i) the greater of (a) 1-month LIBOR or (b) 2.00% per annum, plus (ii) 11.00% per annum, paid in cash monthly in arrears on the last day of each month starting in January 2020.

The OrbiMed Loan was repaid in full and all commitments thereunder were terminated on August 9, 2021 in connection with the execution of the New Credit Facility. In connection with the payment of the OrbiMed Loan, we paid an exit fee of 7.0% and a repayment premium of 4.0% of the principal amount of the OrbiMed Loan repaid.

The foregoing descriptions of the New Credit Facility and the Security Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of each of the New Credit Facility and the Security Agreement which the Company has filed as exhibits to this Quarterly Report.

Item 6. Exhibits.

Exhibit No.	Exhibit Description	Incorporated by Reference		
		Form	Date	Number
3.1	Amended and Restated Certificate of Incorporation of Harmony Biosciences Holdings, Inc.	8-K	August 21, 2020	3.1
3.2	Amended and Restated Bylaws.	8-K	August 21, 2020	3.2
10.1*	Promotion Increase Award Letter to Jeffrey Dierks, dated June 9, 2021.			
10.2*	Credit Agreement, dated as of August 9, 2021, among Harmony Biosciences Holdings, Inc., as Borrower, Harmony Biosciences, LLC, as Guarantor, the Guarantors from time to time party thereto, the Lenders from time to time party thereto, and Wilmington Trust, National Association, as Administrative Agent.			
10.3*	Pledge and Security Agreement, dated as of August 9, 2021, among Harmony Biosciences Holdings, Inc. and Harmony Biosciences, LLC, as Grantors, the other Grantors from time to time party thereto and Wilmington Trust, National Association, as Administrative Agent.			
31.1*	Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.			
31.2*	Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.			
32.1**	Certification of 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 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*	The following financial statements from the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2021 formatted in Inline XBRL: (i) Balance Sheets, (ii) Statements of Operations, (iii) Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit) and (vi) Notes to Financial Statements, tagged as blocks of text and including detailed tags.			

104* Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith.

** Furnished herewith. This certification is deemed furnished, and not filed, with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Harmony Biosciences Holdings, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

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.

HARMONY BIOSCIENCES HOLDINGS, INC.

By: /s/ John C. Jacobs
Name: John C. Jacobs
Title: President, Chief Executive Officer and Director (principal executive officer)
Date: August 10, 2021

By: /s/ Sandip Kapadia
Name: Sandip Kapadia
Title: Chief Financial Officer (principal financial officer)
Date: August 10, 2021



June 9, 2021

MEMORANDUM

To: Jeffrey Dierks
From: John Jacobs
Subject: Promotion Increase Award

Dear Jeff:

Based on your superior performance and Harmony's business needs, you are being promoted to the position of Executive Vice President & Chief Commercial Officer. Congratulations on your promotion, which will benefit not only your career, but Harmony's continued growth as well.

In light of your accomplishment, I am pleased to present you with the following promotion increase:

Promotion Increase:	12.3%
Current Salary:	\$356,250.72
New Salary:	\$400,069.56

The target bonus for your new position is 50%.

You will also receive an additional grant of equity in the Company's parent company, Harmony Biosciences Holdings, Inc. ("Parent") in the amount of 53,900 stock options for Parent common stock with an exercise price equal to the fair market value of a share of our common stock on the grant date. A stock option agreement with full details for this grant will be provided to you.

Your promotion increase will take effect as of June 1, 2021.

Please accept this financial reward, which you have earned, with my regards and best wishes for continued success and personal fulfillment in your new role.

630 W. Germantown Pike, Suite 215, Plymouth Meeting, PA 19462
www.harmonybiosciences.com

CREDIT AGREEMENT

dated as of August 9, 2021

among

**HARMONY BIOSCIENCES HOLDINGS, INC.,
as the Borrower,**

HARMONY BIOSCIENCES, LLC, as the initial Guarantor,

**AND THE OTHER GUARANTORS FROM TIME TO TIME PARTY HERETO,
as Guarantors,**

THE LENDERS FROM TIME TO TIME PARTY HERETO

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent**

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Exhibit I	Forms of U.S. Tax Compliance Certificates
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CREDIT AGREEMENT

This **CREDIT AGREEMENT** is entered into as of August 9, 2021, among HARMONY BIOSCIENCES HOLDINGS, INC., a Delaware corporation (the "**Borrower**"), its wholly owned subsidiary, HARMONY BIOSCIENCES, LLC, a Delaware limited liability company ("**Harmony**") as the sole initial Guarantor, the other Guarantors (as defined herein) from time to time party hereto, the Lenders (as defined herein) from time to time party hereto and Wilmington Trust, National Association, as Administrative Agent (as defined herein).

PRELIMINARY STATEMENTS:

WHEREAS, the Borrower has requested that the Lenders extend (a) an initial term loan facility in the aggregate principal amount of \$200,000,000, which will be funded on the Closing Date (as defined herein), subject to the conditions provided herein, the proceeds of which will be utilized to fund a contribution to Harmony for the purposes of repaying existing debt, to pay transaction fees and expenses in connection with the establishment of this facility and for working capital and other general corporate purposes permitted hereunder and (b) a delayed draw term loan facility in an aggregate principal amount of up to \$100,000,000, the proceeds of which will be utilized to pay all or a portion of the consideration for Permitted Acquisitions (as defined herein), to pay transaction fees and expenses in connection with the consummation of such Permitted Acquisitions and the funding of such delayed draw term loan facility and for working capital and other general corporate purposes permitted hereunder, in up to four draws, following the Closing Date and on or before the one year anniversary of the Closing Date.

WHEREAS, the Lenders have agreed to make such term loan facility available to the Borrower on the terms and subject to the conditions set forth herein.

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

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms.

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

"Accrued Royalty Amount" means, as of any date of determination of Liquidity, the unpaid portion of any amounts accrued and owing by the Borrower to Bioprojet under the License Agreement as of such date, to the extent such accrued and owing amounts are required to be paid to Bioprojet within 184 days of the applicable date of determination.

"Acquisition" means the purchase, inbound license or other acquisition, or option to purchase, license or otherwise acquire, whether through a single transaction or a series of related transactions, of (a) a majority of the Equity Interests, whether by purchase of such Equity Interests or upon the exercise of an option or warrant for, or conversion of securities into, such Equity Interests, of another Person, (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person, or (c) assets consisting of an Acquired Product, royalty rights or similar assets of such Person. The Person or division, line of business or other business unit or assets of the Person to be acquired in such Acquisition shall be referred to herein as the "Target".

“Acquired Product” means any Product of the type described in clause (b) of the definition thereof and/or related Intellectual Property acquired or licensed by a Loan Party or any Subsidiary from a Third Party to facilitate the advertisement, development, importing, manufacturing, marketing, offering for sale, promotion, sale, testing, use or distribution of such Product by a Loan Party or a Subsidiary.

“Action” means any claim, action, cause of action or suit, litigation, assessment, arbitration, mediation, investigation, audit, hearing, charge, complaint, demand, notice or proceeding (in each case, whether in contract, tort or otherwise, whether at law or in equity, and whether civil or criminal) to, from, by or before any Governmental Authority.

“Administrative Agent” means Wilmington Trust, National Association, solely in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent permitted by the terms hereof.

“Administrative Agent’s Account” means the Administrative Agent’s account as the Administrative Agent may from time to time notify the Borrower and the Lenders in accordance with Section 11.02.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

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

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

“Agency Fee Letter” means that certain letter agreement, dated as of the date hereof, between the Borrower and the Administrative Agent.

“Aggregate Commitments” means, at any time, the sum of the Initial Commitments and the Delayed Draw Commitments, as reduced, respectively, by the Initial Loans and any Delayed Draw Loans.

“Agreement” means this Credit Agreement, including all schedules, exhibits and annexes hereto.

“Applicable Law” means, as to any Person, all applicable Laws binding upon such Person or to which such a Person is subject.

“Applicable Percentage” means, with respect to any Lender at any time, (i) with respect to all payments, computations and other matters relating to the Initial Loans and/or Initial Commitments, the percentage obtained by dividing (a) the unused Initial Commitment and Outstanding Amount of Initial Loans of such Lender at such time by (b) the aggregate unused Initial Commitments and aggregate Outstanding Amount of Initial Loans of all of the Lenders at such time; and (ii) with respect to all payments, computations and other matters relating to the Delayed Draw Loans and/or Delayed Draw Commitments, the percentage obtained by dividing (a) the unused Delayed Draw Commitment and Outstanding Amount of Delayed Draw Loans of such Lender at such time by (b) the aggregate unused Delayed Draw Commitments and aggregate Outstanding Amount of Delayed Draw Loans of all of the Lenders at such time.

“Applicable Premium” means, with respect to any prepayment of principal made, or required to be made (excluding prepayments required pursuant to Section 2.03(b)(i) or Section 2.05) and upon any

acceleration of the Maturity Date that, in each case, is effected or occurs (the date of such prepayment (or required prepayment) or acceleration, a “Calculation Date”) of any Loans: (a) on or prior to the second anniversary of the funding of the applicable Loans, the sum of (i) 2.00% of the principal amount of Loans being repaid or subject to such acceleration plus (ii) an amount, determined by the Lender Representative in good faith and in consultation with the Borrower, equal to all required remaining scheduled interest payments which would have been due on the Loans being repaid or subject to such acceleration if such Loans had remained outstanding and unaccelerated, in each case, through the second anniversary of such funding date (excluding accrued and unpaid interest to, but excluding, the Calculation Date) (provided that any interest that would otherwise have accrued from the period commencing after the Interest Payment Date occurring immediately prior to such second anniversary and ending on and including the second anniversary of such date shall be deemed for purposes of this definition to be a required remaining scheduled interest payment that would have otherwise been due on the second anniversary of the applicable funding date) or and provided that for purposes of this calculation, the interest rate shall be deemed to be the Applicable Rate in effect on the Calculation Date, (b) after the second anniversary of the funding of the applicable Loans and on or prior to the third anniversary of such funding, an amount equal to 2.00% of the principal amount of the Loan being repaid or subject to such acceleration, (c) after the third anniversary of the funding of the applicable Loans and on or prior to the fourth anniversary of such funding, an amount equal to 1.00% of the principal amount of the Loan being repaid or subject to such acceleration and (d) on or after the fourth anniversary of such funding, 0.00%. The Borrower and the Guarantors acknowledge that the Lenders shall suffer damages on account of the early payment of the Loans or the acceleration of the Maturity Date and that the Applicable Premium is a reasonable calculation of the lost profits of the Lenders holding the Loans in view of the difficulties and impracticality of determining actual damages resulting from such prepayment or acceleration.

“Applicable Rate” means, for any day, (a) with respect to any Eurodollar Rate Loan, 6.50% per annum, and (b) with respect to any Base Rate Loan, 5.50% per annum.

“Approved Fund” means any Person (other than a natural Person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans in the ordinary course of its activities and that is (a) a member of the Blackstone Group or (b) a Fund that is administered, managed or advised by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers, manages or advises a Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the written consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit B or any other form (including an electronic documentation form generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Finance Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Finance Lease.

“Audited Financial Statements” means the audited Consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2020, and the related Consolidated statements of operations and comprehensive loss, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

“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 Affected Financial Institution.

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

“Base Rate” means for any day a fluctuating rate of interest per annum equal to the highest of (a) the Federal Funds Rate *plus* 0.50%, (b) the Prime Rate and (c) the Eurodollar Rate for such day (or if such day is not a Business Day, the immediately preceding Business Day) based on an interest period of one (1) month, subject to the interest rate floors set forth therein, *plus* 1.00%; *provided* that if the Base Rate shall be less than 2.00%, such rate shall be deemed 2.00% for purposes of this Agreement. Any announced change in the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of such change. If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Rate or the Eurodollar Rate for any reason, the Base Rate shall be determined without regard to clause (a) or (c) above, as applicable, until the circumstances giving rise to such inability no longer exist. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Blackstone” shall mean Blackstone Alternative Credit Advisors LP and its Affiliates.

“Blackstone Group” shall mean Blackstone, Blackstone Holdings Finance Co. L.L.C. and Blackstone Advisors L.L.C. and any of their respective Affiliates, and funds and accounts administered, managed, agented or advised by any of them, and any warehouse entity.

“Bioprojet” means Bioprojet Societe Civile de Recherche, an independent (privately owned) research company organized under the laws of France, together with its Affiliates, including Bioprojet Pharma SARL and Bioprojet Europe Ltd.

“Bona Fide Debt Fund” means any debt fund that is an Affiliate of any Competitor or Competitor Controller that is primarily engaged in, or advises funds that are primarily engaged in, making, purchasing, or holding commercial loans, notes and similar extensions of credit or securities in the ordinary course of its business, but only to the extent that no personnel involved therewith (A) makes (or has the right to make or participate with others in making) investment decisions on behalf of, or otherwise cause the direction of the investment policies of, such Competitor or Competitor Controller or (B) has access to any information (other than information that is publicly available) relating to the Borrower or its Subsidiaries and/or any entity that forms part of any of their respective businesses (including any of their respective subsidiaries).

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Investment Policy” means the investment policy of the Borrower and its Subsidiaries as in effect on the Closing Date and any amendments, modifications or supplements thereto following the Closing Date that are (1) approved and duly adopted by the board of directors (or other governing body) of the Borrower and (2) agreed to by the Lender Representative in its reasonable discretion.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York; provided, however, that when used in connection with a Eurodollar Rate Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Secured Parties, as collateral for the Obligations, cash, Cash Equivalents or deposit account balances or, if the Lender Representative shall agree in its sole discretion, other credit support, in each case, pursuant to documentation in form and substance reasonably satisfactory to the Lender Representative. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) (i) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than two (2) years from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof and (ii) readily marketable direct obligations issued by any state, commonwealth or territory of the United States of America or political subdivision or taxing authority thereof that is rated AAA by S&P and Aaa by Moody’s maturing within two (2) years from the date of acquisition thereof;

(b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$500,000,000, in each case with maturities of not more than two (2) years from the date of acquisition thereof;

(c) commercial paper issued by a corporation or other Person rated at least “A-2” or “P-2” or the equivalent thereof by Moody’s or S&P or Fitch (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Lender Representative) and in each case maturing within two (2) years from the date of acquisition thereof;

(d) marketable short-term money market and similar highly liquid securities having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Lender Representative) and in each case maturing within two (2) years from the date of acquisition thereof;

(e) solely with respect to Foreign Subsidiaries, investments of the type and maturities described in clauses (a) through (d) above, issued where relevant, by any commercial bank of recognized international standing chartered in the country where such Foreign Subsidiary is domiciled having unimpaired capital and surplus of at least \$1,000,000,000, *provided* such country is a member of the Organization for Economic Cooperation and Development, and such bank maintains a short-term commercial paper rating of at least P-1 or A-1 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Lender Representative);

(f) (i) Dollars, Euros, Pounds Sterling, Swiss Francs, Canadian dollars or any national currency of any member state of the European Union or (ii) any other foreign currency held by the Borrower or any of its Subsidiaries in the ordinary course of business;

(g) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a) through (f) of this definition; and

(h) Investments made pursuant to the Borrower Investment Policy.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

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

"cGLP" means the then current good laboratory practices, including, the standards, practices and procedures concerning laboratory practices promulgated or endorsed for the United States by the FDA (including through 21 CFR Part 58) and for outside the United States by comparable Governmental Authorities.

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

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether

or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Change of Control” means and shall be deemed to have occurred if (i) (A) the Borrower shall cease to directly own, beneficially and of record, 100% of the issued and outstanding Equity Interests of Harmony, (B) either the Valor Investors or the Paragon Investors, shall own, directly or indirectly, beneficially or of record, determined on a fully diluted basis, more than 45% of the Voting Stock of the Borrower, or (C) any “person” or “group” (within the meaning of Rule 13d-5 of the Exchange Act) other than the Valor Investors or the Paragon Investors shall own, directly or indirectly, beneficially or of record, determined on a fully diluted basis, more than 45% of the Voting Stock of the Borrower; (ii) during any period of twelve (12) consecutive months, a majority of the members of the board of directors (or equivalent) of the Borrower (other than as a result of vacant seats) cease to be composed of individuals (x) who were members of such board on the first day of such period, (y) who were elected, appointed or nominated to such board, or whose election, appointment or nomination to such board was approved, by individuals referred to in clause (x) above constituting at the time of such election, appointment, nomination or approval at least a majority of such board or equivalent governing body or (z) who were elected, appointed or nominated to such board, or whose election, appointment or nomination to such board was approved, by individuals referred to in clauses (x) and (y) above constituting at the time of such election, appointment, nomination or approval at least a majority of such board, or (iii) any Subsidiary of the Borrower shall cease to be a wholly owned Subsidiary of the Borrower (except pursuant to a Disposition of all of the Equity Interests of a Subsidiary otherwise permitted hereunder).

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Initial Loans or Delayed Draw Loans and when used in reference to any Commitment, refers to whether such Commitment is an Initial Commitment or a Delayed Draw Commitment.

“Closing Date” means the date on which the conditions to the funding of the Initial Loans have been satisfied or waived by the Lenders, and the Initial Loans have funded, which date is August 9, 2021.

“CMS” means the U.S. Center for Medicare & Medicaid Services.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” and “Mortgaged Property” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties in order to secure the Obligations. Notwithstanding anything to the contrary, the Collateral shall not include any Excluded Property.

“Collateral Documents” means, collectively, the Security Agreement, any Mortgages, any related Mortgaged Property Support Documents, the Qualifying Control Agreements, each Joinder Agreement, each of the collateral assignments, security agreements, pledge agreements, account control agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.14, and each of the

other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means, with respect to a Lender, such Lender’s Initial Commitment or Delayed Draw Commitment, as the context may require.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Competitor” means any Person that competes with the business of the Borrower and its Subsidiaries from time to time.

“Competitor Controller” means any Person (excluding any Bona Fide Debt Fund) that is a direct or indirect holding company of a Competitor or an Affiliate of a Competitor that is controlled by such Competitor.

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

“Consolidated” means, when used with reference to financial statements or financial statement items of the Borrower and its Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

“Consolidated EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income of the Borrower and its Subsidiaries for the most recently completed Measurement Period plus:

(a) the following for such period to the extent deducted in calculating such Consolidated Net Income:

(i) Consolidated interest charges, and, to the extent not reflected in such Consolidated interest charges, the sum of (A) premium payments, debt discount, fees, charges and related expenses incurred in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets plus (B) the portion of rent expense under Finance Leases that is treated as interest expense in accordance with GAAP plus (C) the implied interest component of Synthetic Leases plus (D) any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or such derivative instruments plus (E) bank and letter of credit fees and costs of surety bonds in connection with financing activities, plus (F) amortization or write-off of deferred financing fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, financing fees and expenses and, adjusted, to the extent included, to exclude any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program,

(ii) the provision for Federal, state, local and foreign income taxes,

(iii) depreciation and amortization expense,

(iv) (A) compensation paid to employees in the form of common stock and (B) any costs or expenses incurred by the Borrower or any of its Subsidiaries pursuant to any management equity plan or

stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder,

(v) one-time non-recurring transaction fees, costs and expenses (whether or not consummated), including in connection with Acquisitions and other Investments, Dispositions and the incurrence or issuance of Indebtedness and Equity Interests, integration, reorganization and restructuring costs, litigation fees, costs and expenses and facility consolidation and closing costs incurred in connection with reorganizations, restructurings and Investments (including, the incurrence of Indebtedness in connection therewith) and Dispositions not otherwise prohibited hereunder, *provided* that such fees, costs and expenses (A) are incurred within twelve (12) months of the occurrence of such applicable triggering event and (B) the aggregate amount of such fees, costs and expenses added back pursuant to this clause (v) shall not exceed 10% of Consolidated EBITDA for any Measurement Period (prior to giving effect to such adjustments),

(vi) one-time non-recurring severance costs and expenses, payments to employees on account of their equity ownership and one-time compensation charges incurred in connection with reorganizations, restructurings and Investments (including, the incurrence of Indebtedness in connection therewith), the incurrence or issuance of Indebtedness and Equity Interests and Dispositions not otherwise prohibited hereunder, *provided* that such costs, expenses and payments (A) are incurred within twelve (12) months of the occurrence of such applicable triggering event and (B) the aggregate amount of such costs, expenses and payments added back pursuant to this clause (vi) shall not exceed 10% of Consolidated EBITDA for any Measurement Period (prior to giving effect to such adjustments),

(vii) fees, costs and other expenses incurred in connection with the Transactions,

(viii) the effects of adjustments pursuant to GAAP resulting from purchase accounting in relation to Investments not prohibited by this Agreement, or the amortization or write-off of any amounts thereof, net of taxes, in each case, which do not represent a cash item in such period or any future period,

(ix) gains or losses associated with the revaluation of earnouts, milestones or other similar contingent obligations incurred in connection with the Transaction or any other Investment not prohibited by this Agreement (including upfront, earnout or milestone payments),

(x) one-time non-recurring up-front and milestone payments payable under research and development licensing agreements, collaboration agreements or development agreements relating to uncommercialized product candidates,

(xi) other non-recurring expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Borrower and its Subsidiaries for such Measurement Period),

(xii) charges, losses, lost profits, expenses (including litigation expenses, fee and charges) or write-offs to the extent indemnified or insured by a third party, including expenses or losses covered by indemnification provisions or by any insurance provider in connection with the Transactions, a Permitted Acquisition or any other acquisition or Investment, Disposition or any Involuntary Disposition, in each case, to the extent that coverage has not been denied and so long as such amounts are actually reimbursed in cash within one (1) year after the related amount is first added to Consolidated EBITDA pursuant to this clause (a)(xii) (and if not so reimbursed within one (1) year, such amount shall be deducted from Consolidated EBITDA during the next Measurement Period),

(xiii) proceeds of business interruption insurance (whether or not then received so long as the Borrower in good faith expects to receive such proceeds within one (1) year after the related amount is first added to Consolidated EBITDA pursuant to this clause (a)(xiii) (and if not so reimbursed within one (1) year, such amount shall be deducted from Consolidated EBITDA during the next Measurement Period)), and

(xiv) such other costs, expenses and adjustments related to the Transaction or other Investments not prohibited by this Agreement as the Lender Representative shall approve, in its reasonable discretion, and minus

(b) the following to the extent included in calculating such Consolidated Net Income:

(i) all non-cash gains increasing Consolidated Net Income (in each case of or by the Borrower and its Subsidiaries for such Measurement Period),

(ii) all interest income for such period,

(iii) all Tax benefits for such period to the extent not netted in determining the amount for clause (a)(ii) above,

(iv) one-time, nonrecurring gains for such period,

(v) non-cash purchase accounting adjustments, and

(vi) amounts received in respect of non-recurring upfront, earnout or milestone payments or other similar contingent non-recurring amounts in connection with any Disposition.

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate of the net income of such Person and its Subsidiaries calculated in accordance with GAAP for such period, on a Consolidated basis.

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

"Control" means (i) the power of such Person, directly or indirectly, (x) to vote 10% or more of the Voting Stock (determined on a fully diluted basis) of another Person, or (y) to direct or cause the direction of the management and policies of such other Person (whether by contract or otherwise), and/or (ii) the ownership by such Person of 10% or more of the Equity Interests of another Person. "Controlling" and "Controlled" have meanings correlative thereto.

"Controlled Investment Affiliate" shall mean, with respect to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person, and (b) is organized primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Equity Interests, by contract, or otherwise.

"Copyrights" means all copyrights, whether statutory or common law, and all exclusive licenses from third parties or rights to use copyrights owned by such third parties, along with any and all (i) renewals, revisions, extensions, derivative works, enhancements, modifications, updates and new releases thereof,

(ii) income, royalties, damages, claims and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iii) rights to sue for past, present and future infringements thereof, and (iv) foreign copyrights and any other rights corresponding thereto throughout the world.

“Covered Entity” means any of the following: (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Debt Issuance” means the issuance by the Borrower or any Subsidiary of any Indebtedness other than Indebtedness permitted under this Agreement.

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

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

“Default Rate” means (a) with respect to any Obligation for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto and (b) with respect to any Obligation for which a rate is not specified or available, a rate per annum equal to the Base Rate *plus* the Applicable Rate for Base Rate Loans *plus* two percent (2%), in each case, to the fullest extent permitted by Applicable Law.

“Defaulting Lender” means, subject to Section 2.12(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent, the Lender Representative or the Borrower, to confirm in writing to the Administrative Agent, the Lender Representative and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent, the Lender Representative and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so

long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent or the Lender Representative that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.12(b)) as of the date established therefor by the Administrative Agent or the Lender Representative in a written notice of such determination, which shall be delivered by the Administrative Agent, the Lender Representative to the Borrower and each other Lender promptly following such determination.

“Deferred Acquisition Consideration” means any purchase price adjustments, royalty, earn-out, milestone payments, contingent or other deferred payment payments of a similar nature (including any non-compete payments and consulting payments) made in connection with any Permitted Acquisition or other acquisition or investment permitted under this Agreement.

“Delayed Draw Availability Period” means the period from and including the Closing Date to the earliest of (i) the Outside Date, (ii) the date of termination of all of the Delayed Draw Commitments pursuant to Section 2.04(a) or Section 2.04(b), and (iii) the date of termination of the Aggregate Commitments of each Lender pursuant to Section 8.02.

“Delayed Draw Commitment” means, as to each Lender, its obligation to make Delayed Draw Loans to the Borrower pursuant to Section 2.01(b) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Delayed Draw Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Delayed Draw Commitments of all of the Lenders on the Closing Date shall be \$100,000,000.

“Delayed Draw Funding Date” means the date or dates on which the conditions specified in Section 4.02 are satisfied (or waived in accordance with Section 11.01) and the Delayed Draw Loans are funded in accordance with the terms hereof.

“Delayed Draw Loans” has the meaning specified in Section 2.01(b).

“Designated Key Contracts” means those Key Contracts defined in clauses (a) through (h) of the definition thereof, including any replacements of such Key Contracts.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory is itself the subject of any Sanction.

“Designated Non-Cash Consideration” means the fair market value (as determined by the Borrower in good faith) of non-cash consideration received by the Loan Parties and their Subsidiaries in connection with a Disposition pursuant to Section 7.05(e) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer, setting forth the basis of such valuation (which amount will be reduced by the amount of cash or Cash Equivalents received in connection with a subsequent sale or conversion of such Designated Non-Cash Consideration to cash or Cash Equivalents).

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any Sale/Leaseback Transaction) of any property by any Loan Party that constitutes Collateral, including

any sale, assignment, transfer or other disposal, with or without recourse, of any notes, accounts receivable, royalties, milestones, other payments or any rights and claims associated therewith.

“Disputes” has the meaning specified in Section 5.23(d).

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest(s) into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for (x) Qualified Equity Interests and (y) cash in lieu of fractional shares), pursuant to a sinking fund obligation or otherwise (except (i) as a result of a change of control, fundamental change, asset sale or (ii) upon the prior repayment of the Loans and all other Obligations that are accrued and payable and the termination of the Aggregate Commitments), (b) is or becomes redeemable at the option of the holder thereof (other than solely for (x) Qualified Equity Interests and (y) cash in lieu of fractional shares), in whole or in part (except (i) as a result of a change of control, fundamental change, asset sale or (ii) upon the prior repayment of the Loans and all other Obligations that are accrued and payable and the termination of the Aggregate Commitments), (c) is or becomes convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interests that would constitute Disqualified Equity Interests or (d) provides for the scheduled payments of dividends in cash, in each case of clauses (a) through (d), in each case, prior to the date that is 91 days after the Maturity Date; *provided* that, if such Equity Interests are issued pursuant to any plan for the benefit of any employee, director, manager or consultant of the Borrower or its Subsidiaries or by any such plan to such employee, director, manager or consultant, such Equity Interests shall not constitute Disqualified Equity Interests because it may be required to be repurchased by the Borrower or its Subsidiaries (x) to the extent permitted by Section 7.06(e), in order to satisfy applicable statutory or regulatory obligations or (y) to the extent permitted by Section 7.06(j), as a result of the termination, death or disability of such employee, director, manager or consultant.

“Disqualified Institution” means (a) those banks, financial institutions and other persons that have been specified to the Administrative Agent and the Lender Representative by the Borrower in writing at any time prior to the Closing Date, (such list, the “Disqualified Lender List”), (b) any Competitor or Competitor Controller that has been identified to the Administrative Agent and the Lender Representative by the Borrower in writing at any time prior to the Closing Date (which list may be provided to the Lenders upon their request), which list described in this clause (b) may be updated from time to time with the written consent of the Lender Representative and upon written notification thereof to the Administrative Agent by the Borrower after the Closing Date (such list, the “Competitors List” and together with the Disqualified Lender List, the “Disqualified Institutions List”); *provided* that no addition to the Disqualified Institutions List shall apply retroactively to disqualify any party (i) that has previously acquired an assignment or participation interest or (ii) is party to a permitted pending trade as of the date of identification, and which in any event, such addition shall not become effective until two Business Days after such date identified by name in writing by the Borrower to the Administrative Agent and the Lender Representative and (c) any Person that is an Affiliate of the Persons described in clauses (a) and (b) (excluding Bona Fide Debt Fund) that is (i) identified in writing by the Borrower to the Administrative Agent and the Lender Representative from time to time (which addition shall not apply retroactively to disqualify any party (1) that has previously acquired an assignment or participation interest or (2) is party to a permitted pending trade as of the date of such identification, and which in any event, such addition shall not become effective until two Business Days after such date identified by name in writing by the Borrower to the Administrative Agent and the Lender Representative) or (ii) readily identifiable as an Affiliate of such Persons solely on the basis of such Person’s name. For the avoidance of doubt, no Affiliate of the Blackstone Group shall be considered a Disqualified Institution.

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

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

“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 Assignee” means any Person that meets the requirements to be an assignee under Section 11.06 (subject to such consents, if any, as may be required under Section 11.06(b) (iii)).

“Environment” means ambient air, indoor air, vapor, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

“Environmental Claim” means any written notice, claim, demand, litigation, request for information, complaint, citation, summons, investigation, notice of non-compliance or violation, cause of action, consent order, consent decree, or other proceeding by any Governmental Authority or any other Person, arising out of, based on or pursuant to any Environmental Law or related in any way to any actual, alleged or threatened Environmental Liability.

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws (including common law), regulations, standards, ordinances, rules, judgments, orders, decrees, permits, agreements or governmental restrictions relating to pollution or the protection of the Environment or human health (to the extent related to exposure to hazardous materials), including those relating to the handling, use, manufacture, registration, distribution, formulation, packaging, labeling, generation transport, storage, disposal, treatment, Release or threat of Release of or exposure to any Hazardous Materials.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), obligation, responsibility or cost whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law relating to (a) any violation of, or liability under, Environmental Law, (b) the presence, generation, use, handling, transportation, storage, treatment, packaging, labelling or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) Release of any Hazardous Materials, (e) natural resource damage, or (f) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, certification, registration, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities

convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; *provided* that Permitted Convertible Debt shall not be considered an "Equity Interest".

"Equity Issuance" means the issuance on the Closing Date to the Lenders or their designees of shares of common stock of the Borrower pursuant to a stock purchase agreement satisfactory to the Borrower and the Lenders.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

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

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

"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.

"Eurodollar Rate" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) ("LIBOR"), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "LIBOR Rate") at or about 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m., London time, on such date (or if such date is not a Business Day, on the immediately preceding Business Day) for Dollar deposits with an interest period of one (1) month commencing that day.

Notwithstanding the foregoing, for purposes of this Agreement, the Eurodollar Rate shall in no event be less than 1.00% at any time.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate”.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Account” means any of the following: (a) accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Loan Party’s employees, which shall in no event hold in the aggregate more than the amount reasonably expected to meet such payroll expenses for the following calendar month, including bonuses and other payments to be paid within the following calendar month, (b) zero balance accounts, (c) accounts (including trust accounts) used exclusively for third party escrow, customs, insurance, deposits or fiduciary purposes, (d) merchant accounts for which the obligations were incurred in the ordinary course of business, (e) accounts used exclusively for compliance with any (i) Applicable Law to the extent such Applicable Law prohibits the granting of a Lien thereon or (ii) Contractual Obligation to the extent such Contractual Obligation prohibits the granting of a Lien thereon (other than Liens in favor of a counterparty to such Contractual Obligation), (f) accounts which are exclusively used to hold cash or Cash Equivalents that serves as collateral in respect of a Permitted Lien, (g) accounts exclusively used for the receipt of receivables solely funded by Medicare or Medicaid and whose total cash balances shall be automatically swept to an account that is not an Excluded Account, and (h) other accounts, the cash balance of which such accounts, in the case of this clause (h), does not exceed \$500,000 in the aggregate at any time.

“Excluded Property” means, with respect to any Loan Party (a) assets for which a pledge thereof or a security interest therein is prohibited by Applicable Laws after giving effect to the applicable anti-assignment provisions of the UCC and other Applicable law (including any requirement to obtain the consent of any Governmental Authority or third person, unless such consent has been obtained) other than to the extent that any such prohibition would be rendered ineffective pursuant to the UCC or any other Applicable Law, (b) any lease, license or other agreements, or any goods or other property subject to a purchase money security interest, Finance Lease or similar arrangements, in each case to the extent permitted under the Loan Documents, to the extent that a pledge thereof or a security interest therein would violate or invalidate such lease, license or agreement, purchase money, Finance Lease or similar arrangement, or create a right of termination in favor of any other party thereto (other than the Borrower and its Subsidiaries), after giving effect to the applicable anti-assignment clauses of the UCC, Applicable Laws or principles of equity, other than the proceeds thereof and other than to the extent that the assignment of which is expressly deemed effective under the UCC or other Applicable Laws notwithstanding such prohibition, (c) any intent-to-use United States trademark application for which neither (i) an amendment to allege use to bring the application into conformity with 15 U.S.C. §1051(c) has been filed with and accepted by the USPTO nor (ii) a verified statement of use under 15 U.S.C. §1051(d) has been filed with and accepted by the USPTO, (d) letter of credit rights, (e) assets for which a pledge thereof or a security interest therein is prohibited by any contract binding on such assets or would give any other party to such contract the right to terminate its obligations thereunder; *provided*, that (i) any such limitation described in this clause (e) shall only apply to the extent that any such prohibition or termination right could not be rendered ineffective pursuant to the UCC or any other Applicable Law or principles of equity and shall not apply to any proceeds or receivables thereof, the assignment of which is expressly deemed effective under the UCC notwithstanding such prohibition and (ii) in the event of the termination or elimination of any such prohibition or termination right contained in the UCC or any Applicable Law, a security interest in such assets shall be automatically and simultaneously granted under the applicable Collateral Documents and shall be included as Collateral, (f) any governmental licenses (but not the proceeds thereof) or state or local franchises, charters and authorizations, to the extent security interests in favor of the Administrative Agent in such licenses, franchises, charters or authorizations are prohibited or restricted thereby; *provided* that (i) any such limitation described in this clause (f) on the security interests granted shall only apply to the extent that any such prohibition or restriction could not be rendered ineffective pursuant to the UCC of any applicable jurisdiction or any other Applicable Law or principles of equity and shall not apply to any proceeds or receivables thereof, the assignment of which is expressly deemed effective under

the UCC notwithstanding such prohibition and (ii) in the event of the termination or elimination of any such prohibition or restriction contained in any applicable license, franchise, charter or authorization, a security interest in such licenses, franchises, charters or authorizations shall be automatically and simultaneously granted under the applicable Collateral Documents and such licenses, franchises, charters or authorizations shall be included as Collateral, (g) Equity Interests in (A) any Person (other than Harmony and other wholly owned Subsidiaries of the Borrower) to the extent and for so long as the pledge thereof in favor of the Administrative Agent is not permitted by the terms of such Person's joint venture agreement or other applicable Organization Documents or any contractual obligation of such Person, to the extent such contractual obligation is permitted under the Loan Documents, (h) margin stock within the meaning of Section 5.13, (i) Excluded Accounts, (j) any leasehold or subleasehold interests in any real property, (k) motor vehicles and other assets subject to certificates of title with a fair market value of \$2,000,000 or less in the aggregate, (l) any asset subject to a Permitted Lien (other than Liens in favor of the Secured Parties) securing obligations permitted under the Credit Agreement to the extent that the grant of other Liens on such asset (i) would result in a breach, termination, invalidity or violation of, or constitute a default under, the agreement or instrument governing such Permitted Lien (or the transaction or obligations secured thereby), (ii) would result in the loss of use of such asset or (iii) would permit the holder of such Permitted Lien to terminate the Grantor's use of such asset, (m) the Equity Interests of any Foreign Subsidiary or Foreign Subsidiary Holdco of any Loan Party to the extent a pledge of such Equity Interests would cause actual or anticipated material adverse tax consequences to any Loan Party (in the Borrower's reasonable determination from time to time), and (n) those assets as to which the Lender Representative and the Borrower reasonably agree that the cost of obtaining such a security interest or perfection thereof are excessive in relation to the benefit to the Lenders of the security to be afforded thereby; *provided* that the Collateral shall at all times include (and "Excluded Property" shall not include) (i) all proceeds arising from the sale or transfer of any of the foregoing Excluded Property to the extent such proceeds do not otherwise constitute Excluded Property and (ii) except with respect to clauses (a), (b), (c), (e), (f), (g), (h), (j), (l), (m) and (n) above, any of the following items solely to the extent such items pertain to, arise from, are collected on, are distributed on account of or are given in exchange for or in settlement of any Collateral: (1) Accounts, (2) Chattel Paper (including Electronic Chattel Paper and Tangible Chattel Paper), (3) Commercial Tort Claims, (4) Documents, (5) General Intangibles, (6) Instruments, (7) Letter-of-Credit Rights and (8) insurance and insurance claims (it being understood that the foregoing items (1) through (7) shall have the meanings set forth in the UCC).

"*Excluded Subsidiary*" means any of the following, (a) each Immaterial Subsidiary, (b) any (i) non-wholly owned Domestic Subsidiary, (ii) Foreign Subsidiary or (iii) Foreign Subsidiary Holdco (to the extent the Guarantee of the Obligations by such Foreign Subsidiary Holdco would cause actual or anticipated material adverse tax consequences to any Loan Party (in the Borrower's reasonable determination from time to time)), in each case, that is formed, capitalized or acquired solely through an Investment permitted pursuant to Sections 7.03(h), (u)(i) or (v), and (c) any other Subsidiary acquired or formed after the Closing Date with respect to which the Lender Representative and the Borrower reasonably agree that the cost or other consequences (including adverse tax consequences and adverse regulatory consequences) of providing a Guarantee of or granting Liens to secure the Obligations are likely to be excessive in relation

to the value to be afforded thereby. Notwithstanding the foregoing, no Subsidiary (other than a Non-Guarantor Material IP Holder) which holds any Material IP Rights (other than pursuant to clause (y)(ii) of the definition of Permitted License) or which holds any Equity Interests or other Investment (other than intercompany loans) in any Subsidiary of the Borrower which holds Material IP Rights (other than pursuant to clause (y)(ii) of the definition of Permitted License) shall be an Excluded Subsidiary.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) 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 Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) 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 (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01, 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, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(f) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Debt” means all debt outstanding as of the Closing Date under that certain Credit Agreement, dated January 9, 2020 (as amended prior to the date hereof), by and among the Loan Parties party thereto, the lenders party thereto and Orbimed Royalty & Credit Opportunities III, LP, as administrative agent.

“Facility Termination Date” means the date as of which all of the following shall have occurred: (a) the Aggregate Commitments have terminated and (b) all Obligations have been paid in full (other than contingent indemnification obligations).

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

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

“FDA” means the U.S. Food and Drug Administration, or any successor agency thereto having substantially the same functions and jurisdiction.

“FD&C Act” means the Federal Food, Drug, and Cosmetic Act (or any successor thereto), as amended from time to time, and the rules and regulations issued or promulgated thereunder.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that (a) if such day is not a Business Day, the Federal Funds Rate for

such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average of the quotations (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it; *provided, further*, that if the Federal Funds 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 that certain Fee Letter, dated as of the date hereof, between the Borrower, the Lender Representative and the other parties party thereto.

“Finance Lease” means any lease that has been or is required to be, in accordance with GAAP, recorded, classified and accounted for as a financing lease. For the avoidance of doubt, an operating lease shall not be considered a Finance Lease.

“Foreign Lender” means a Lender that is not a U.S. Person. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

“Foreign Subsidiary Holdco” means any Domestic Subsidiary that has no material assets other than Equity Interests or Equity Interests and Indebtedness of one or more Foreign Subsidiaries.

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

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

“GAAP” means generally accepted accounting principles in the United States set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession) including, without limitation, the FASB Accounting Standards Codification, that are applicable to the circumstances as of the date of determination, consistently applied and subject to Section 1.03.

“Governmental Authority” means (a) the government of the United States or (b) any other nation or jurisdiction, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, any supra-national bodies such as the European Union or the European Central Bank).

“Government Reimbursement Program” means (a) Medicare, (b) Medicaid, (c) the Federal Employees Health Benefit Program under 5 U.S.C. §§ 8902 et seq., (d) TRICARE, (e) CHAMPVA, (f) any “federal health care program” as defined in 42 U.S.C. §1320a-7b(f), and (g) if applicable within the context of this Agreement, any agent, administrator, administrative contractor, intermediary or carrier for any of the foregoing.

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of the kind described in

clauses (a) through (g) of the definition thereof or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness of the kind described in clauses (a) through (g) of the definition thereof or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed or expressly undertaken by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case, in the ordinary course of business, or customary or reasonable indemnity obligations in effect on the Closing Date, or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranteed Obligations” has the meaning set forth in Section 10.01.

“Guarantors” means, collectively, Harmony and the other Subsidiaries of the Borrower that are not Excluded Subsidiaries as are or may from time to time become parties to this Agreement pursuant to Section 6.13.

“Guaranty” means, collectively, the Guarantee made by the Guarantors under Article X in favor of the Secured Parties, together with each other guaranty delivered pursuant to Section 6.13.

“Harmony” has the meaning specified in the introductory paragraph hereto.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, per- and polyfluoroalkyl substances, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form regulated pursuant to any Environmental Law.

“Health Care Activities” means activities involving or related to research, development, manufacture, packaging, labeling, storage, testing, commercialization, import, export, distribution, promotion, marketing, product and patient support, pricing and price reporting, sale, coverage and reimbursement of a Product or related services.

“Health Care Laws” means all Laws related to Health Care Activities applicable to the Borrower and each Subsidiary or by which any of their respective properties, operations, products or other assets is bound or affected, including: (a) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 et seq.), (b) fraud and abuse Laws such as the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the civil False Claims Act (31 U.S.C. §§ 3729 et. seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)),

the exclusion Laws (42 U.S.C. § 1320a-7), the so-called federal “sunshine” law or Open Payments program (42 U.S.C. § 1320a-7h) and analogous state Laws requiring reporting of transfers of value between pharmaceutical manufacturers and members of the healthcare industry, and state Laws regulating interactions between pharmaceutical manufacturers and members of the healthcare industry, (c) Laws regulating the purchase of any health care product or service by or on behalf of any Governmental Authority or other Person and the pricing, price reporting, discounting or rebating of such health care product or service such as the Medicaid Drug Rebate Program (42 U.S.C. § 1396r-8) and any state supplemental rebate program, the Public Health Service Act (42 U.S.C. § 256b), the VA Federal Supply Schedule (38 U.S.C. § 8126) or any applicable state pharmaceutical assistance program agreement or U.S. Department of Veterans Affairs agreement and any successor government programs, (d) Laws related to pharmaceutical manufacturer participation in any Government Reimbursement Program; (e) Laws applicable to the manufacture or distribution of prescription drugs, including state Laws requiring licensure of pharmaceutical manufacturers and distributors; (f) coding, coverage, payment, or reimbursement of a health care product or service by a Government Reimbursement Program or private health care benefit program, and (g) HIPAA and Other Health Privacy Laws, including in each case any other similar Laws and including for each of the foregoing as amended, modified or supplemented from time to time, and any successor statutes thereto and regulations promulgated from time to time thereunder.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), as the same may be amended, modified, or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

“HIPAA and Other Health Privacy Laws” means (a) the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009); and (b) any other federal, state or local Laws governing the privacy and security of health information or breach of same, each as may be amended, modified, or supplemented from time to time and any successor statute thereto.

“Immaterial Subsidiary” means, on any date of determination, any Subsidiary of the Borrower (excluding, for the avoidance of doubt, Harmony) that, together with its Subsidiaries, after eliminating intercompany obligations solely as between such Subsidiary and its Subsidiaries, as of the last day of the most recently ended Measurement Period, generated less than 5.00% of Consolidated revenue of the Borrower and its Subsidiaries; *provided, however*, that if at any time there are Subsidiaries which are classified as “Immaterial Subsidiaries” but which collectively, as of the last day of the most recently ended Measurement Period, generated more than 5.00% of Consolidated revenue of the Borrower and its Subsidiaries, after eliminating intercompany obligations, then the Borrower shall promptly re-designate one or more of such Subsidiaries as not Immaterial Subsidiaries such that, after such designation hereunder, the Subsidiaries that are designated as Immaterial Subsidiaries did not, as of the last day of the most recently ended Measurement Period, generate more than 5.00% of Consolidated revenue of the Borrower and its Subsidiaries. Notwithstanding the foregoing, no Subsidiary which holds any Material IP Rights or which holds any Equity Interests or other Investment in any Subsidiary of the Borrower which holds Material IP Rights shall be an Immaterial Subsidiary.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following:

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

(b) all reimbursement obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit or other instruments plus the aggregate amount of drawings thereunder that have not been reimbursed);

(c) net obligations of such Person under any Swap Contract;

(d) all obligations (including, without limitation, earnout obligations) of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable or similar obligations, including accrued expenses owed to a trade creditor incurred in the ordinary course of business, (ii) accruals for payroll and other similar employee liabilities accrued in the ordinary course of business and (iii) royalty or milestone payments not yet due and payable), in each case, to the extent such obligations have become due and payable;

(e) all indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, but limited to the lesser of the fair market value of such property (as determined in good faith by the Borrower at the date of determination) and the principal amount of such Indebtedness if recourse is solely to such property;

(f) all Attributable Indebtedness in respect of Finance Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person in respect of Disqualified Equity Interests or Permitted Convertible Debt; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

Notwithstanding anything herein to the contrary, Indebtedness shall not include (i) prepaid or deferred revenue arising in the ordinary course of business, (ii) endorsements of checks or drafts arising in the ordinary course of business, (iii) Equity Interests of the Borrower to the extent not constituting Disqualified Equity Interests and obligations in respect of any Permitted Bond Hedge Transaction or Permitted Warrant Transaction, (iv) deferred compensation and severance, pension, health and welfare retirement and equivalent benefits or any deferred obligations incurred under ERISA until such obligations become a liability on the balance sheet of such Person in accordance with GAAP, (v) deemed Indebtedness pursuant to Accounting Standards Codification 825 or 480 (formerly SFAS Nos. 133 or 150, respectively), (vi) installment payments or the deferred purchase price of property or services to the extent payable solely in Equity Interests (other than Disqualified Equity Interests) of the Borrower, (vii) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset, (viii) notes or loans if (and so long as) proceeds are held in escrow pursuant to customary escrow arrangements pending the release thereof to repay, defease, redeem or satisfy and discharge such notes or loans, and (ix) notes that have been discharged or legally defeased

under any indenture or similar agreement pursuant to customary discharge or defeasance provisions and such notes would not be a liability on the balance sheet of such Person in accordance with GAAP.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all obligations as described above.

“Indemnified Taxes” means all (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

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

“Information” has the meaning specified in Section 11.07(a).

“Initial Commitment” means, as to each Lender, its obligation to make Initial Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(b) under the caption “Initial Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Initial Commitments of all of the Lenders on the Closing Date shall be \$200,000,000, which shall be funded on the Closing Date.

“Initial Loans” has the meaning specified in Section 2.01(a).

“Intellectual Property” means all (i) Patents and all patent applications of any type, registrations and renewals, reissues, reexaminations and patent rights in any lawful form thereof; (ii) Trademarks and all applications, registrations and renewals thereof; (iii) Copyrights and other works of authorship (registered or unregistered), and all applications, registrations and renewals thereof; (iv) computer software, databases, data and documentation; (v) trade secrets and confidential business information, whether patentable or unpatentable and whether or not reduced to practice, know-how, inventions, manufacturing processes and techniques, research and development information, data and other information, including any such information included in or supporting Key Permits; (vi) proprietary financial, marketing and business data, pricing and cost information, business, finance and marketing plans, customer and prospective customer lists and information, and supplier and prospective supplier lists and information; (vii) other intellectual property or similar proprietary rights; (viii) copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (ix) any and all improvements, developments, refinements, additions or subtractions to any of the foregoing.

“Intercompany Debt” has the meaning specified in Section 7.02(d).

“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided, however*, that if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months thereafter; *provided that*:

(a) any Interest Period that would otherwise end on a day that is not a Business Day 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 next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person (including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor guaranties Indebtedness of such other Person); *provided, however* that endorsements of negotiable instruments and documents in the ordinary course of business or consistent with past practice will not be deemed to be an Investment, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person which constitute all or substantially all of the assets of such Person or of a division, line of business or other business unit of such Person. For purposes of covenant compliance, the amount of any Investment shall be (i) the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, minus (ii) (x) the amount of dividends or distributions actually received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash or Cash Equivalents (not in excess of the amount of Investments originally made) and (y) any cancellation of any Investment in the form of a Guarantee (not in excess of the amount of Investment originally made). If the Borrower or any Subsidiary issues, sells or otherwise Disposes of Equity Interests of a Person that is a Subsidiary, such that after giving effect thereto such Person is no longer a Subsidiary, any Investment by the Borrower or any Subsidiary in such Person remaining after giving effect thereto will be deemed to be a new Investment at such time. Notwithstanding anything to the contrary in the foregoing, the purchase of any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction by the Borrower or any of its Subsidiaries and the performance of its obligations thereunder shall not be an Investment.

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

“IP Rights” means, collectively, any Owned Intellectual Property and/or any Licensed Intellectual Property.

“IRS” means the United States Internal Revenue Service.

“Joinder Agreement” means a joinder agreement substantially in the form of Exhibit D executed and delivered in accordance with the provisions of Section 6.13.

“Joint Ventures” means (a) any Person which would constitute an “equity method investee” of the Borrower or any of the Subsidiaries and (b) any Person in whom the Borrower or any of the Subsidiaries beneficially owns any Equity Interest that is not a Subsidiary.

“Key Contracts” means (a) the License Agreement, (b) that certain Trademark License Agreement, dated as of August 23, 2018, among Bioprojet Europe, Ltd., Bioprojet Societe Civile de Recherche and

Harmony, (c) that certain Contract Manufacturing Agreement, dated as of December 19, 2019, by and between Harmony and Corden Pharma Chenove SAS (as may be terminated and, in connection with such termination, replaced from time to time by the Borrower or its Subsidiaries in their reasonable business judgment), (d) that certain Packaging Agreement, dated as of December 3, 2018, by and between Harmony and Carton Service, Inc. (d.b.a Pharma Packaging Solutions) (as may be terminated and, in connection with such termination, replaced from time to time by the Borrower or its Subsidiaries in their reasonable business judgment), (e) that certain Manufacturing Services Agreement, dated as of March 13, 2018, by and between Patheon UK Limited and Bioprojet Pharma SAS (as may be terminated and, in connection with such termination, replaced from time to time by the Borrower or its Subsidiaries in their reasonable business judgment), (f) that certain Deed of Novation, dated as of January 31, 2019, by and among Patheon UK Limited, Bioprojet Pharma SAS and Harmony (as may be terminated and, in connection with such termination, replaced from time to time by the Borrower or its Subsidiaries in their reasonable business judgment), (g) any other agreement between Bioprojet Societe Civile de Recherche, Bioprojet Pharma SAS or Bioprojet Europe, Ltd. or any of their Affiliates, on the one hand, and the Borrower or any of its Subsidiaries, on the other hand, the absence of, or breach or default under, which would reasonably be expected to result in a material adverse consequence under any Designated Key Contract (excluding any agreements (including investment agreements) to which Bioprojet Societe Civile de Recherche, Bioprojet Pharma SAS or Bioprojet Europe, Ltd. or any of their Affiliates is a party with the Borrower and/or one or more of its direct or indirect shareholders, solely in their respective capacities as holders of the Equity Interests of the Borrower the breach of which would not create a termination right or default under any other Key Contract, including, without limitation, agreements with respect to the issuances thereof), in each case as amended, supplemented or otherwise modified from time to time and (h) all other contracts, agreements or licenses, that the early termination, cancellation, loss, abandonment or other disposition of which, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect, in each case as amended, supplemented or otherwise modified from time to time.

“Key Permits” means all Permits relating to the Products, including all Regulatory Authorizations.

“Knowledge” or “knowledge” shall mean and refer to (i) the actual knowledge of a Responsible Officer of any Loan Party or (ii) the knowledge that such Responsible Officer would have obtained if such officer had engaged in good faith and diligent performance of such officer's duties. For the avoidance of doubt, “know”, “known” and “knew,” words, or phrases of similar import, relating to the knowledge or the awareness of any Loan Party used in this Agreement or any other Loan Document, shall have the respective correlative meaning thereto.

“Laws” means, collectively, all supranational, foreign, federal, state, local, provincial, municipal or other constitution, treaties, rules, legally binding regulatory policy statement, statute, law (including common law), ordinance, regulation, rule, code or similar requirement of law enacted, adopted, issued or promulgated 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.

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

“Lender Notice” has the meaning specified in [Section 11.21](#).

“Lender Representative” means, initially and as of the Closing Date and until the earlier of such time as the Blackstone Group ceases to constitute the Required Lenders or Blackstone has resigned by

written notice to the Required Lenders, the Administrative Agent and the Borrower, Blackstone; it being agreed that, upon and following such time, all references herein or in the other Loan Documents to the Lender Representative shall be deemed to be a reference to the Required Lenders.

“Lending Office” means, as to the Administrative Agent or any Lender, the office or offices of such Person described as such in such Person’s Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Borrower and the Administrative Agent; which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

“LIBOR” has the meaning specified in the definition of Eurodollar Rate.

“License Agreement” means that certain License and Commercialization Agreement, dated as of July 27, 2018, between Bioprojet and Harmony, (a) as amended by that certain Amendment No. 1 to License and Commercialization Agreement, dated as of August 27, 2018, (b) as modified by (i) that certain Limited Waiver of License and Commercialization Agreement, dated as of March 27, 2019 (as amended by (x) that certain Amendment to Limited Waiver of License and Commercialization Agreement, dated as of April 5, 2019 and (y) that Second Amendment to Limited Waiver of License and Commercialization Agreement, dated as of April 9, 2019), (ii) that certain Side Letter Agreement to License and Commercialization Agreement, dated as of August 27, 2020 and (iii) that certain Side Letter agreement to License and Commercialization Agreement Concerning the Status of Exporter, dated as of October 1, 2020 and (c) as may be further amended, supplemented, amended and restated or otherwise modified from time to time after the date hereof in accordance with the terms thereof and hereof.

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

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

“Limited Condition Transaction” means any Acquisition or similar Investment of or in any assets, business or Person permitted by this Agreement that the Borrower or one or more of its Subsidiaries is contractually committed to consummate (it being understood that such commitment may be subject to conditions precedent, which conditions precedent may be amended, satisfied or waived in accordance with the terms of the applicable agreement) and the consummation of which is not conditioned on the availability of, or on obtaining, third party financing.

“Liquidity” means, as of any date of determination, the difference between (x) the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties as of such date maintained in accounts in the United States that are not subject to any Liens other than Liens securing the Obligations, Liens permitted by Section 7.01(c) and bankers’ liens minus (y) the Accrued Royalty Amount.

“Loan” means an extension of credit by a Lender to the Borrower under Article II.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Collateral Documents, (d) each Joinder Agreement, (e) the Fee Letter, (f) the Agency Fee Letter and (g) all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing and any amendments, modifications or supplements thereto or

to any other Loan Document or waivers hereof or to any other Loan Document; *provided, however*, that for purposes of Section 11.01, “Loan Documents” shall mean this Agreement and the Collateral Documents.

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, in each case, shall be substantially in the form of Exhibit E or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

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

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Mandatory Prepayment” has the meaning set forth in Section 2.03(b)(i).

“Master Agreement” has the meaning set forth in the definition of “Swap Contract.”

“Material Adverse Effect” means a material adverse effect on (a) the operations, business, assets, or financial condition of the Borrower and its Subsidiaries taken as a whole; or (b) (i) the ability of the Loan Parties, taken as a whole, to perform their payment Obligations under the Loan Documents to which they are a party, (ii) the legality, validity, binding effect or enforceability against the Loan Parties of this Agreement or of the other Loan Documents to which they are a party, taken as whole or (iii) the rights and remedies of the Administrative Agent and the Lenders under any Loan Documents (other than due to the action or inaction of the Administrative Agent, the Lenders or any other Secured Party); or (c) the Borrower and its Subsidiaries rights under, or anticipated revenues or liabilities arising from, any of the Key Contracts; or (d) Wakix, the Wakix NDA, the Wakix NCE or the Wakix ODE.

“Material IP Rights” means (i) the rights of the Borrower and its Subsidiaries under those Key Contracts defined in clauses (a) and (b) of the definition thereof, (ii) any rights of the Borrower and its Subsidiaries in respect of material Intellectual Property under those Key Contracts defined in clauses (c) and (h) of the definition thereof and (iii) any material Intellectual Property, in each case of clauses (i), (ii) and (iii) above, related to the Specified Products.

“Material Real Property” means any fee-owned real property that is owned by any Loan Party with a fair market value in excess of \$2,000,000, as reasonably estimated by the Borrower in good faith.

“Maturity Date” means the date that is five years from the Closing Date; *provided, however*, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Measurement Period” means, at any date of determination, the most recently completed four (4) fiscal quarters of the Borrower for which financial statements have been delivered, or were required to have been delivered, pursuant Section 6.01.

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

“Mortgage” or “Mortgages” means, individually and collectively, as the context requires, each of the fee mortgages, deeds of trust and deeds executed by a Loan Party that purport to grant a Lien to the Administrative Agent (or a trustee for the benefit of the Administrative Agent) for the benefit of the Secured

Parties in any Mortgaged Properties, in form and substance reasonably satisfactory to the Administrative Agent and the Lender Representative.

“Mortgaged Property” means any Material Real Property of a Loan Party listed on Schedule 1.01(c) and, thereafter, shall include each other Material Real Property with respect to which a Mortgage is granted pursuant to Section 6.14(b).

“Mortgaged Property Support Documents” means, with respect to any real property subject to a Mortgage, the deliveries and documents described in Section 6.14(b) and Section 6.18(b).

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

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

“Net Cash Proceeds” means the aggregate cash or Cash Equivalents proceeds (other than the proceeds of any business interruption insurance, so long as no Specified Event of Default has occurred or is continuing) received by the Borrower or any Subsidiary in respect of any Disposition, Debt Issuance or Involuntary Disposition (excluding, for the avoidance of doubt, any such amounts held in escrow), net of (a) fees, costs and expenses incurred in connection therewith (including, without limitation, legal, accounting, recording, consultant, and investment banking fees and sales commissions), (b) taxes paid or reasonably estimated to be payable in connection therewith and any repatriation costs associated with receipt or distribution by the applicable taxpayer of such proceeds, (c) in the case of any Disposition or any Involuntary Disposition, the amount necessary to retire any Indebtedness secured by a Lien on the assets subject to such Disposition or Involuntary Disposition other than any Indebtedness with a Lien ranking *pari passu* with or junior to the Lien securing the Obligations, together with any applicable premiums, penalties, interest or breakage costs, (d) any reserve for adjustment in respect of (x) the sale price of the property that is the subject of such Disposition established in accordance with GAAP and (y) any liabilities associated with such property and retained by any Loan Party after such Disposition, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction and (e) in the case of any Disposition or Involuntary Disposition by a Subsidiary that is a joint venture or other Subsidiary that is not a wholly owned Subsidiary, the pro rata portion of the Net Cash Proceeds thereof (calculated without regard to this clause (e)) attributable to the minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Subsidiary as a result thereof, and it being understood that “Net Cash Proceeds” shall include, without limitation, (i) any cash or Cash Equivalents received upon the Disposition of any non-cash consideration received by the Borrower or any Subsidiary in any such Disposition or Involuntary Disposition and (ii) upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in clause (d).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Guarantor Material IP Holder” means any of the following, in each case, that is formed, capitalized or acquired solely through an Investment permitted pursuant to Sections 7.03(h), (u)(i) or (v); (a)(i) any non-wholly Subsidiary or (ii) any Foreign Subsidiary Holdco, in each case, that holds Material IP Rights and (b) any Foreign Subsidiary Holdco that directly or indirectly owns the Equity Interests of any Foreign Subsidiary described in clause (a)(ii) above.

“Note” means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of Exhibit G.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit J or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“NPL” means the National Priorities List under CERCLA.

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

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

“Offer Notice” has the meaning specified in Section 11.21.

“Officer’s Certificate” means a certificate substantially the form of Exhibit H or any other form approved by the Lender Representative.

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

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

“Other 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 3.06).

“Outside Date” means August 9, 2022 or such later date as may be agreed by the Lender Representative and the Borrower in their sole discretion and notified by the Borrower or the Lender Representative to the Administrative Agent in writing.

“Outstanding Amount” means, on any date, the aggregate outstanding principal amount of Loans after giving effect to any Borrowings and prepayments or repayments of Loans occurring on such date.

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

“Paragon Investors” means (a) Marshman Fund Trust I U/A/D 5/1/08, (b) Marshman Fund Trust II U/A/D 5/1/08 or (c) any Controlled Investment Affiliate of any of the foregoing.

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

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

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

“Patriot Act” has the meaning specified in Section 11.19.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate or with respect to which the Borrower or any ERISA Affiliate has any liability and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permits” means any permit, approval, clearance, authorization, license, certificate, certification, concession, grant, franchise, variance, submission, notification, registration, amendment, supplement, exemption or permission obtained from or submitted to any Governmental Authority.

“Permitted Acquisition” means an Acquisition as to which the following conditions have been satisfied:

(a) immediately before and after giving effect to such Acquisition, no Event of Default shall then exist or would exist after giving effect thereto; provided, that, in the case of an Acquisition that constitutes a Limited Condition Transaction, such condition shall be deemed satisfied so long as (i) no Event of Default is continuing as of the date the applicable definitive agreement in respect of such Limited Condition Transaction is entered into and (ii) no Specified Event of Default is continuing as of the date such Limited Condition Transaction is consummated;

(b) either (i) the total purchase price paid of all Acquisitions consummated pursuant to this clause (b)(i) (excluding any Deferred Acquisition Compensation and any other payments not made on the date an Acquisition is consummated) does not exceed \$30,000,000, or (ii) the Lender Representative shall have received and have had a reasonable opportunity to review all requested documentation or other information in respect of such Acquisition, and shall have consented to such Acquisition in its sole discretion;

(c) immediately before and after giving effect to the Acquisition, the Loan Parties are in compliance with the Liquidity covenant set forth in Section 7.11;

(d) the Total Leverage Ratio, both immediately before and after giving effect to such Acquisition on a Pro forma Basis, is not greater than the Target Leverage;
and

(e) The assets acquired shall be acquired by a Loan Party or, if an entity or entities are acquired, such entities shall become Loan Parties in accordance with Section 6.13.

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event, reclassification or other similar fundamental change of the Borrower, or adjustment with respect to the common stock of the Borrower) that is (A) purchased or otherwise entered into by the Borrower in connection with the issuance of any Permitted Convertible Debt, (B) settled in common stock of the Borrower (or such other securities or property), cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower and (C) on terms and conditions customary for bond hedge transactions in respect of transactions related to public market convertible indebtedness (pursuant to a public offering or an offering under Rule 144A or Regulation S of the Securities Act) as reasonably determined by the Borrower; provided, that, the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Permitted Warrant Transaction (or in the case of capped calls, where such proceeds are not received but are reflected in a reduction of the premium), does not result in the incurrence of additional Indebtedness by the Borrower (other than Indebtedness from the issuance of Permitted Convertible Debt in connection with such Permitted Bond Hedge Transaction).

“Permitted Convertible Debt” means Indebtedness issued by the Borrower having a feature which entitles the holder thereof to convert or exchange all or a portion of such Indebtedness into Equity Interests of the Borrower; provided, that (i) such Permitted Convertible Debt shall be unsecured and contractually subordinated to the Loans, (ii) no Subsidiary of the Borrower shall guarantee Permitted Convertible Debt,

(iii) Permitted Convertible Debt shall not include any financial maintenance covenants and shall only include covenants and defaults that are customary for public market convertible indebtedness (pursuant to a public offering or an offering under Rule 144A or Regulation S of the Securities Act), as determined by the Borrower in its good faith judgment, (iv) no Event of Default shall have occurred and be continuing at the time of incurrence of such Permitted Convertible Debt or would immediately result therefrom, (v) such Permitted Convertible Debt shall not require cash payments of interest or principal prior to, and does not have a scheduled maturity date earlier than, 91 calendar days after the Maturity Date, (vi) the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Borrower certifying as to the foregoing; and (viii) the Borrower shall have provided the Lenders with a written irrevocable offer to purchase such Indebtedness not less than 20 Business Days prior to its proposed issuance, which offer shall include a summary of the material terms of such Indebtedness and copies of the definitive documentation therefore, and shall provide the Lenders not less than 10 Business Days to decide whether to accept such offer.

“Permitted License” means any non-exclusive or exclusive license for the use of (or covenant not to sue with respect to) any Intellectual Property of the Borrower or any of its Subsidiaries or a grant of rights for development, manufacture, production, commercialization (including commercial sales to end users), marketing, promotion, co-promotion, sales or distribution which, (x) if related to Wakix, is solely between Loan Parties and (y) if not related to Wakix, shall either (i) solely be between Loan Parties or (ii) relate solely to the development, manufacture, production, commercialization (including commercial sales to end users), marketing, promotion, co-promotion, sales or distribution of the relevant Product outside of the United States.

“Permitted Liens” has the meaning set forth in [Section 7.01](#).

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to the Borrower’s common stock (or other securities or property following a merger event, reclassification or other change of the common stock of the Borrower) sold by the Borrower, substantially concurrently with any purchase by the Borrower of a Permitted Bond Hedge Transaction and settled in common stock of the Borrower, cash or a combination thereof (such amount of cash determined by reference to the price of the Borrower’s common stock or such other securities or property), and cash in lieu of fractional shares of common stock of the Borrower, with a strike price higher than the strike price of the Permitted Bond Hedge Transaction.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, fund, account, Governmental Authority or other entity.

“Personal Data” means any data or information in any media that is linked to the identity of a particular third-party individual natural persons (including any information that, alone or in combination with any other information held by the Borrower and its Subsidiaries, can be used to specifically identify an individual person) and any other data or information that constitutes personal data or personal information, including “individually identifiable health information,” under Applicable Laws, including, as applicable, an individual’s first and last name, home address, telephone number, fax number, email address, social security number or other Governmental Authority issued identifier (including state identification number, tax identification number, driver’s license number, or passport number), precise geolocation information of an individual, biometric data, medical or health information, credit card or other financial information, cookie identifiers associated with an individual’s web browsing activity, or any other browser or device specific number or identifier, and web or mobile browsing or usage information that is linked to the foregoing.

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

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

“Platform” has the meaning specified in Section 6.02.

“Pledged Equity” has the meaning specified in the Security Agreement.

“Prime Rate” means, for any day, a rate per annum equal to the rate last quoted by The Wall Street Journal as the “base rate on corporate loans posted by at least 70% of the nation’s largest banks” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably determined by the Administrative Agent (which determination shall be conclusive absent manifest error)) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent (which determination shall be conclusive absent manifest error)).

“Pro Forma Basis” means, with respect to the calculation of the Total Leverage Ratio, the amount of Consolidated EBITDA or any other financial test or ratio hereunder and for any other specified purpose hereunder, and for purposes of determining compliance with the covenant set forth in Section 7.11, in each case as of any date, that such calculation shall give pro forma effect to all Permitted Acquisitions (with any such incurrence of Indebtedness being deemed to be amortized over the applicable testing period in accordance with its terms) (and the application of the proceeds from any such event, asset sale or debt incurrence) that have occurred during the Measurement Period ended on the applicable date of determination and during the period immediately following the applicable date of determination and prior to or simultaneously with the event for which the calculation of any such ratio on such date of determination is made, including pro forma adjustments arising out of events which are attributable to proposed Permitted Acquisitions, using, for purposes of determining such compliance with a financial test or ratio (including any incurrence test), the historical financial statements of all entities, divisions or lines or assets so acquired or sold and the consolidated financial statements of the Borrower and its Subsidiaries, calculated as if such Permitted Acquisitions, and all other Permitted Acquisitions that have been consummated during the relevant period, and any Indebtedness incurred or repaid in connection therewith, had been consummated (and the change in Consolidated EBITDA resulting therefrom) and incurred or repaid at the beginning of such period. Whenever pro forma effect is to be given to any Permitted Acquisitions, the pro forma calculations shall be made in good faith by a Responsible Officer and shall be subject to the reasonable satisfaction of the Lender Representative. If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of the event for which the calculation is made had been the applicable rate for the entire test period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower may designate.

“Products” means (a) Wakix and (b) any current or future product, drug, biologic, or medical device that is researched, developed, manufactured, packaged, labeled, stored, tested, commercialized, imported, exported, distributed, promoted, marketed or sold by or on behalf of the Borrower and its Subsidiaries, including, without limitation, marketed products and products under development.

“Product Authorizations” means any and all approvals, licenses, notifications, registrations, clearances or authorizations or other Permits of any Governmental Authority necessary for the testing, manufacture, development, distribution, use, storage, import, export, promotion, marketing, sale or other commercialization of a Product in any country or jurisdiction, including without limitation registration and listing, INDs (as defined below), New Drug Applications (including the Wakix NDA or any other New Drug Application directed to pitolisant hydrochloride and any moiety thereof), any related orphan drug exclusivity designation and approval (including the Wakix ODE), any related new chemical entity designation and approval (including the Wakix NCE), and similar applications.

“Public Lender” has the meaning specified in [Section 6.02](#).

“Qualifying Control Agreement” means an agreement among a Loan Party, a depository institution or securities intermediary and the Administrative Agent, which agreement is in form and substance reasonably acceptable to the Administrative Agent and the Lender Representative and which provides the Administrative Agent with “control” (as such term is used in Article 9 of the UCC) over the deposit account(s) or securities account(s) described therein.

“Recipient” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Register” has the meaning specified in [Section 11.06\(c\)](#).

“Regulation U” means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Reinvestment Period” has the meaning set forth in [Section 2.03\(b\)\(i\)](#).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, investment committee members, accountants, agents, trustees, administrators, managers, advisors, consultants, attorneys, current or prospective investors, advisors, financing or funding sources, service providers and representatives of such Person and of such Person’s Affiliates.

“Release” means any actual or threatened release, spill, emission, discharge, deposit, dispersal, disposal, leaking, pumping, pouring, dumping, emptying, placing, injection or leaching or migration into or through the Environment.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“Required Lenders” means, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Resignation Effective Date” has the meaning set forth in [Section 9.06\(a\)](#).

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

“Responsible Officer” means the chief executive officer, chief financial officer, chief compliance officer, chief strategy officer, general counsel or controller of a Loan Party, and, solely for purposes of the

delivery of incumbency certificates pursuant to [Section 4.01\(b\)](#), the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to [Article II](#), any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party, the Administrative Agent and the Lender Representative. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. To the extent requested by the Administrative Agent or the Lender Representative, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance reasonably satisfactory to the Lender Representative.

“[Restricted Payment](#)” means (a) any dividend or other distribution, direct or indirect, on account of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares (or equivalent) of any class of Equity Interests of the Borrower or any of its Subsidiaries, now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding; *provided*, that the issuance of, entry into (including any payments of premiums in connection therewith), performance of obligations under, and conversion, exercise, repurchase, redemption, settlement or early termination or cancellation of (whether in whole or in part and including by netting or set-off) (in each case, whether in cash, common stock of the Borrower or, following a merger event or other change of the common stock of Borrower, other securities or property) any Permitted Convertible Debt (subject to [Section 7.14](#)), any Permitted Warrant Transactions or any Permitted Bond Hedge Transactions, or the satisfaction of any condition that would permit or require any of the foregoing, including any payment or delivery in connection with a Permitted Warrant Transaction or Permitted Bond Hedge Transaction by (i) delivery of shares of the Borrower’s common stock upon net share settlement thereof and any related purchase of such common stock required to be made in connection with such delivery, (ii) set-off or payment of an early termination payment or similar payment thereunder, in each case, in the Borrower’s common stock upon any early termination thereof or (iii) in the event of cash settlement upon settlement, any payment of a cash settlement or equivalent amount, in each case, shall not constitute a Restricted Payment by the Borrower.

“[Revolving Credit Facility](#)” has the meaning set forth in [Section 7.02\(x\)](#).

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

“[Sale/Leaseback Transaction](#)” means an arrangement relating to property now owned or hereafter acquired by any Loan Party or any Subsidiary whereby any Loan Party or any Subsidiary transfers such property to a Person and any Loan Party or any Subsidiary leases it from such Person, other than leases between Loan Parties and their Subsidiaries.

“[Sanction\(s\)](#)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“[HMT](#)”) or other relevant sanctions authority.

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

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Indemnitees and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Securities Act” means the Securities Act of 1933, including all amendments thereto and regulations promulgated thereunder.

“Security Agreement” means the security and pledge agreement, dated as of the Closing Date, executed in favor of the Administrative Agent by each of the Loan Parties, as amended, modified, extended, restated, replaced or supplemented from time to time.

“Security Breach” means any (i) unauthorized acquisition of, access to, loss of, or misuse (by any means) of Personal Data; (ii) unauthorized or unlawful processing, sale, or rental of Personal Data; (iii) other act or omission that compromises the security, integrity, or confidentiality of Personal Data; or (iv) phishing, ransomware or other cyberattack that results in a monetary loss.

“SEMS” means Superfund Enterprise Management System maintained by the U.S. Environmental Protection Agency.

“Solvency Certificate” means a solvency certificate in substantially in the form of Exhibit F.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the aggregate fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the aggregate present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) 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, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Event of Default” means an Event of Default pursuant to Section 8.01(a) or Section 8.01(f).

“Specified Products” means Wakix and any other Product that is material to the business of the Borrower and its Subsidiaries, taken as a whole, it being understood that any Product as to which the Borrower and its Subsidiaries have invested \$20 million or more in the acquisition or development of such Product or which represents not less than 10% or \$25 million, in each case, of the Consolidated revenues of the Borrower and its Subsidiaries shall be deemed to be material.

“Subordinated Debt” means Indebtedness incurred by any Loan Party which, if secured, is subordinated in Lien priority to the Lien securing the Obligations and, in all cases, is subordinated in right of payment to the prior payment of the Obligations pursuant to a subordination agreement in form and substance reasonably satisfactory to the Lender Representative.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of Voting Stock is at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more

intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement. Notwithstanding anything to the contrary in the foregoing, neither any Permitted Bond Hedge Transaction nor any Permitted Warrant Transaction shall be a Swap Contract.

“Swap Obligations” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

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

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the Consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including Sale/Leaseback Transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“Target” has the meaning set forth in the definition of “Acquisition.”

“Target Leverage” means 3.90:1.00.

“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.

“Third Party” means any Person other than the Borrower or any of its Subsidiaries.

“Threshold Amount” means \$7,500,000.

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

“Total Funded Debt” means, as of any date of determination, the aggregate amount of Indebtedness of the Borrower and its Subsidiaries consisting of Indebtedness of the type described in clauses (a), (b) (to the extent not cash collateralized and more than one (1) Business Day overdue), (f) and (g) of the definition of Indebtedness.

“Total Leverage Ratio” means, with respect to any Measurement Period, the ratio of (a) Total Funded Debt as of the last day of such Measurement Period minus the lesser of (x) the aggregate amount of unrestricted cash and Cash Equivalents of the Borrower and its Subsidiaries as of such date maintained in accounts in the United States and (y) \$10,000,000 to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for such Measurement Period.

“Trade Date” has the meaning specified in Section 11.06(g)(i).

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

“Transactions” means, collectively, (a) the execution and delivery of this Agreement and the other Loan Documents, and the funding of the Initial Loans, (b) the repayment of the Existing Debt, (c) the consummation of any other transactions in connection with the foregoing, and (d) the payment of the fees and expenses incurred in connection with any of the foregoing.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

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

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

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

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

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

“U.S. Tax Compliance Certificate” has the meaning specified in Section 3.01(f)(ii)(B)(3).

“USPTO” means the United States Patent and Trademark Office.

“Valor Investors” means (a) Valor IV Pharma Holdings, LLC or (b) any Controlled Investment Affiliate of the foregoing.

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

“Wakix” means the product known as of the date hereof as Wakix® that contains the active pharmaceutical ingredient pitolisant hydrochloride as its sole active ingredient, in any dosage, dosage form, formulation or presentation.

“Wakix NCE” means the period of regulatory exclusivity granted by the FDA to Wakix as a new chemical entity.

“Wakix NDA” means New Drug Application Number N211150.

“Wakix ODE” means the period of regulatory exclusivity awarded by the FDA to Wakix as an orphan drug (i) for the treatment of excessive daytime sleepiness in adult patients with narcolepsy or (ii) for the treatment of cataplexy in adult patients with narcolepsy.

“Withholding Agent” means the Borrower and the Administrative Agent.

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

1.02 Other Interpretive Provisions.

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended

and restated, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

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

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant contained herein, (i) Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded, (ii) [reserved], and (iii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under FASB ASC Topic 825 "Financial Instruments" (or any other financial accounting standard having a similar result or effect) to value any Indebtedness of the Borrower or any Subsidiary at "fair value", as defined therein. For purposes of determining the amount of any outstanding Indebtedness, no effect shall be given to any election by the Borrower to measure an item of Indebtedness using fair value (as permitted by Financial Accounting

Standards Board Accounting Standards Codification 825–10–25 (formerly known as FASB 159) or any similar accounting standard).

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

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

1.04 Rounding.

Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day.

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

1.06 UCC Terms.

Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

1.07 Eurodollar Rates.

The Administrative Agent shall not be under any obligation (i) to monitor, determine or verify the unavailability or cessation of the Eurodollar Rate (or any other applicable benchmark), or whether or when there has occurred, or to give notice to any other party to this Agreement of the occurrence of (except as directed by the Required Lenders), any termination date relating to the Eurodollar Rate, (ii) to select, determine or designate any alternative rate, or other successor or replacement benchmark index, or whether any conditions to the designation of such a rate have been satisfied, (iii) to select, determine or designate any other modifier to any alternative rate or (iv) to determine whether or what alternative rate changes are necessary or advisable, if any, in connection with any of the foregoing. The Administrative Agent shall not be liable for any inability, failure or delay on its part to perform any of its duties set forth in this Agreement as a result of the unavailability of the Eurodollar Rate (or any other applicable benchmark) and absence of

a designated replacement benchmark, including as a result of any inability, delay, error or inaccuracy on the part of the Required Lenders in providing any direction, instruction, notice or information with respect thereto required or contemplated by the terms of this Agreement and reasonably required for the performance of such duties by the Administrative Agent. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to any alternate replacement index to the Eurodollar Rate, including without limitation, whether the composition or characteristics of any such alternate replacement index to the Eurodollar Rate will be similar to, or produce the same value or economic equivalence of, the Eurodollar Rate or have the same volume or liquidity as did the Eurodollar Rate prior to its discontinuance or unavailability, except for performance or non-performance of its duties and obligations with respect thereto that are expressly set forth herein.

1.08 Limited Condition Transactions.

For purposes of (i) determining compliance with any provision of this Agreement or the other Loan Documents which requires the calculation of any ratio, (ii) determining the accuracy of any representations or warranties or determining whether any Default or Event of Default has occurred or (iii) testing availability under baskets set forth in this Agreement or the other Loan Documents, in each case, in connection with a Limited Condition Transaction, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "LCT Election"), the date of determination of whether any such action is permitted hereunder, shall be deemed to be the date the definitive agreement for such Limited Condition Transaction is entered into (such date, the "LCT Test Date"), and if, on a Pro Forma Basis after giving effect to the Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they had occurred at the beginning of the most recent Measurement Period, as applicable, ending prior to the LCT Test Date, the Borrower could have taken such action on the relevant LCT Test Date in compliance with such ratio or basket, such ratio or basket shall be deemed to have been complied with. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio or basket on or following the relevant LCT Test Date and prior to the earlier of (i) the date on which such Limited Condition Transaction is consummated, and (ii) the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, any such ratio or basket shall be calculated and tested on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith have been consummated until such time as the applicable Limited Condition Transaction has actually closed or the definitive agreement for such Limited Condition Transaction has been terminated. For the avoidance of doubt, if any of such ratios or amounts are exceeded as a result of changes in such ratio or amount (including due to changes in Consolidated EBITDA of the Borrower and its Subsidiaries or of the Person subject to such Limited Condition Transaction), at or prior to the consummation of the relevant transaction or action, such ratios will not be deemed to have been exceeded as a result of such changes solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken.

ARTICLE II

COMMITMENTS AND BORROWINGS

2.01 Loans.

(a) Initial Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make on the Closing Date Loans to the Borrower, in Dollars, in an amount equal to its Initial Commitment (the "Initial Loans"). The funding of the Initial Loans shall consist of

Loans made simultaneously by the Lenders in accordance with their respective Applicable Percentage of the Initial Commitments. The Initial Commitments shall be reduced by the funding of the Initial Loans, and amounts borrowed under this Section 2.01(a), and repaid or prepaid may not be reborrowed. The Initial Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) Delayed Draw Borrowings. Subject to the terms and conditions set forth herein, each Lender severally agrees to make one or more Loans to the Borrower, in Dollars, on any Business Day during the Delayed Draw Availability Period in an amount not to exceed its remaining Delayed Draw Commitment as of the applicable Delayed Draw Funding Date ("Delayed Draw Loans"); provided, that there shall be no more than 4 separate Delayed Draw Funding Dates, and each funding of Delayed Draw Loans shall be in an aggregate amount of not less than \$25,000,000 or the then-remaining amount of the Delayed Draw Commitments. The Delayed Draw Loans shall consist of Loans made simultaneously by the Lenders in accordance with their respective Applicable Percentage of the Delayed Draw Commitments as of the applicable Delayed Draw Funding Date. The Delayed Draw Commitments shall be reduced by each funding of Delayed Draw Loans, and amounts borrowed under this Section 2.01(b), and repaid or prepaid may not be reborrowed. The Delayed Draw Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Notice of Borrowing. Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which notice shall be given by a Loan Notice. Each such Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (x) ten (10) Business Days prior to the requested date of any Borrowing and (y) three (3) Business Days prior to the requested date of any conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans (in each case, or such shorter period as may be agreed by the Administrative Agent and the Lender Representative). Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, in connection with any conversion or continuation of a Loan, if less, the entire principal thereof then outstanding). Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, in connection with any conversion or continuation of a Loan, if less, the entire principal thereof then outstanding). Each Loan Notice shall specify (I) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be (and the Class of Loans to which such Borrowing, conversion or continuation applies), (II) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (III) the principal amount of Loans to be borrowed, converted or continued, (IV) the Type of Loans to be borrowed or to which existing Loans are to be converted or the Eurodollar Rate Loans to be continued, (V) if applicable, the duration of the Interest Period with respect thereto, and (VI) in the case of a Borrowing, the wiring information of the Borrower's account to which funds are to be disbursed. If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Advances. Following receipt of a Loan Notice for a Borrowing, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds to the Administrative Agent's Account not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in (x) with respect to the Initial Loans, Section 4.01, and (y) with respect to the Delayed Draw Loans, Section 4.02, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds to the account of the Borrower specified in the applicable Loan Notice.

(c) Eurodollar Rate Loans. Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the outstanding Eurodollar Rate Loans be converted immediately to Base Rate Loans.

(d) Interest Rates. Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error.

(e) Interest Periods. After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than five Interest Periods in effect.

(f) Cashless Settlement Mechanism. Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent, the Lender Representative and such Lender.

2.03 Prepayments.

(a) Optional.

(i) The Borrower may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Loans in whole or in part subject to Section 2.03(c) and Section 3.05, but otherwise without any other premium or penalty; *provided* that, unless otherwise agreed by the Administrative Agent, (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) one (1) Business Day prior to any date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) and Class of Loans to be prepaid and, if

Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; *provided* that the Notice of Loan Prepayment may state that such notice is conditioned upon the effectiveness of other credit facilities, indentures or similar agreements or other transactions, in which case such notice may be revoked or postponed by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Loans pursuant to this Section 2.03(a) shall be applied to the principal repayment installments thereof, and to the Initial Loan or applicable Delayed Draw Loans as directed by the Borrower, and, in the absence of direction, first to the Initial Loans and next to the Delayed Draw Loans, and to reduce amortization payments in direct order of maturity. Subject to Section 2.12, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages of the applicable outstanding Loans.

(b) Mandatory.

(i) Dispositions and Involuntary Dispositions. The Borrower shall prepay the Loans, together with any accrued but unpaid interest on any principal amount of the Loans being prepaid (collectively, the "Mandatory Prepayment") in an aggregate amount equal to 100% of the Net Cash Proceeds received by the Loan Parties from all Dispositions pursuant to Section 7.05(e) and (f) and Involuntary Dispositions of Collateral within ten (10) Business Days of the date such Net Cash Proceeds are received that are in excess of \$500,000 in any fiscal year of the Borrower; *provided* that, if the Borrower or its Subsidiaries invest (or commit to invest) the Net Cash Proceeds from such event (or a portion thereof) within one hundred eighty (180) days following the receipt of such Net Cash Proceeds (the "Reinvestment Period"), in each case, to acquire, maintain, develop, construct, improve, upgrade, repair or make capital expenditures or Investments with respect to assets or property (x) that constitute Collateral or (y) with respect to which the Administrative Agent, on behalf of the Secured Parties, shall have received a first priority perfected security interest, then no prepayment shall be required pursuant to this paragraph in respect of such Net Cash Proceeds in respect of such event (or the applicable portion of such Net Cash Proceeds, if applicable) except to the extent of any such Net Cash Proceeds therefrom that have not been so invested (or committed to be invested) by the end of such Reinvestment Period, at which time a Mandatory Prepayment shall be required in an amount equal to such Net Cash Proceeds that have not been so invested (or committed to be invested). For the avoidance of doubt, the amount of any Mandatory Prepayment (including any accrued but unpaid interest on any principal amount of the Loans being prepaid) pursuant to this clause (i) shall not exceed 100% of the Net Cash Proceeds received by the Loan Parties from the Disposition or Involuntary Disposition requiring such Mandatory Prepayment.

(ii) [Reserved].

(iii) Debt Issuance. Within one (1) Business Day upon the receipt by the Borrower or any Subsidiary of the Net Cash Proceeds of any Debt Issuance, the Borrower

shall prepay the Loans as hereinafter provided in an aggregate amount equal to 100% of such Net Cash Proceeds.

(iv) Application of Payments. Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.03(b), shall be applied, in an aggregate amount not to exceed the Net Cash Proceeds required to be prepaid by this Section 2.03(b), to the principal repayment installments of the Loans and accrued and unpaid interest and any required Applicable Premium due with respect to such prepaid principal, on a ratable basis among the Initial Loans and the Delayed Draw Loans outstanding at the time of such prepayment, first to the next four (4) scheduled principal installments on the Loans in direct order of maturity and second to principal installments on the Loans ratably among such remaining installments (including the amounts payable at maturity). Subject to Section 2.12, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages of the outstanding Loans. Within the parameters of the applications set forth above, prepayments pursuant to Section 2.03(b) shall be applied first to Base Rate Loans and then to Eurodollar Rate Loans in direct order of Interest Period maturities. All prepayments under Section 2.03(b) (other than prepayments made pursuant to Section 2.03(b)(i)) shall be subject to payment of the Applicable Premium and subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

(v) Option to Decline. Any Mandatory Prepayment may be declined in whole or in part by any Lender without prejudice to such Lender's rights hereunder to accept or decline any future payments in respect of any Mandatory Prepayments, by providing notice to Administrative Agent no later than 11:00 a.m. (New York, NY time) one (1) Business Day (or such other date acceptable to Administrative Agent) prior to the date of such prepayment. Each such notice from a Lender shall specify the principal amount of the Mandatory Prepayment to be rejected by such Lender. If a Lender fails to deliver such notice to Administrative Agent within the time frame specified above or such notice fails to specify the principal amount of the Mandatory Prepayment to be rejected, any such failure will be deemed an acceptance of the total amount of such Mandatory Prepayment. If a Lender chooses not to accept payment in respect of a Mandatory Prepayment in whole or in part on or before the date otherwise due hereunder, such declined proceeds shall be retained by the Loan Parties.

(c) Call Protection. Notwithstanding anything to the contrary contained in this Agreement, at the time of (x) any payment or prepayment of Loans (other than any prepayment pursuant to Section 2.03(b)(i) or Section 2.05) or (y) any acceleration of the Loans pursuant to Article VIII, shall be accompanied by payment to the Administrative Agent, for the ratable amount of each applicable Lender of the Applicable Premium on the amount so prepaid or requirement to be prepaid or accelerated. The Applicable Premium shall be fully earned, and due and payable, on the date of the applicable prepayment, or, if earlier, on the date such prepayment is required to be made, and shall be non-refundable or curable when made. The Loan Parties further acknowledge and agree that the Applicable Premium is not intended to act as a penalty or to punish the Loan Parties for any such prepayment or amendment.

(d) Notice of Prepayments. The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment pursuant to Section 2.03(b) in the form of Notice of Loan Prepayment not later than 11:00 a.m. three (3) Business Days before the date of such mandatory prepayment. Each such notice shall specify the prepayment date, the amount of the prepayment and the Loans being prepaid and shall contain a reasonably detailed calculation of the amount of

such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, it is understood and agreed that if the Obligations are accelerated as a result of the occurrence of any Event of Default (including by operation of law or otherwise), the Applicable Premium will also be due and payable and shall constitute part of the Obligations for all purposes herein. The Applicable Premium 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 LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT, THE ACCRUAL OR COLLECTION OF THE APPLICABLE PREMIUM. The Loan Parties expressly agree that (i) the Applicable Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel, (ii) the Applicable Premium shall be payable notwithstanding the then prevailing market interest rates at the time payment is made, (iii) there has been a course of conduct between the Lender Representative, the Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium, (iv) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this Section 2.04(c), (v) the Loan Parties' agreement to pay the Applicable Premium is a material inducement to the Lenders to make the Loans, and (vi) the Applicable Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Lenders, not a penalty, 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.

2.04 Termination, Reduction or Acceleration of Commitments.

(a) Optional. On any date prior to the expiration of the Delayed Draw Availability Period, the Borrower may elect to permanently reduce all or a portion of the undrawn Delayed Draw Commitments upon notice to the Administrative Agent and the Lender Representative; provided that any such notice shall be received by the Administrative Agent and the Lender Representative not later than 11:00 a.m. three (3) Business Days prior to the date of reduction; *provided, further* that any such notice may state that such notice is conditioned upon the effectiveness of other credit facilities, indentures or similar agreements or other transactions, in which case such notice may be revoked or postponed by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(b) Mandatory.

(i) The aggregate Initial Commitments shall be automatically and permanently reduced to zero on the Closing Date following the funding of the Initial Loans.

(ii) The aggregate Delayed Draw Commitments shall be automatically and permanently reduced by each funding of Delayed Draw Loans.

(c) Outside Date. If the conditions in Section 4.02 have not been satisfied as of the Outside Date (unless extended by the Lender Representative and the Borrower in their sole discretion and the Administrative Agent has been notified in writing by the Borrower or the Lender Representative of such extension), any portion of the Delayed Draw Commitments that remain outstanding shall be automatically terminated.

2.05 Amortization; Maturity.

(a) Until payment in full of the Initial Loans, on the last Business Day of each March, June, September and December, commencing December 2021, the Borrower shall pay to the Administrative Agent, for the ratable account of the Lenders holding Initial Loans, as a repayment of principal of the Initial Loans, \$500,000 (which, with respect to any such payment due for the last Business Day of March 2024 or after such date, shall increase to \$5,000,000).

(b) On the last Business Day of each March, June, September and December following the initial funding of Delayed Draw Loans, and for so long as there are Delayed Draw Loans outstanding, the Borrower shall pay to the Administrative Agent, for the ratable account of the Lenders holding Delayed Draw Loans, as a repayment of principal of the Delayed Draw Loans, an amount equal to 0.25% of the original principal amount of any Delayed Draw Loans funded prior to such date (which, with respect to any such payment due for the last Business Day of March 2024 or after such date, shall increase to 2.50% of the original principal amount of any Delayed Draw Loans funded prior to such date).

(c) On the Maturity Date, the Borrower shall pay to the Administrative Agent, for the ratable account of the Lenders, an amount equal to the outstanding principal amount of all Loans together with all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder.

2.06 Interest and Default Rate.

(a) Interest.

(i) Subject to the provisions of Section 2.06(b), the unpaid principal amount of each Base Rate Loan shall bear interest at a rate per annum equal to the Base Rate in effect from time to time plus the Applicable Rate, in each case from the date of the Borrowing thereof until maturity (whether by acceleration or otherwise).

(ii) Subject to the provisions of Section 2.06(b), the unpaid principal amount of each Eurodollar Rate Loan shall bear interest at a rate per annum equal to the Eurodollar Rate in effect from time to time plus the Applicable Rate, in each case from the date of the Borrowing thereof until maturity (whether by acceleration or otherwise).

(b) Default Rate. While any Event of Default pursuant to Section 8.01(a) exists and following any acceleration of the Loans (including on account of an Event of Default under Section 8.01(f)), unless waived by the Lender Representative, all past due Obligations (including, in the event of acceleration, all such accelerated Obligations) shall accrue at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by Applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable on each subsequent Interest Payment Date or otherwise promptly upon demand.

(c) Interest Payments. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.07 **Fees.**

(a) Agency Fee Letter. The Borrower shall pay to the Administrative Agent, for its own account, fees in the amounts and at the times specified in the Agency Fee Letter.

(b) Fee Letter. The Borrower shall pay to the Lenders, for their own account, fees in the amounts and at the times specified in the Fee Letter.

2.08 **Computation of Interest and Fees.**

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a three hundred sixty (360) day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365 day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.10(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. The Administrative Agent shall, at the request of the Borrower, deliver to the Borrower a statement showing the methodology used by the Administrative Agent in determining any interest rate hereunder.

2.09 **Evidence of Debt.**

The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The Administrative Agent shall maintain the Register in accordance with Section 11.06(c). The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register, the Register shall control in the absence of manifest error. Upon the request of any Lender to the Borrower, the Borrower shall execute and deliver to such Lender a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.10 **Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the Administrative Agent's Account in Dollars and in immediately available funds not later than 1:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 1:00 p.m. shall, in the discretion of the Administrative Agent, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Except as otherwise specifically provided for in this Agreement, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in

computing interest or fees, as the case may be; provided that, if any payment on a Eurodollar Rate Loan becomes due and payable on a day other than a Business Day, such payment shall be due and payable on the next following Business Day unless the result of such extension would be to extend such payment into another calendar month, in which case, such payment shall be made on the immediately preceding Business Day.

(b) Funding by Lenders; Presumption by Administrative Agent.

(i) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Loans that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, but shall have no obligation to do so, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, but shall have no obligation to do so, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

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

(f) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing shall be made from the Lenders, each payment of fees under Section 2.07 shall be made for account of the Lenders, and each termination or reduction of the amount of the Commitments shall be applied to the respective Commitments of the Lenders, *pro rata* according to the amounts of their respective Commitments; (ii) each Borrowing shall be allocated *pro rata* among the Lenders according to the amounts of their respective Commitments or their respective Loans that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrower shall be made for account of the Lenders *pro rata* in accordance with the respective unpaid principal amounts of the Loans held by them; and (iv) each payment of interest on Loans by the Borrower shall be made for account of the applicable Lenders *pro rata* in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

2.11 Sharing of Payments by Lenders.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent and the Lender Representative of such fact, and (B) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared

by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided* that:

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

(ii) the provisions of this Section 2.11 shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section 2.11 shall apply).

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

2.12 Defaulting Lenders.

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Lender Representative as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder and under the other Loan Documents; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Lender Representative; third, if so determined by the Lender Representative and the Borrower, to be held in a deposit account and released *pro rata* in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise

as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 4.01 or Section 4.02, as applicable, were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders *pro rata* in accordance with the Commitments hereunder. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the Lender Representative agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held *pro rata* by the Lenders in accordance with their Commitments, whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Defined Terms. For purposes of this Section 3.01, the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Laws. If any Applicable Laws (as determined in the good faith discretion of an applicable Withholding Agent) require 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 Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after any such withholdings or deductions (including such withholdings or deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the

Administrative Agent or the Lender Representative timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof 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 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and 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.

(ii) Each Lender shall, and does hereby, severally indemnify and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (B) the Administrative Agent against any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (C) the Administrative Agent against 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 clause (d)(ii).

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority, as provided in this Section 3.01, 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 any return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender Representative.

(f) Status of Lenders: Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably

requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(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 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-E (or W-8BEN, as applicable) 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-E (or W-8BEN, as applicable) 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;

(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 L-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 881(c)(3)(B) of the Code, or a "controlled foreign corporation" 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-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECL, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9, 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 I-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 (or originals, as required) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law 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 to deduct and withhold from such payment. Solely for the purposes of this ~~clause (f)(ii)(D)~~, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 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 Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01, including any payments of additional amounts pursuant to this Section 3.01, it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with

respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (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 clause (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (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 clause (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) Survival. Each party's obligations under this Section 3.01 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.

3.02 Illegality.

If any Lender determines that any Change in Law after the Closing Date has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to make, maintain or fund or charge interest with respect to any Loan, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent and the Lender Representative without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent, the Lender Representative and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (A) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent and the Lender Representative without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (B) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

(a) Subject to clauses (b) through (f) of this Section 3.03, if the Administrative Agent reasonably determines that for any reason, adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or is informed by the Lender Representative that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, or that deposits are not being offered to banks in the relevant interbank market for the applicable amount and the Interest Period of such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods) and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Lender Representative) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding anything to the contrary herein or in any other Loan Document:

(b) On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of USD LIBOR’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-month, 2-month, 3-month, 6-month and 12- month USD LIBOR tenor settings. On the earlier of (i) the date that all Available Tenors of USD LIBOR have either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly or quarterly basis as agreed to by the Borrower and the Lender Representative and notified to the Administrative Agent.

(c) Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lender Representative and the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from the Lender Representative. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrower’s receipt of notice from the Administrative Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the

period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate.

(d) In connection with the implementation and administration of a Benchmark Replacement, the Administrative Agent (acting at the direction of the Lender Representative) will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement (and the Lenders hereby (i) authorize and direct the Administrative Agent to make any Benchmark Replacement Conforming Changes (and to enter into any modifications to this Agreement or the other Loan Documents implementing such Benchmark Replacement Conforming Changes) that have been consented or agreed to by the Lender Representative, or in respect of which the Administrative Agent has received a direction from the Lender Representative to implement, and (ii) acknowledge and agree that the Administrative Agent shall be entitled to all of the exculpations, protections and indemnifications provided for in this Agreement in favor of the Administrative Agent in implementing any Benchmark Replacement Conforming Changes (or in entering into any modifications to this Agreement or the other Loan Documents implementing the same) that have been consented or agreed to by the Lender Representative, or in respect of which the Administrative Agent has received a direction from the Lender Representative to implement).

(e) The Administrative Agent will promptly notify the Borrower, the Lender Representative and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent, the Lender Representative or, if applicable, any Lender (or group of Lenders) pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section.

(f) At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR), and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may (by providing notice thereof (which may be via email) to the Borrower and the Lenders) remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Administrative Agent may (by providing notice thereof (which may be via email) to the Borrower and the Lenders) reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(g) As used in this Section 3.03, the following terms shall have the meanings set forth below:

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“Benchmark” means, initially, USD LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to this Section 3.04, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means, for any Available Tenor:

- (1) For purposes of Section 3.03(c), the first alternative set forth below that (x) can be determined by the Administrative Agent (acting at the direction of the Lender Representative) and (y) is administratively feasible as determined by the Administrative Agent:
 - (a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three-months’ duration, and 0.42826% (42.826 basis points) for an Available Tenor of six-months’ duration, or
 - (b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in Section 3.04(b); and
- (2) For purposes of Section 3.03(c), the sum of (x) the alternate benchmark rate and (y) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Lender Representative and the Borrower as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

provided that, (x) in the case of clause (a)(i), such Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion and (y) if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent (acting at the direction of the Lender Representative and in consultation with the Borrower) decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent (acting at the direction of the Lender Representative) determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as (x) the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents and (y) the Administrative Agent determines is administratively feasible).

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than USD LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent (acting at the direction of the Lender Representative) in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent (acting at the direction of the Lender Representative) may establish another convention in its reasonable discretion and that is administratively feasible for the Administrative Agent.

“Early Opt-in Effective Date” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lender Representative and the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lender Representative and the Lenders, written notice of objection to such Early Opt-in Election from the Lender Representative.

“Early Opt-in Election” means the occurrence of:

- (1) a notification by the Administrative Agent to (or the request by the Borrower or the Lender Representative to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and
- (2) the joint election by the Lender Representative and the Borrower to trigger a fallback from USDLIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“Relevant Governmental Body,” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of

Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“SOFR” means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

“Term SOFR” means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“USD LIBOR” means the London interbank offered rate for U.S. dollars.

3.04 Increased Costs; Reserves on Eurodollar Rate Loans.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e));

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered. Notwithstanding anything to the contrary in this Section 3.04(a), it shall be a condition to any Lender’s exercise of its rights, if any, under this Section 3.04(a) that such Lender shall generally be exercising similar rights with respect to borrowers under similar agreements.

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

time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's or holding company for any such reduction suffered. Notwithstanding anything to the contrary in this Section 3.04(b), it shall be a condition to any Lender's exercise of its rights, if any, under this Section 3.04(b) that such Lender shall generally be exercising similar rights with respect to borrowers under similar agreements.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in clause (a) or (b) of this Section 3.04 and delivered to the Borrower (with a copy to the Administrative Agent) shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent demonstrable error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, *provided* the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent and the Lender Representative) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

(e) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

3.05 Compensation for Losses

Upon demand of any Lender (with a copy to the Administrative Agent and the Lender Representative) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (other than lost profits) incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

excluding any loss of anticipated profits but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained.

3.06 Mitigation Obligations: Replacement of Lenders.

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

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, gives a notice pursuant to Section 3.02 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 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender (and, in the case of a Lender that gives a notice pursuant to Section 3.02, with the consent of the Lender Representative) in accordance with Section 11.13.

3.07 Survival.

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, resignation of the Administrative Agent and the Lender Representative and the Facility Termination Date.

ARTICLE IV

CONDITIONS PRECEDENT

4.01 Conditions of Effectiveness and the Borrowing of Initial Loans.

The effectiveness of this Agreement and the obligation of each Lender to make its portion of the Initial Loan hereunder on the Closing Date is subject to satisfaction or waiver of the following conditions precedent:

(a) Execution of Credit Agreement; Loan Documents. The Administrative Agent and the Lenders shall have received (i) counterparts of this Agreement, executed by a Responsible Officer of each Loan Party and a duly authorized officer of each Lender, (ii) for the account of each Lender that has requested a Note prior to the Closing Date, a Note executed by the Borrower, (iii) counterparts of the Security Agreement executed by a Responsible Officer of the applicable Loan Parties and a duly authorized officer of each other Person party thereto, as applicable and (iv) counterparts of the Agency Fee Letter (which shall only be provided to the Administrative Agent, and not the Lenders), the Fee Letter, and any other Loan Documents to be entered into on the Closing Date.

(b) Officer's Certificate. The Administrative Agent and the Lenders shall have received an Officer's Certificate dated the Closing Date, certifying as to the Organization Documents of each Loan Party (which, to the extent filed with a Governmental Authority, shall be certified as of a recent date by such Governmental Authority), the resolutions of the governing body of each Loan Party, the good standing, existence or its equivalent of each Loan Party in its jurisdiction of formation and of the incumbency (including specimen signatures) of the Responsible Officers of each Loan Party, and certifying as to the satisfaction of the conditions set forth in this Section 4.01 (other than those constituting the satisfaction of the Administrative Agent or any Lender) to the funding of Initial Loans on the Closing Date.

(c) Legal Opinions of Counsel. The Administrative Agent and the Lenders shall have received a customary opinion or opinions of counsel for the Loan Parties, dated the Closing Date and addressed to the Administrative Agent and the Lenders party to this Agreement on the Closing Date.

(d) Personal Property Collateral. The Administrative Agent and the Lenders shall have received:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Loan Party and each jurisdiction where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral and copies of the financing statements on file in such jurisdictions and (B) tax lien, judgment and bankruptcy searches;

(ii) searches of ownership of Intellectual Property in the appropriate governmental offices and such patent/trademark/copyright filings as requested by the Administrative Agent or the Lender Representative prior to the Closing Date in order to perfect the Administrative Agent's security interest in the Intellectual Property; and

(iii) forms of UCC financing statements for each appropriate jurisdiction as is necessary, in the Lender Representative's sole discretion, to perfect the Administrative Agent's security interest in the Collateral.

(e) Insurance. The Administrative Agent and the Lenders shall have received copies of insurance certificates evidencing insurance meeting the requirements set forth herein or in the Collateral Documents.

(f) Solvency Certificate. The Administrative Agent and the Lenders shall have received a Solvency Certificate signed by a Responsible Officer of the Borrower as to the Solvency of the Borrower and its Subsidiaries, on a Consolidated basis, after giving effect to the transactions contemplated hereby.

(g) Anti-Money-Laundering; Beneficial Ownership. Upon the reasonable request of the Administrative Agent, the Lender Representative or any other Lender made at least five (5) Business Days prior to the Closing Date, the Borrower shall have provided to the Administrative Agent, the Lender Representative or such other Lender or the Lender Representative the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, and any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

(h) Consents. The Administrative Agent and the Lenders shall have received evidence that all members, boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the entering into of this Agreement have been obtained.

(i) Fees and Expenses. The Administrative Agent, the Lender Representative and the Lenders shall have received all fees and expenses owing hereunder or under the Agency Fee Letter and under the Fee Letter on the Closing Date, but, in the case of expenses, only to the extent invoiced prior to the Closing Date.

(j) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in Article II, Article V or any other Loan Document, shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Borrowing, 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 on and as of such earlier date and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Borrowing, 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 material respects on and as of such earlier date, and except that for purposes of this Section 4.01, the representations and warranties contained in Sections 5.05(a) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a).

(k) Default. No Default shall exist, or would immediately result from such proposed Borrowing or from the application of the proceeds thereof.

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

(m) Existing Debt. The Administrative Agent and the Lenders shall have received all documents or instruments necessary to release all Liens on the assets of Loan Parties including, without limitation payoff letters with respect to the Existing Debt and evidence that such Existing Debt or Debt, in each case, shall be fully repaid with the proceeds of the Loans, UCC and other appropriate termination statements and documents effective to evidence the foregoing.

(n) Equity Issuance. The Equity Issuance shall have been consummated, or shall be consummated simultaneously with the funding of the Initial Loans.

Without limiting the generality of the provisions of Section 9.03(c), for purposes of determining compliance with the conditions specified in this Section 4.01, the Lender Representative and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied

with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lender Representative or any Lender unless the Administrative Agent shall have received notice from the Lender Representative or such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to Borrowing of Delayed Draw Loans.

The obligation of each Lender to honor a Loan Notice with respect to each Borrowing of Delayed Draw Loans is subject to the following conditions precedent:

(a) Representations and Warranties. The representations and warranties of the Borrower and each other Loan Party contained in Article II, Article V or any other Loan Document, shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct on and as of the date of such Borrowing, 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 on and as of such earlier date and (ii) with respect to representations and warranties that do not contain a materiality qualification, be true and correct in all material respects on and as of the date of such Borrowing, 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 material respects on and as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in Sections 5.05(a) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a).

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

(c) Fees and Expenses. The Administrative Agent, the Lender Representative and the Lenders shall have received all fees and expenses owing hereunder the Fee Letter with respect to such funding of Delayed Draw Loans, but, in the case of expenses, only to the extent invoiced prior to the Closing Date.

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

(e) Officer's Certificate. The Administrative Agent and the Lenders shall have received an Officer's Certificate dated the proposed funding date, certifying as to the satisfaction of the conditions to such funding.

(f) Leverage Ratio. The Total Leverage Ratio both before, and immediately after giving effect to such funding and, if applicable, the consummation of any applicable Permitted Acquisition the consideration for which is to be funded, in whole or in part, with the proceeds of such Delayed Draw Loan, on a Pro Forma Basis, shall not exceed the Target Leverage.

Each Loan Notice (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Borrowing.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent, the Lender Representative and the Lenders, as of the date made or deemed made, that:

5.01 Existence, Qualification and Power.

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

5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of (or the requirement to create) any Lien under, or require any payment to be made under (i) any material Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Applicable Law, except in the case of this Section 5.02(c), with respect to any conflict, breach, violation, or payment, to the extent that such conflict, breach, violation, or payment would not reasonably be expected to have a Material Adverse Effect.

5.03 Governmental Authorization; Other Consents.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained, (ii) filings to perfect the Liens created by the Collateral Documents, (iii) filings by the Borrower required under applicable securities laws and (iv) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to have a Material Adverse Effect.

5.04 Binding Effect.

This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and

each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity.

5.05 Financial Statements: No Material Adverse Effect.

(a) Audited Financial Statements. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations and comprehensive loss, cash flows and changes in shareholders' equity for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) Material Adverse Effect. Since the Closing Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

5.06 Litigation.

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

5.07 [Reserved].

5.08 Ownership of Property.

Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, subject to Permitted Liens and except for such defects in title as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.09 Environmental Matters.

(a) (A) except as could not reasonably be expected to result in material liability to any Loan Party or any of its Subsidiaries, none of the properties currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries is listed or formally proposed for listing on the NPL or on the SEMS list; (B) except as would not have a Material Adverse Effect, as of the Closing Date, to the knowledge of the Loan Parties and their Subsidiaries, there is no asbestos or asbestos-containing material on, at or in any property currently owned, leased or operated by any Loan Party or any of its Subsidiaries; (C) except as would not have a Material Adverse Effect, there has not been a Release of Hazardous Materials on, at, under or from any property currently, or to the knowledge of the Loan Parties and their Subsidiaries, formerly owned, leased or operated by any Loan Party or any of its Subsidiaries, or otherwise arising from the operations of any Loan Party or any of its Subsidiaries; and (D) except as would not have a Material Adverse Effect, no Environmental Claim is pending or, to the knowledge of the Loan Parties and their Subsidiaries, threatened, with respect to or in connection with any Loan Party or any of its Subsidiaries or any

real properties currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries;

(b) (A) except as would not have a Material Adverse Effect, neither any Loan Party nor any of its Subsidiaries is undertaking, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any Release of Hazardous Materials at, on, under, or from any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and (B) except as would not have a Material Adverse Effect, all Hazardous Materials generated, used, treated, handled, stored, or transported by or on behalf of any Loan Party or any of its Subsidiaries have been disposed of in a manner which could not reasonably be expected to result in liability to any Loan Party or any of its Subsidiaries; and

(c) except as would not have a Material Adverse Effect, each of the Loan Parties and their respective Subsidiaries is, and within the period of all applicable statutes of limitation has been, in compliance with all Environmental Laws (which compliance includes, but is not limited to, the possession of all Environmental Permits and compliance with the terms and conditions thereof).

5.10 Insurance.

The properties of each Loan Party are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates. The general liability, casualty, property, terrorism and business interruption insurance coverage of the Loan Parties as in effect on the Closing Date is outlined as to carrier, policy number, expiration date, type, amount and deductibles on Schedule 5.10 and such insurance coverage complies with the requirements set forth in this Agreement and the other Loan Documents.

5.11 Taxes.

Each Loan Party and its Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. There is no proposed tax assessment against any Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect, nor is there any tax sharing agreement applicable to the Borrower or any Subsidiary (other than any tax sharing agreement solely between Borrower and one or more of its Subsidiaries).

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state laws except as would not have a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter or is subject to a favorable opinion letter from the IRS to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS except

as would not have a Material Adverse Effect. To the knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status except as would not have a Material Adverse Effect.

(b) There are no pending or, to the knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan except as would not have a Material Adverse Effect; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date except as would not have a Material Adverse Effect; (iii) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid except as would not have a Material Adverse Effect; (iv) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA except as would not have a Material Adverse Effect; and (v) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan except as would not have a Material Adverse Effect.

(d) Neither the Borrower nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (i) on the Closing Date, those listed on Schedule 5.12 hereto and (ii) thereafter, Pension Plans not otherwise prohibited by this Agreement.

5.13 Margin Regulations: Investment Company Act.

(a) Margin Regulations. Neither the Borrower nor any of its Subsidiaries is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing, not more than twenty-five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 7.01 or Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower or any of its Subsidiaries and any Lender or any Affiliate of any Lender relating to Indebtedness and within the scope of Section 8.01(e) will be margin stock.

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

5.14 Disclosure.

(a) No report, financial statement, certificate or other written information with respect to the Borrower or its Subsidiaries furnished by or on behalf of any Loan Party to the Administrative Agent, the Lender Representative or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished and other than projected financial information, pro forma information and information of a general economic or industry nature), when taken as a whole and when furnished, contains any material misstatement of 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 materially misleading; *provided* that, with respect to projected financial information, pro forma information each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation and delivery; it being understood that actual results may vary from such forecasts and that such variances may be material.

(b) On the Closing Date, the Borrower does not have any Subsidiaries other than Harmony, 100% of the Equity Interests of which are owned by the Borrower. As of the Closing Date, the Borrower does not have any Immaterial Subsidiaries. The Borrower does not own or hold, directly or indirectly, any Equity Interests of any Person other than the Borrower and Investments permitted by [Section 7.03](#).

5.15 Compliance with Laws.

The Borrower and each Subsidiary is in compliance with all Applicable Laws, including any Health Care Laws, except in such instances in which (i) such requirement of Applicable Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

5.16 Solvency.

The Borrower and its Subsidiaries are Solvent on a Consolidated basis.

5.17 Reserved.

5.18 Sanctions Concerns and Anti-Corruption Laws.

(a) **Sanctions Concerns.** No Loan Party, nor any Subsidiary, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets, or any similar list enforced by any other relevant sanctions authority or (iii) located (except for sporadic personal travel by individuals, not engaged in business for the Borrower or its Subsidiaries), organized or resident in a Designated Jurisdiction. The Borrower and its Subsidiaries have conducted their businesses in compliance with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.19 EEA Financial Institutions.

No Loan Party is an EEA Financial Institution.

5.20 Covered Entities.

No Loan Party is a Covered Entity.

5.21 Beneficial Ownership Certification.

The information included in the Beneficial Ownership Certification, if applicable, is true and correct in all material respects as of the date when furnished.

5.22 Reserved.

5.23 Intellectual Property: Licenses, Etc.

(a) Each Loan Party and each of its Subsidiaries owns, or possesses the right to use, all of the Material IP Rights that are used in or reasonably necessary for the operation of its respective business, as currently conducted and as proposed to be conducted, and to Borrower's knowledge, such Material IP Rights do not conflict with the rights of any other person in any material respect; *provided, however*, that, with respect to the last clause of this Section 5.23(a) regarding no conflict with the rights of any other person, Borrower may schedule any such conflicts as an exception to this Section 5.23(a), if applicable, as of the date of borrowing of any Delayed Draw Loans with respect to any Specified Product other than Wakix.

(b) Schedule 5.23(b) sets forth a true, correct and complete listing, under separate headings, of all written Contractual Obligations under which any Loan Party or any of its Subsidiaries (i) has received a license or other right to practice or use any Material IP Rights that any other Person owns, or (ii) owes any royalties or other payments to any Person for the use of any Material IP Rights, or (iii) has granted any Person any right or interest in any Material IP Rights in return for royalties or other payments, excluding, in the case of each of clause (i)-(iii), Contractual Obligations that are (x) not material or (y) entered into in the ordinary course of business and which do not include any right to commercialize any Specified Product (which, for the avoidance of doubt, includes investigator-initiated study agreements and material transfer agreements related to research, in both cases entered into in the ordinary course of business) ; provided, however, that, the Borrower may update Schedule 5.23(b) as of the date of borrowing of any Delayed Draw Loans.

(c) Schedule 5.23(c) sets forth a complete and accurate list as of the Closing Date of all (i) issued Patents and any Patent applications, (ii) registered and material unregistered Trademarks (including domain names) and any pending registrations for Trademarks, and (iii) any other registered Owned Intellectual Property or Licensed Intellectual Property. For each item of Intellectual Property listed on Schedule 5.23(c), the Borrower has, where relevant, indicated (A) the countries in each case in which such item is registered, (B) the application numbers, (C) the

registration or patent numbers, (D) with respect to the Patents, the expected expiration date of the issued Patents and (E) the owner of such item of Intellectual Property and, if licensed to any Loan Party, the applicable agreement pursuant to which the Intellectual Property is so licensed. Except as identified in Schedule 5.23(c), (A) the owner listed on Schedule 5.23(c) is the exclusive owner of such registration or application; (B) to the Borrower's knowledge, none of those registrations or applications have lapsed or been abandoned, cancelled or expired; (C) the Loan Party has taken commercially reasonable steps to maintain such registrations or applications, including by paying filing fees and submitting responses prior to final deadlines; and (D) to the Borrower's knowledge, each individual associated with the filing and prosecution of such registrations or applications, has complied in all material respects with all applicable duties of candor and good faith in dealing with any patent office, including the USPTO, in those jurisdictions where such duties exist; *provided, however*, that, the Borrower may update Schedule 5.23(c) as of the date of borrowing of any Delayed Draw Loans, except to the extent that any change in such Schedule is an event not otherwise permitted by this Agreement or that is materially adverse to Wakix.

(d) Other than those listed on Schedule 5.23(d), there is no opposition, interference, reexamination, inter partes review, post-grant review, derivation or other post-grant proceeding, injunction, claim, suit, action, subpoena, hearing, inquiry, investigation (by the International Trade Commission or otherwise), complaint, arbitration, mediation, demand, decree or other dispute, proceeding or claim (collectively, "Disputes") to which a Loan Party or a Subsidiary is a party or in which any of the Licensed Intellectual Property or Owned Intellectual Property is involved (or, to the Borrower's knowledge, to which a Loan Party or a Subsidiary is not a party) that is pending or, to Borrower's knowledge, currently threatened, that challenges the legality, scope, validity, enforceability, infringement, ownership, inventorship or other rights with respect to any of the Material IP Rights, except, in each case, (i) as may arise in the ordinary, day-to-day course of prosecution of intellectual property applications and registrations or (ii) as of the date of borrowing of any Delayed Draw Loans, which would not reasonably be expected to be materially adverse to the business as conducted and proposed to be conducted or to the development or commercialization of any Specified Product other than Wakix. As of the Closing Date, no Loan Party or Subsidiary has received any written notice that there is any, and to the Borrower's knowledge there is no, Person who is or claims to be an inventor under any Patent included in the Material IP Rights who is not a named inventor thereof; *provided, however*, that, the Borrower may update Schedule 5.23(d) as of the date of borrowing of any Delayed Draw Loans, except to the extent that any change in such Schedule is an event not otherwise permitted by this Agreement or that is materially adverse to Wakix.

(e) To the knowledge of the Borrower, neither the business of the Loan Parties as currently conducted or proposed to be conducted, nor the discovery, development, manufacture, use, import, export or commercialization of any Specified Product, or related service, process, method, substance, part or other material now used by any Loan Party or any of its Subsidiaries infringes, misappropriates or otherwise violates any Intellectual Property held by any other Person (x) as of the Closing Date, in any material respect and (y) as of the date of borrowing of any Delayed Draw Loans, in any material respect with respect to Wakix and, with respect to any Specified Product other than Wakix, which could reasonably be expected to be materially adverse to the business as conducted and proposed to be conducted or to the development or commercialization of any Specified Product other than Wakix. There is no pending or, to the knowledge of the Borrower, threatened, and, to the knowledge of the Borrower, no event has occurred or circumstance exists that (with or without notice or lapse of time, or both) would reasonably be expected to give rise to or serve as a basis for any reasonable action, suit, or proceeding, or any investigation or claim by any Person that claims or alleges that the discovery, development, manufacture, use, import, export or commercialization of any Specified Product anywhere in the

world infringes on any Patent or other Intellectual Property of any other Person or constitutes misappropriation of any other Person's trade secrets or other Intellectual Property rights (x) as of the Closing Date, in any material respect and (y) as of the date of borrowing of any Delayed Draw Loans, in any material respect with respect to Wakix and, with respect to any Specified Product other than Wakix, which could reasonably be expected to be materially adverse to the business as conducted and proposed to be conducted or to the development or commercialization of any Specified Product other than Wakix. To the knowledge of the Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed by any Loan Party or any Subsidiary infringes upon any rights held by any other Person. Except as would not reasonably be expected to have a Material Adverse Effect, to the Borrower's knowledge, no third party is infringing, misappropriating or otherwise violating any Licensed Intellectual Property or Owned Intellectual Property.

(f) Except as disclosed in Schedule 5.23(f), no Loan Party or any of its Subsidiaries has entered into any Contractual Obligation (other than this Agreement and the other Loan Documents) (i) creating a lien, charge, security interest or other encumbrance on, the Licensed Intellectual Property or Owned Intellectual Property (other than Permitted Licenses entered into after the Closing Date) or any royalties on, or proceeds from, sales of any Specified Product, (ii) pursuant to which a Loan Party or any of its Subsidiaries has sold, transferred, assigned or pledged to any Person royalties on, or proceeds from, sales of any Specified Product or (iii) except in connection with a Permitted Acquisition, providing for milestone payments or similar development, commercialization or intellectual property-related payments by a Loan Party to any Person applicable (or that with further development and commercialization may become applicable) to any Specified Product. To the knowledge of the Borrower, no Third Party has created a lien, charge, security interest or other encumbrance on, the IP Rights (other than Permitted Licenses entered into after the Closing Date).

(g) [Reserved].

(h) The Borrower or Harmony owns, has a valid license or rights in any other form to all rights associated with the Owned Intellectual Property and Licensed Intellectual Property (as applicable), and the Borrower or Harmony owns the Owned Intellectual Property and holds, to the knowledge of the Borrower, its rights under the Licensed Intellectual Property, in each case of Licensed Intellectual Property, that constitutes Material IP Rights, in each case, free and clear of any and all Liens (other than Permitted Licenses entered into after the Closing Date) and, in the case, of the Owned Intellectual Property, any ownership interest of any other person. All Owned Intellectual Property and Licensed Intellectual Property that constitutes Material IP Rights, is in full force and effect, and has not expired, lapsed or been forfeited, cancelled or abandoned.

(i) Each of the Borrower and its Subsidiaries, as applicable, has taken commercially reasonable actions to maintain and protect the Owned Intellectual Property and the Licensed Intellectual Property and there are no unpaid maintenance or renewal fees payable by the Borrower or any of its Subsidiaries that are currently overdue for any of such registered Intellectual Property that constitutes Material IP Rights.

(j) There is no actual or threatened (in writing or, to the knowledge of the Borrower, orally) proceeding in any court, patent office, Governmental Authority, arbitral body or elsewhere challenging the validity, scope, inventorship, ownership or enforceability (or asserting non-infringement with respect to) of any Owned Intellectual Property or any Licensed Intellectual Property, in each case of Licensed Intellectual Property, that constitutes Material IP Rights, none of the Borrower or any of its Subsidiaries is involved in any such proceeding with any Person and

none of the Owned Intellectual Property or the Licensed Intellectual Property that constitutes Material IP Rights is the subject of any material Other Administrative Proceeding.

(k) No Loan Party knows of any reason why the Licensed Intellectual Property listed in the FDA's Orange Book with respect to Wakix cannot be rightfully listed therein or of any material misstatement with respect thereto.

(l) [Reserved]

(m) [Reserved]

(n) With respect to each license agreement listed on Schedule 5.23(b), such license agreement (i) is in full force and effect and is binding upon and enforceable against the Borrower, Harmony and the Subsidiaries party thereto and, to the knowledge of the Borrower, all other parties thereto in accordance with its terms, (ii) has not been amended or otherwise modified, except as set forth on Schedule 5.23(b), and (iii) has not, to the knowledge of the Borrower, suffered a default or breach thereunder. To the knowledge of the Borrower, none of the Borrower, Harmony or any of the Subsidiaries has taken or omitted to take any action that would permit any other Person party to any such license agreement to have, and no such Person otherwise has, any defenses, counterclaims, termination rights or rights of setoff thereunder.

(o) None of the Borrower, Harmony or any of its Subsidiaries has received written notice from any Third Party alleging that the conduct of its business (including the development, manufacture, use, sale or other commercialization of any Specified Product) infringes, violates misappropriate or conflicts with (or may infringe, misappropriate, violate or conflict with) any Intellectual Property of that Third Party, in each case, (x) as of the Closing Date, in any respect and (y) as of the date of borrowing of any Delayed Draw Loans, in any material respect with respect to the conduct of its business related to Wakix and, with respect to the conduct of its business related to any Specified Product other than Wakix, which could reasonably be expected to be materially adverse to the business as conducted and proposed to be conducted or to the development or commercialization of any Specified Product other than Wakix.

(p) The Borrower and its Subsidiaries have used commercially reasonable efforts and precautions to protect their respective commercially significant unregistered Material IP Rights.

5.24 Labor Matters.

As of the Closing Date, there are no collective bargaining agreements or Multiemployer Plans covering the employees of the Borrower or any of its Domestic Subsidiaries as of the Closing Date and neither the Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five (5) years preceding the Closing Date.

5.25 Regulatory Matters.

(a) The Borrower and the Subsidiaries have all Permits, including Key Permits and Environmental Permits, necessary or required for the ownership, operation and conduct of their business and ownership of assets and the distribution of the Specified Products and all such Permits are validly held and there are no material breaches, violations or defaults thereunder. No deficiencies have been asserted in writing by any applicable Governmental Authority with respect to any such Permit and to the knowledge of the Borrower no fact, situation, circumstance, condition or other basis exists which, with notice or lapse of time or both, would constitute a material breach,

violation or default under such Permit or give any Governmental Authority grounds to suspend, revoke or terminate any such Permit.

(b) All Key Permits held by the Borrower and its Subsidiaries are (i) legally and beneficially owned exclusively by the Borrower or such Subsidiary, free and clear of all Liens other than Liens permitted pursuant to Section 7.01, and (ii) validly registered and on file with the applicable Governmental Authority, in material compliance with all filing and maintenance requirements (including any fee requirements) thereof, and are in good standing, valid and enforceable with the applicable Governmental Authority. All notices, registrations and listings, supplemental applications or notifications, reports (including reports of adverse experiences) and other filings required to be filed by the Borrower, its Subsidiaries or, to the knowledge of the Borrower, received from any of their respective suppliers with respect to any Specified Products, the business and assets of the Borrower and each of its Subsidiaries with the applicable Governmental Authorities were duly filed with the FDA and all other applicable Governmental Authorities. Each such filing was true, complete and correct as of the date of submission, and any material and legally necessary or required updates, changes, corrections, amendments, supplements or modifications to such filings have been submitted to the applicable Governmental Authority.

(c) To the knowledge of the Borrower, the factual basis for the application to the FDA in respect of, and leading to, the Wakix ODE was true, correct and complete in all material respects as of the date such factual basis was represented to the FDA, and no material misstatements or omissions in such factual basis have been identified or asserted between such dates and the date hereof. None of the Borrower or any of the Subsidiaries has received any written notice that any Key Permits have been or are being revoked, withdrawn, suspended, limited or challenged.

(d) Other than as disclosed in Schedule 5.25(d), (i) the Specified Products, as well as the business of the Borrower and its Subsidiaries, materially comply with (A) all applicable material Laws, including, without limitation, all applicable material requirements of the FD&C Act, the PHSA and similar applicable state Laws and (B) all Product Authorizations with respect to Specified Products and other Key Permits; (ii) none of the Borrower and its Subsidiaries, nor, to the knowledge of the Borrower, their respective suppliers, have received any inspection reports, warning letters or untitled letters with respect to any Specified Product of the Borrower and its Subsidiaries, from any Governmental Authority that assert a lack of compliance with the FD&C Act, the PHSA and similar applicable state Laws; (iii) none of the Borrower or any of its Subsidiaries has received any written notice of, or otherwise have knowledge of, any pending regulatory enforcement action, investigation or inquiry against the Borrower or any of the Subsidiaries, or any of their respective suppliers with respect to the Specified Products, and, to the knowledge of the Borrower, there is no basis for any adverse regulatory action against the Borrower or any of the Subsidiaries or their respective suppliers, with respect to the Specified Products; and (iv) without limiting the foregoing, (A) (1) there have been no Specified Product recalls, safety alerts, withdrawals, clinical holds, marketing suspensions or removals, undertaken or issued by any Person, whether or not at the request, demand or order of any Governmental Authority or otherwise, with respect to any Specified Product, (2) no such Specified Product recalls, safety alerts, corrections, withdrawals, marketing suspensions or removals have been requested, demanded or ordered by any Governmental Authority, and, to the knowledge of the Borrower, there is no basis for the issuance of any such product recalls, safety alerts, corrections, withdrawals, marketing suspensions or removals by any Person with respect to any Specified Products, and (B) none of the Borrower or any of the Subsidiaries has received any written notice of, and do not otherwise have knowledge of, any criminal, injunctive, seizure, detention or civil penalty actions that have at any time been commenced or threatened in writing by any Governmental Authority with respect to or in connection with any Specified Products, or any consent decrees (including plea agreements)

which relate to any Specified Products, and, to the knowledge of the Borrower, there is no basis for the commencement for any criminal injunctive, seizure, detention or civil penalty actions by any Governmental Authority relating to the Specified Products or for the issuance of any consent decrees. None of the Borrower and its Subsidiaries nor, to the knowledge of the Borrower, any of their respective suppliers is employing or utilizing the services of any individual who has been debarred under any FDA regulations.

(e) With respect to Specified Products, (i) all design, manufacturing, storage, distribution, packaging, labeling, sale, recordkeeping and other activities by the Borrower or any of its Subsidiaries and, to the knowledge of the Borrower, their respective suppliers relating to the Specified Products have been conducted, and are currently being conducted, in compliance with the applicable requirements of the FD&C Act, the PHSA and other requirements of the FDA and all other applicable Governmental Authorities, including, without limitation, cGMPs and adverse event reporting requirements, and (ii) none of the Borrower or any of its Subsidiaries, or, to the knowledge of the Borrower, any of their respective suppliers, has received written notice or threat of commencement of action by any Governmental Authority to withdraw its approval of to enjoin production of the Specified Products at any facility, or otherwise to seize any Specified Product. To the knowledge of Borrower, no Specified Product in the inventory of the Borrower or any of its Subsidiaries, or otherwise currently in commercial distribution is adulterated or misbranded. All advertising or other promotion of all Specified Products by the Borrower or any of its Subsidiaries has been conducted in material compliance with applicable FDA requirements for advertising and promotion of pharmaceuticals.

(f) All manufacturing facilities owned or operated by the Borrower or any of the Subsidiaries, or, to the knowledge of the Borrower, used in the production of any Specified Product, are and have been operated in material compliance with cGMPs and all other applicable Laws. The FDA has not issued any written Form 483, Warning Letter, or untitled letter with respect to any such facility, or otherwise alleged in writing any non-compliance with cGMPs.

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

(h) All studies, tests and preclinical and clinical trials conducted relating to the Specified Products by or, to the knowledge of Borrower, on behalf of the Borrower or any of its Subsidiaries and, to the knowledge of the Borrower, their respective licensees, licensors and third party services providers and consultants, have been conducted, and are currently being conducted, in compliance with all applicable Laws in all material respects, including, but not limited to, the FD&C Act, the PHSA, cGCPs and, to the extent required by FDA regulations, cGLPs. Written summaries related to material studies, tests and trials have been made available to the Lenders. To the knowledge of the Borrower, the summaries and descriptions of any of the foregoing provided to the Lenders are accurate in all material respects and contain no material omissions. None of the Borrower and its Subsidiaries, or, to the knowledge of the Borrower, any of their respective licensees, licensors or third party services providers or consultants, has received from the FDA or

other applicable Governmental Authority or institutional review board any written notices or correspondence requiring the termination, suspension, material modification or clinical hold of any studies, tests or clinical trials with respect to or in connection with the Specified Products. No clinical trial conducted by or, to the knowledge of the Borrower, on behalf of the Borrower and its Subsidiaries with respect to any Specified Product has used any clinical investigator who has been disqualified under the regulations of the FDA or other applicable Governmental Authority.

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

(j) There is no arrangement relating to the Borrower or its Subsidiaries providing for any rebates, kickbacks or other forms of compensation that are unlawful to be paid to any Person in return for the referral of business or for the arrangement for recommendation of such referrals. None of the Borrower and its Subsidiaries has received any written notice from the United States Department of Justice, any U.S. Attorney, any State Attorney General, or other Governmental Authority alleging any violation of the Federal Anti-kickback Statute, the Federal False Claims Act, the Foreign Corrupt Practices Act, any applicable federal Laws, or similar state or foreign Laws.

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

(l) No right of the Borrower or any of the Subsidiaries to receive reimbursements pursuant to any government program or private program has ever been terminated or otherwise adversely affected as a result of any investigation or enforcement action, whether by any Governmental Authority or other Third Party, and none of the Borrower or any Subsidiary has been the subject of any inspection, investigation, or audit, by any Governmental Authority for the purpose of any alleged improper activity or is aware of any facts which could give rise to such action.

(m) None of the Borrower or any of the Subsidiaries, nor, to the Borrower's knowledge, any individual who is an officer, director, manager, employee, agent or managing agent of the Borrower or any of the Subsidiaries has been convicted of, or, to the Borrower's knowledge, charged with or investigated for any federal or state health program-related offense or any other offense related to healthcare or been excluded or suspended from participation in any such program; is currently listed on the list of parties excluded from federal procurement programs and non-procurement programs as maintained in the Government Services Administration's System for Award Management or other federal agencies; or, to the Borrower's knowledge, within the past five (5) years, has been convicted of, or, to the Borrower's knowledge, charged with or investigated for a violation of Laws related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances, or has been subject to any judgment, stipulation, order or decree of, or criminal or civil fine or penalty imposed by, any Governmental Authority related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation or controlled substances. None of the Borrower or any of the Subsidiaries, nor, to the Borrower's knowledge, any individual who is an officer, director, employee, agent or managing agent of the Borrower or any of the Subsidiaries has

been convicted of any crime that has resulted or would reasonably be expected to result in a debarment under 21 U.S.C. Section 335a. No debarment proceedings under any FDA regulation in respect of the business of the Borrower or any of the Subsidiaries are pending or, to the Borrower's knowledge, threatened against the Borrower, any of the Subsidiaries or, to the knowledge of the Borrower, any individual who is an officer, director, manager, employee, agent or managing agent of the Borrower or any of the Subsidiaries. The Borrower and each of its Subsidiaries regularly screens officers, employees, contractors and agents consistent with industry practices for such convictions, exclusions, suspensions, debarments or restrictions.

(n) None of the Borrower or any of its Subsidiaries or any of their respective owners, directors, officers, employees, contractors or agents is a party or bound by any individual integrity agreement, corporate integrity agreement, corporate compliance agreement, deferred prosecution agreement, or other formal or informal agreement with any Governmental Authority concerning compliance with Health Care Laws, any Government Reimbursement Program or the requirements of any Permit and no such agreement is currently contemplated, proposed or pending with the foregoing representations limited to the knowledge of the Borrower with respect to contractors and agents only.

(o) There are no material Actions, or, to the Borrower's knowledge, any Actions threatened in writing, against or affecting Borrower or any of its Subsidiaries relating to or arising under any Health Care Laws. None of the Borrower or any of its Subsidiaries has received notice from any third party, including employees, former employees or competitors alleging that any operation or activity of the Borrower or any of its Subsidiaries is in violation of any Health Care Laws or other Applicable Law. Without limiting the generality of the foregoing, to the Borrower's knowledge, no Person has filed or has threatened to file against the Borrower or any of its Subsidiaries any legal action under any federal or state whistleblower statute, including under the civil False Claims Act (31 U.S.C. § 3729 et seq.).

(p) None of the Borrower or its Subsidiaries is a "covered entity" or a "business associate" pursuant to HIPAA (as those terms are defined in 45 C.F.R. §160.103).

(q) Each of the Borrower and its Subsidiaries has an operational healthcare compliance program that: (i) governs all employees and contractors, including sales representatives; (ii) is consistent with the current U.S. Federal Sentencing Guidelines standards for effective compliance programs; (iii) complies with the Pharmaceutical Research and Manufacturers of America Code on Interactions with Healthcare Professionals; and (iv) addresses compliance with all applicable Health Care Laws. Each of the Borrower and its Subsidiaries further operates in material compliance with such healthcare compliance program. The Borrower regularly seeks advice of outside legal counsel knowledgeable of Health Care Laws on activities within the scope of such compliance program and undertakes such activities consistent with applicable Health Care Laws and such advice.

5.26 Key Contracts. As of the date of the borrowing of any Delayed Draw Loans, set forth on Schedule 5.26 (as updated from time to time) is a list, and reasonably detailed description of, all Key Contracts of the Loan Parties entered into following the Closing Date. Each Key Contract (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party and, to such Loan Party's knowledge, each other Person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified (other than amendments or modifications permitted by Section 7.18), and (c) no notice of material default or termination has been provided to the applicable Loan Party, or to such Loan Party's knowledge, each other Person party to such has been delivered such a notice, and no material default or other material circumstance giving rise to a right to terminate (or to non-renew) by a party to any

such Key Contract exists. The Borrower has provided to the Administrative Agent and the Lenders full, complete and correct copies of the Key Contracts (including all exhibits and schedules thereto). With respect to Key Contracts, (v) Borrower and Harmony are in compliance with their obligations under the Key Contracts in all material respects, including timely payments thereunder, (w) no audit has been conducted and no claim for indemnification made except, following the Closing Date, routine audits and claims not giving rise to or evidencing, any material default thereunder, (x) no party thereto has given notice of an intention to terminate or not renew the applicable agreement (except to the extent the replacement thereof would not result in an Event of Default pursuant to Section 8.01(q)) and (y) there currently are no material disputes or threatened material disputes.

5.27 Privacy and Data Security.

(a) Since January 1, 2019, except as has not been, or could not reasonably be expected to be, materially adverse to the business of the Borrower and its Subsidiaries, taken as a whole, the collection, acquisition, use, storage, transfer (including any cross-border transfers), distribution, dissemination or other processing by the Borrower and its Subsidiaries of Personal Data are and have been in compliance in all respects with: (i) all Applicable Laws governing the privacy, data protection, processing, transfer or security of Personal Data, including, without limitation, the following and their implementing regulations, in each case, to the extent applicable to the Borrower and its Subsidiaries: (A) HIPAA, (B) the California Consumer Privacy Act, (C) U.S. state data security laws and regulations such as the New York SHIELD Act and the Massachusetts Standards for the protection of personal information of residents of the Commonwealth, 201 CMR 17; (D) Section 5 of the Federal Trade Commission Act as it applies to the receipt, access, use, disclosure, and security of consumer Personal Data, and (E) CAN-SPAM, the Telephone Consumer Protection Act and other similar Applicable Laws; and (ii) the applicable Person's contractual obligations to third parties relating to privacy, data protection, processing, transfer or security of Personal Data as well as its publicly posted privacy policies regarding Personal Data (collectively, such Applicable Laws, obligations and privacy policies, the "Privacy Requirements").

(b) Except as could not reasonably be expected to be materially adverse to the Borrower and its Subsidiaries, taken as a whole, (i) the Borrower and its Subsidiaries implement and maintain written policies and procedures with respect to the physical and electronic security and privacy of Personal Data that are designed to protect the security, confidentiality, integrity and availability of Personal Data and to comply with the applicable Privacy Requirements, and (ii) the Borrower and its Subsidiaries are in compliance with such policies and procedures. To the knowledge of the Borrower, since January 1, 2019, there have been no material Security Breaches or material regulatory complaints regarding the Privacy Requirements or any such policies and procedures, or any other material unauthorized access to or acquisition of any such Personal Data collected, acquired, used, stored, transferred, distributed, disseminated or otherwise processed by the Borrower and its Subsidiaries by any Third Party.

(c) Since January 1, 2019, the Borrower and its Subsidiaries have been and are in compliance with all Applicable Laws governing notification and remediation of Security Breaches in all material respects. No material written claim, investigations (including investigations by a Governmental Authority), or other proceeding is pending against Borrower and its Subsidiaries, nor to the Borrower's knowledge, threatened, relating to any such obligation, policy, Applicable Law in relation to Personal Data, the Privacy Requirements, or any breach or alleged breach thereof.

ARTICLE VI
AFFIRMATIVE COVENANTS

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, such Loan Party shall, and shall cause each of its Subsidiaries to:

6.01 Financial Statements.

Deliver to the Administrative Agent (for distribution to the Lender Representative and each Lender):

(a) Audited Financial Statements. As soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Borrower, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related Consolidated statements of operations and comprehensive income (loss), changes in shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of Deloitte Touche Tohmatsu Limited or any other independent certified public accountant selected by the Borrower of nationally recognized standing or that is otherwise reasonably acceptable to the Lender Representative, 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 any qualification or exception as to the scope of such audit other than solely with respect to, or resulting from, an upcoming Default or Event of Default under this Agreement or a maturity date occurring within one (1) year from the time such opinion is delivered.

(b) Quarterly Financial Statements. As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower, a Consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related Consolidated statements of operations and comprehensive loss, changes in shareholders' equity and cash flows for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such Consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller who is a Responsible Officer of the Borrower as fairly presenting, in all material respects, the financial condition, results of operations and comprehensive loss, shareholders' equity and cash flows of the Borrower and its Subsidiaries, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) Other Reporting. As soon as available, but in any event within sixty (60) days after the end of the fourth fiscal quarter of each fiscal year of the Borrower, an abbreviated reporting package substantially in a form mutually agreed by the Borrower and the Lender Representative, which shall include the following for such fiscal quarter: (i) revenue, (ii) gross margins, (iii) calculation of Consolidated EBITDA, (iv) cash flows, (v) Indebtedness, (vi) accrued amounts owed to Bioprojet and (vii) calculation of Total Leverage Ratio and Liquidity.

6.02 Certificates; Other Information.

Deliver to the Administrative Agent (for distribution to the Lender Representative and each Lender):

(a) Compliance Certificate. (i) Concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower and (ii) with respect to each fiscal month, within thirty (30) days after the end of such month, a duly completed Compliance Certificate (solely with respect to the calculation of Liquidity as of the end such month) signed by a Responsible Officer of the Borrower.

(b) SEC Notices. Promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC concerning any investigation or possible investigation by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof that would reasonably be expected to result in a Material Adverse Effect.

(c) Reserved.

(d) Environmental Notice. Promptly after any Responsible Officer of a Loan Party becomes aware of the assertion or occurrence thereof, (i) any Release required to be reported by any Loan Party or any of its Subsidiaries to any Governmental Authority under any applicable Environmental Laws, and any remedial actions related thereto; and (ii) any notice of any Environmental Claim received by any Loan Party or any of its Subsidiaries of any noncompliance by any Loan Party or any of its Subsidiaries with any applicable Environmental Law or Environmental Permit, or that causes any property described in the Mortgages to be subject to any material restrictions on ownership, occupancy, use or transferability under any Environmental Law, in each case, that could reasonably be expected to result in a Material Adverse Effect.

(e) Anti-Money-Laundering; Beneficial Ownership Regulation. Promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent, the Lender Representative or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act.

(f) Beneficial Ownership. To the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, an updated Beneficial Ownership Certification promptly (but in any event no later than the next date a Compliance Certificate is required to be delivered pursuant to Section 6.02(a)) following any change in the information provided in the Beneficial Ownership Certification delivered to any Lender in relation to such Loan Party that would result in a change to the list of beneficial owners identified in such certification.

(g) FDA Notifications. Promptly after the receipt thereof by any Responsible Officer of the Borrower, details with respect to any material (i) “warning letter” or untitled letter, or (ii) notification of a mandated or requested recall, in each case, from the FDA (or analogous foreign, state or local Governmental Authority).

(h) Health Care Laws Notifications. Promptly after any Responsible Officer of the Borrower becomes aware of the assertion or occurrence thereof, any notice from a Governmental Authority alleging non-compliance with any Health Care Law or Key Permit, in each case, that

could reasonably be expected to be materially adverse to the business of the Borrower and its Subsidiaries taken as a whole.

(i) Key Contracts. Notice (i) promptly (but, in any event within ten (10) Business Days) after a Loan Party receives a written notice of default or event of default under any Key Contract (other than immaterial or easily curable defaults or events of defaults which are promptly cured), (ii) promptly (but, in any event within five (5) Business Days) after a Loan Party receives any written termination notice (or any notice communicating an intent not to renew) under any Key Contract or (iii) promptly upon the later of ten (10) Business Days and the delivery of the next Compliance Certificate, of any new Key Contract is entered into by the Loan Parties, in each case, together with a copy of such notice or new agreement.

(j) IP Rights. Promptly (but in any event within ten (10) Business Days) after any Responsible Officer of the Borrower becomes aware of the assertion or occurrence thereof, written notice of any material Dispute involving any IP Rights.

(k) Additional Information. Promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent, the Lender Representative or any Lender may from time to time reasonably request in writing to the extent such information is reasonably available to such Loan Party or any Subsidiary.

Notwithstanding anything to the contrary in this Section 6.02 or any other provision of the Loan Documents, neither the Borrower nor any of its Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (ii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Documents required to be delivered pursuant to Section 6.01(a) or (b) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 1.01(a); or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender, the Lender Representative and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent). The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (i) the Borrower, Administrative Agent and/or an Affiliate thereof may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by providing Borrower Materials directly to the Lenders or posting the Borrower Materials on IntraLinks, Syndtrak, DebtDomain, ClearPar or a substantially similar electronic transmission system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities.

The Borrower hereby agrees, unless otherwise directed by the Lender Representative (but, notwithstanding any such direction from the Lender Representative, without limiting the obligation of the Borrower to notify the Administrative Agent as to whether Borrower Materials delivered to the Administrative Agent can be posted to the portion of the Platform designated "Public Side Information"), that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (A) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (B) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, any Affiliate thereof and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws; (C) all Borrower Materials marked "PUBLIC" are permitted to be made available by the Borrower directly to the Lenders or by the Administrative Agent through a portion of the Platform designated "Public Side Information;" (D) the Borrower and any Affiliate thereof shall be entitled to deliver any Borrower Materials that are not marked "PUBLIC" as being suitable only for delivery to the designated representative of Lender entitled to receive such non-PUBLIC information, and (E) the Administrative Agent and any Affiliate thereof shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information" and shall only post such Borrower Materials on a portion of the Platform designated "PRIVATE." Each Lender agrees to designate in writing to Borrower and to Administrative Agent the names and contact information (including email addresses) of one or more representatives entitled to receive Public Side Information and one or more representatives to receive non-PUBLIC information.

6.03 Notices.

Promptly, but in any event within five (5) Business Days, notify the Administrative Agent (for distribution to the Lender Representative and each Lender) upon obtaining knowledge of:

- (a) the occurrence of any Default;
- (b) any matter, including, without limitation, (i) breach or non-performance of, or any default under, a Contractual Obligation of the Borrower or any Subsidiary; (ii) any action, suit, dispute, litigation, investigation, proceeding or suspension involving the Borrower or any Subsidiary or any of their respective properties and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws, in each case of this clause (b), that has resulted or would reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event that would reasonably be expected to result in a Material Adverse Effect;
- (d) any occurrence of any Disposition of property or assets for which the Borrower is required to make a Mandatory Prepayment pursuant to Section 2.03(b)(i) or Section 2.03(b)(ii);
- (e) (i) any written notice received by the Borrower from any Governmental Authority alleging any potential or actual violations of any Health Care Law by the Borrower, (ii) any written notice that the FDA (or international equivalent) is limiting, suspending or revoking any Permit, (iii) any written notice that the Borrower has become subject to any administrative or regulatory

enforcement action, proceeding or investigation issued by the FDA or other Governmental Authority, (iv) notice of the exclusion or debarment from any governmental healthcare program or debarment or disqualification by FDA of the Borrower, (v) any written notice that FDA or other Governmental Authority is changing the market classification or labeling under any such Permit, or (vi) the receipt of notice, or occurrence of any decision, to conduct a voluntary or mandatory recall, withdrawal, removal, suspension of manufacturing or marketing, or discontinuation, in each case of clauses (i) through (vi), to the extent such notice would reasonably be expected to result in material and adverse consequences to the Borrower and its Subsidiaries, taken as a whole; and

(f) Promptly (but in any event within ten (10) Business Days) of the Borrower or any other Loan Party having knowledge of any Third Party having created a lien, charge, security interest or other encumbrance on, any of the Licensed Intellectual Property in respect of the License Agreement.

Each notice pursuant to this Section 6.03 (other than Section 6.03(d) or (e)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and to the extent applicable, stating what action the Borrower has taken and proposes to take with respect thereto.

6.04 Payment of Obligations.

Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (other than Permitted Liens); and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, in each case, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05;

(b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(c) use commercially reasonable efforts to preserve or renew all of its registered patents, trademarks, trade names and service marks related to the Intellectual Property, the non-preservation of which would reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties.

(a) Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty and condemnation events excepted; and

(b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance.

(a) Maintenance of Insurance. Maintain with financially sound and reputable (as determined by the Borrower in good faith) insurance companies not Affiliates of the Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

(b) Evidence of Insurance. Subject to Section 6.18(b), cause the Administrative Agent to be named as lenders' loss payable, loss payee or mortgagee, as its interest may appear, and/or additional insured with respect of any such insurance providing liability coverage or coverage in respect of any Collateral (other than directors and officers policies and workers compensation policies), and cause, unless otherwise agreed to by the Lender Representative, each provider of any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Administrative Agent that it will give the Administrative Agent thirty (30) days prior written notice before any such policy or policies shall be altered or cancelled (or ten (10) days prior notice in the case of cancellation due to the nonpayment of premiums). No more than one time per year, the Loan Parties shall provide, or cause to be provided, to the Administrative Agent, evidence of insurance, to the extent such evidence is reasonably requested by the Administrative Agent (acting at the written direction of the Required Lenders) or the Lender Representative. Notwithstanding the foregoing, so long as no Event of Default exists, except as required under Section 2.03(b)(i), the Borrower and its Subsidiaries may retain all or any portion of the proceeds of any insurance of Borrower and its Subsidiaries (and Administrative Agent shall promptly remit to Borrower or the applicable Subsidiary any proceeds with respect to such insurance received by Administrative Agent).

6.08 Compliance with Laws.

Comply with the requirements of all Applicable Laws and Privacy Requirements (including applicable Health Care Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records.

(a) Maintain proper books of record and account, in which full, true and correct entries in all material respects in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of such Loan Party or such Subsidiary, as the case may be; and

(b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Loan Party or such Subsidiary, as the case may be.

6.10 Inspection and Access Rights.

(a) Permit representatives of the Administrative Agent or the Lender Representative to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures and after giving the Borrower an opportunity to participate in any such discussions with such accountants), not more than one (1) time per calendar year at reasonable times during normal business hours and upon reasonable advance notice to the Borrower; *provided, however*, that when an Event of Default exists the Administrative Agent, the Lender Representative or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower. Notwithstanding anything to the contrary in this Section 6.10, none of the Borrower and its Subsidiaries will be required to disclose or permit the inspection or discussion of, any document, information or other matter (i) in respect of which disclosure (or their respective representatives or contractors) is prohibited by Law or any binding agreement or (ii) that is subject to attorney client or similar privilege or constitutes attorney work product.

(b) Not less and not more than quarterly, at a time mutually agreed with the Lender Representative that is after the date (i) of the regularly scheduled quarterly meeting between Bioprojet and Harmony and (ii) that the Borrower's financial statements for such fiscal period are filed with the SEC (or, if one or more of events in clauses (i) and (ii) do not occur within a given fiscal quarter of the Borrower, then after the date on which financial statements were delivered (or required to be delivered) pursuant to Section 6.01(b)), participate in a conference call between senior management of the Borrower and the Lender Representative to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently-ended fiscal period. Prior to each such conference call with the Lender Representative, deliver to the Lender Representative copies of any written materials (other than administrative in nature) provided by or on behalf of Bioprojet to Harmony, or Harmony to Bioprojet, in connection with the quarterly meeting between Bioprojet and Harmony, as well as any minutes prepared by or received by Harmony reflecting the matters discussed at such meeting; *provided* that none of the Borrower and its Subsidiaries will be required to disclose (and may redact) any such materials or minutes (i) in respect of which disclosure is prohibited by Law or any binding agreement with Bioprojet, or (ii) that is subject to attorney client or similar privilege or constitutes attorney work product.

6.11 Use of Proceeds.

Use the proceeds of any Borrowing (i) in the case of the Initial Loans to repay the Existing Debt and to fund transaction fees and expenses in connection with this Agreement and such funding, and (ii) in the case of Delayed Draw Loans, to fund all or a portion of the consideration for a Permitted Acquisition, and to pay transaction fees and expenses, and to pay transaction fees and expenses in connection with such Permitted Acquisition and such funding, and for general corporate purposes and working capital not in contravention of any Loan Document.

6.12 Reserved.

6.13 Covenant to Guarantee Obligations.

The Loan Parties will cause each of their Subsidiaries (other than any Excluded Subsidiary) whether newly formed, after acquired or otherwise existing (including any Subsidiary ceasing to be an

Excluded Subsidiary) to promptly (and in any event within forty-five (45) days after such Subsidiary is formed or acquired or ceases to be an Excluded Subsidiary (or such longer period of time as agreed to by the Lender Representative in its reasonable discretion)) become a Guarantor hereunder by way of execution of a Joinder Agreement. In connection with the foregoing, the Loan Parties shall deliver to the Administrative Agent and the Lender Representative, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to Sections 4.01(b) – (d), and 6.14 and such other documents or agreements as the Administrative Agent or the Lender Representative may reasonably request, including without limitation, updated Schedules 5.10, 5.12 and 5.26.

6.14 Covenant to Give Security.

Except with respect to Excluded Property:

(a) Equity Interests and Personal Property. Each Loan Party will cause the Pledged Equity and all of its tangible and intangible personal property that constitutes Collateral now owned or hereafter acquired by it to be subject at all times to a first priority, perfected Lien (subject to Permitted Liens) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Obligations pursuant to, and as and when required by, the terms and conditions of the Collateral Documents. Each Loan Party shall provide opinions of counsel to the extent reasonably requested by the Lender Representative and any filings and deliveries reasonably necessary in connection therewith to perfect the security interests therein, all in form and substance reasonably satisfactory to the Lender Representative.

(b) Real Property. If any Loan Party acquires a fee ownership interest in any Material Real Property, it shall provide to the Administrative Agent within one hundred eighty (180) days (or such extended period of time as reasonably agreed to by the Lender Representative) a Mortgage and such other support documents as the Administrative Agent (acting at the written direction of the Required Lenders) or the Lender Representative may reasonably request to cause such Material Real Property to be subject to a first priority, perfected Lien (subject in each case to Permitted Liens) in favor of the Administrative Agent for the benefit of the Secured Parties to secure the Obligations pursuant to the terms and conditions of the Collateral Documents.

(c) Account Control Agreements. Subject to Section 6.18, each of the Loan Parties shall not open, maintain or otherwise have any deposit or other accounts (including securities accounts) at any bank or other financial institution, or any other account where money or securities are or may be deposited or maintained with any Person, other than (i) deposit accounts that are maintained at all times with depository institutions as to which the Administrative Agent shall have received a Qualifying Control Agreement within 30 days after the opening or acquisition thereof (or such extended period of time as reasonably agreed to by the Lender Representative), (ii) securities accounts that are maintained at all times with financial institutions as to which the Administrative Agent shall have received a Qualifying Control Agreement thirty (30) days after the opening or acquisition thereof (or such extended period of time as reasonably agreed to by the Lender Representative), and (iii) Excluded Accounts.

(d) Further Assurances. At any time upon the reasonably written request of the Administrative Agent (acting at the written direction of the Required Lenders) or the Lender Representative, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent or the Lender Representative may reasonably deem necessary or desirable to maintain in favor of the Administrative Agent, for the benefit of the Secured Parties, Liens on the Collateral that are duly perfected in accordance with the requirements of, or the obligations of the Loan Parties under, the Loan Documents and all Applicable Laws.

(e) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, in no event shall the Loan Parties be required, nor shall the Administrative Agent be authorized, to take any of the following actions (i) execute, deliver or otherwise obtain any agreement, instrument or documents governed by foreign law, (ii) perfect any pledge, security interest or Mortgage by any means other than by (A) filings pursuant to the UCC in the office of the secretary of state (or similar central filing office) of the relevant states and jurisdictions, (B) filings in the applicable real estate records with respect to any Material Real Property with respect to which a Mortgage has been granted or any fixtures relating to any Material Real Property with respect to which a Mortgage has been granted to the extent provided in clause (b) above, (C) filings with the USPTO, as applicable, with respect to Intellectual Property, (D) to the extent certificated, delivery of stock certificates and other certificated securities and the applicable transfer powers endorsed in blank and (E) entering into Control Agreements pursuant to clause (c) above or Section 6.18(a), or (iii) to take any actions with respect to any assets not located in the United States (including any Intellectual Property registered or applied for in any jurisdiction outside the United States) or enter into any security document governed by the laws of a jurisdiction other than a jurisdiction within the United States; *provided that this clause (iii) shall not apply to the Collateral described in clause (ii)(D) above.*

6.15 Environmental Matters.

Except as could reasonably be expected to result in liabilities or expenditures of the Borrower or any of its Subsidiaries in excess of the Threshold Amount, (a) comply and take commercially reasonable steps to cause all lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits; (b) obtain and renew all Environmental Permits necessary for its operations and properties; (c) conduct any investigation, study, sampling and testing, cleanup, removal, remedial or other action to remove and clean up all Hazardous Materials from any of its properties to the extent required of any Loan Party or any of its Subsidiaries under, and in accordance with, all applicable Environmental Laws; and (d) make an appropriate response to any Environmental Claim against such Loan Party or any of its Subsidiaries.

6.16 Anti-Corruption Laws: Sanctions.

Conduct its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

6.17 Further Assurances.

Promptly upon the reasonable written request by the Administrative Agent (acting at the written direction of the Required Lenders), the Lender Representative, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, the Lender Representative, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by Applicable Law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder to the extent provided in Section 6.14 and (iv) assure, convey, grant, assign, transfer,

preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party is or is to be a party, and cause each of its Subsidiaries to do so.

6.18 Post-Closing Covenants.

(a) Qualifying Control Agreements. By the date that is sixty (60) days after the Closing Date, or such later date as agreed to by the Lender Representative, deliver to the Administrative Agent, each Qualifying Control Agreement required to be delivered pursuant to Section 6.14.

(b) Insurance. By the date that is thirty (30) days after the Closing Date, or such later date as reasonably agreed to by the Lender Representative, deliver to the Administrative Agent all endorsements with respect to the insurance certificates delivered to the Administrative Agent on the Closing Date pursuant to Section 4.01(e), in each case meeting the requirements set forth in Section 6.07(b).

6.19 Maintenance, Defense and Enforcement of IP Rights.

Each Loan Party and its Subsidiaries shall take those steps that are commercially reasonable under the circumstances to file, prosecute, maintain, defend and enforce the Material IP Rights. The Loan Parties will provide, at the request of the Lender Representative, periodic updates of the status of, and any material activity with respect to, the filing, prosecution, maintenance, defense and enforcement of the Owned Intellectual Property and the Licensed Intellectual Property, including sharing copies of substantive patent office submissions or other documents, if requested. The Loan Parties will give good faith consideration to any reasonable suggestions from the Lender Representative.

**ARTICLE VII
NEGATIVE COVENANTS**

Each of the Loan Parties hereby covenants and agrees that on the Closing Date and thereafter until the Facility Termination Date, no Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens.

Create, incur, assume or suffer to exist any Lien upon any of its property or assets, whether now owned or hereafter acquired, except for the following (the "Permitted Liens"):

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.01 and any renewals or extensions thereof, *provided* that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(b) and (iii) any renewal, refinancings, replacements or extension of the obligations secured or benefited thereby is permitted by Section 7.02(b);

(c) Liens for Taxes, assessments or other governmental charges or levies not yet due and not yet overdue for 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP for property Taxes on property such Person or one of its Subsidiaries has determined to abandon if the sole recourse for such Tax, assessment, charge, levy or claim is to such property;

(d) Statutory Liens such as carriers', warehousemen's, landlords', mechanics', materialmen's, repairmen's, construction contractors', airports', navigation authority's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than sixty (60) days or which are being contested in good faith and by appropriate proceedings diligently conducted (or which, if due and payable, are being contested in good faith by appropriate proceedings and for which adequate reserves are being maintained, to the extent required by GAAP); *provided* that adequate reserves with respect thereto are maintained on the books of the applicable Person;

(e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) deposits to secure the performance of bids, tenders, trade contracts and leases (other than Indebtedness), statutory obligations, surety, stay, customs and appeal bonds, performance bonds, or as security for contested taxes or import duties or for the payment of rent, and other obligations of a like nature incurred in the ordinary course of business;

(g) Liens in favor of the issuers of performance and surety bonds, bid, indemnity, warranty, release, appeal or similar bonds or with respect to regulatory requirements or letters of credit or bankers' acceptances issued and completion of guarantees provided for, in each case, pursuant to the request of and for the account of the Borrower or any Subsidiary in the ordinary course of its business;

(h) survey exceptions, non-monetary encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines and other similar purposes, reservations of rights or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) affecting real property or incidental to the conduct of business of the applicable Person or to the ownership of its properties, which, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Borrower or its Subsidiaries and do not materially detract from the value thereof;

(i) Liens securing judgments for the payment of money (or appeal or other surety bonds relating to such judgments) not constituting an Event of Default under Section 8.01(h);

(j) Liens securing Indebtedness permitted under Section 7.02(c) or (k); *provided* that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;

(k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any of its Subsidiaries with any Lender, in each case in the ordinary course of business in favor of

the bank or banks with which such accounts are maintained, securing solely the customary amounts owing to such bank with respect to cash management and operating account arrangements; *provided*, that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(l) Liens arising out of judgments or awards not resulting in an Event of Default; *provided* the applicable Loan Party or Subsidiary shall in good faith be prosecuting an appeal or proceedings for review;

(m) Any interest or title of a lessor, licensor or sublessor under any lease, license, sublease, sublicense, occupancy agreement or assignment of or in respect of real or personal property and covering only those assets so leased, subleased, licensed or sublicensed;

(n) Liens of a collection bank arising under Section 4–210 of the UCC on items in the course of collection;

(o) Liens on property of a Person existing at the time such Person acquired the property or the Person is merged into or consolidated with the Borrower or any Subsidiary of the Borrower or becomes a Subsidiary of the Borrower; *provided* that such Liens were not created in contemplation of such merger, consolidation or Investment and do not extend to any assets other than those of the Person merged into or consolidated with the Borrower or such Subsidiary or acquired by the Borrower or such Subsidiary, and the applicable Indebtedness secured by such Lien is permitted under Section 7.02(t);

(p) Liens securing Indebtedness permitted under Section 7.02(f) or (j);

(q) any zoning, building or similar laws or rights reserved to or vested in any Governmental Authority;

(r) other Liens securing Indebtedness and other obligations in an aggregate secured principal amount (or amount with respect to other obligations) not to exceed \$5,000,000 at any time outstanding;

(s) Liens on specific items of inventory or other goods and proceeds of the Borrower or a Subsidiary securing such Person's obligations in respect of bankers' acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(t) Liens arising from, or from UCC financing statement filings regarding, operating leases or consignments entered into by the Borrower or its Subsidiaries in the ordinary course of business;

(u) deposits made or other security provided in the ordinary course of business to secure liability to insurance carriers or under self-insurance arrangements in respect of such obligations;

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

(w) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation and exportation of goods in the ordinary course of business;

(x) Liens (i) of a collection bank arising under Section 4-210 of the UCC, or any comparable or successor provision, on items in the course of collection; (ii) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; and (iii) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(y) any Liens with respect to Equity Interests of any joint venture, co-promotion agreement or similar arrangement pursuant to any joint venture, co-promotion or similar agreement;

(z) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(aa) (x) Liens solely on any cash earnest money deposits made by the Borrower or its Subsidiaries in connection with any letter of intent or other agreement in respect of any permitted Investment, (y) Liens on advances of cash or Cash Equivalents in favor of the seller of any property to be acquired in a permitted Investment to be applied against the purchase price for such Investment and (z) on the escrowed cash portion of any earnest moneys paid or the purchase price received in connection with any Investment, acquisition or Disposition permitted by this Agreement or any other Loan Document to secure guarantees, indemnities, or obligations thereunder;

(bb) Liens on any real property that constitutes Excluded Property and any condemnation or eminent domain proceedings affecting any real property;

(cc) Liens listed as exceptions on any mortgage insurance policy;

(dd) in the case of any account described in clause (e)(ii) of the definition of "Excluded Accounts," Liens on such account in favor of any counterparty to the applicable Contractual Obligation;

(ee) any Permitted License; and

(ff) Liens on cash deposits for obligations of landlords and sublandlords and in connection with any obligations and Indebtedness permitted by Section 7.02(h) or (t).

7.02 **Indebtedness.**

Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any refinancings, refundings, renewals or extensions thereof; *provided* that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any

existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and, still further, that the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination, standstill and related terms (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable, when taken as a whole, in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(c) Indebtedness in respect of Finance Leases, Synthetic Lease Obligations and purchase money obligations (within the limitations set forth in [Section 7.01\(j\)](#)); *provided, however*, that the aggregate amount of all such Indebtedness (to the extent constituting Indebtedness under GAAP) at any one time outstanding shall not exceed \$10,000,000;

(d) Unsecured Indebtedness of the Borrower or any Subsidiary of the Borrower owed to the Borrower or another Subsidiary of the Borrower, which Indebtedness is permitted under the provisions of [Section 7.03](#) ("*Intercompany Debt*");

(e) Guarantees of the Borrower or any Subsidiary in respect of Indebtedness otherwise permitted hereunder of the Borrower or any Subsidiary; *provided* that, (i) such Guarantees are not prohibited by the provisions of [Section 7.03](#) and (ii) if the Indebtedness being guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Obligations on terms at least as favorable to the Lenders;

(f) Swap Obligations (contingent or otherwise) existing or arising under any Swap Contract, including any payments in connection with the termination of any Swap Obligations, *provided* that such Swap Obligations are (or were) entered into by such Person for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates and not for speculative purposes;

(g) Indebtedness owed to any financial institution in respect of overdrafts, netting services, purchasing or debit card programs and related liabilities arising from ordinary course treasury, depository or cash management services or in connection with any automated clearing house transfers of funds, including any payments in connection with the termination thereof;

(h) Indebtedness in respect of (A) letters of credit issued for the account of the Borrower or a Subsidiary and (B) bankers' acceptances, bank guaranties, surety bonds and similar instruments, in each case, in the ordinary course of business;

(i) Indebtedness consisting of obligations of the Borrower or any of its Subsidiaries in respect of deferred compensation, indemnification, earn-outs, milestone payments, adjustment of purchase or other similar arrangements or Deferred Acquisition Consideration incurred by such Person in connection with Permitted Acquisitions;

(j) Indebtedness of the Borrower and its Subsidiaries consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

- (k) Finance Leases that constitute automobile leases in an aggregate principal amount not to exceed \$5,000,000 in the aggregate at any time outstanding;
- (l) Indebtedness owed to future, current or former officers, directors, managers, employees, consultants and independent contractors thereof or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Borrower so long as, after giving effect thereto, the Borrower is in compliance with Section 7.11;
- (m) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;
- (n) guarantees incurred in the ordinary course of business in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners;
- (o) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that they are permitted to remain unfunded under Applicable Law;
- (p) Indebtedness of the Borrower or any Subsidiary consisting of (i) deferred compensation or equity based compensation to current or former officers, directors, consultants, advisors or employees thereof, in each case in the ordinary course of business or (ii) Taxes, assessments or governmental charges to the extent such Taxes are being contested in good faith;
- (q) Other Indebtedness not to exceed \$5,000,000 in the aggregate principal amount at any time outstanding;
- (r) Indebtedness incurred in connection with corporate credit cards not to exceed \$5,000,000 in an aggregate principal amount at any time outstanding;
- (s) Indebtedness of Subsidiaries that are not Loan Parties not to exceed \$5,000,000 in an aggregate principal amount at any time outstanding;
- (t) Indebtedness assumed pursuant to any Permitted Acquisition not to exceed \$5,000,000 in the aggregate principal amount at any time outstanding, so long as no such Indebtedness was created or incurred in connection with, or in contemplation of, such Permitted Acquisition, and any refinancings, refundings, renewals or extensions thereof; *provided* that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and the direct or any contingent obligor with respect thereto is not changed, as a result of or in connection with such refinancing, refunding, renewal or extension; and, still further, that the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination, standstill and related terms (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable, when taken as a whole, in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

- (u) Permitted Convertible Debt;
- (v) Indebtedness of the Borrower or any Subsidiary in the form of a working capital or revolving credit facility with a maximum credit line of no more than \$15,000,000 (the "*Revolving Credit Facility*"); provided, that such Indebtedness must be unsecured;
- (w) Indebtedness in respect of performance, stay, customs, surety or appeal bonds provided in the ordinary course of business;
- (x) customary indemnification obligations in favor of purchasers in connection with Dispositions permitted hereunder; and
- (y) Indebtedness incurred by the Borrower and its Subsidiaries in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business.

7.03 **Investments.**

Make or hold any Investments, except:

- (a) Loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, managers, consultants or independent contractors of the Borrower and its Subsidiaries (i) for payroll payments, travel, entertainment, relocation and analogous ordinary business purposes and (ii) solely in the case of loans and advances, in connection with such Person's acquisition of Equity Interests of the Borrower, to the extent permitted pursuant to Section 7.06(j);
- (b) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;
- (c) Guarantees permitted by Section 7.02;
- (d) Investments existing on the date hereof (and set forth on Schedule 7.03 and Investments consisting of an extension, modification, replacement or renewal of any Investment existing on, or made pursuant to a binding commitment existing on, the Closing Date; *provided* that the amount of any such Investment may be increased (a) as required by the terms of such Investment as in existence on the Closing Date or (b) as otherwise permitted under this Agreement;
- (e) Permitted Acquisitions;
- (f) any customary upfront milestone, marketing or other payment in the ordinary course of business to another Person in connection with obtaining a right to receive a royalty or other payments in the future;
- (g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

- (h) other Investments in an aggregate amount invested per fiscal year of the Borrower not to exceed \$5,000,000;
- (i) Swap Contracts permitted under Sections 7.02(f);
- (j) Investments consisting of purchases or acquisitions of inventory, supplies, materials and equipment or purchases, acquisitions, licenses, sublicenses or leases or subleases of intellectual property, or other rights or assets, in each case in the ordinary course of business;
- (k) Investments consisting of (v) Liens permitted under Section 7.01, (w) Indebtedness (including guarantees) permitted under Section 7.02, (x) mergers, amalgamations, consolidations and transfers of all or substantially all assets permitted under Section 7.04, (y) Dispositions permitted under Section 7.05, or (z) Restricted Payments permitted under Section 7.06;
- (l) Investments consisting of purchases and acquisitions of assets or services useful in the business of the Borrower or any Subsidiary in the ordinary course of business;
- (m) any Investment of the non-cash consideration received from a Disposition that was made pursuant to and in compliance with Section 7.05;
- (n) Investments consisting of earnest money deposits made by the Borrower or its Subsidiaries in connection with any letter of intent or other agreement in respect of any Investment permitted by this Section 7.03;
- (o) acquisitions of obligations of one or more officers or other employees of any direct or indirect parent of the Borrower, the Borrower or any Subsidiary of the Borrower in connection with such officer's or employee's acquisition of Equity Interests of any direct or indirect parent of the Borrower, so long as no cash is actually advanced by the Borrower or any Subsidiary to such officers or employees in connection with the acquisition of any such obligations;
- (p) guarantees of operating leases (for the avoidance of doubt, excluding obligations in respect of Finance Leases) or of other obligations, in each case, that do not constitute Indebtedness and are entered into by the Borrower or any Subsidiary in the ordinary course of business;
- (q) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted by Section 7.06;
- (r) non-cash Investments made in connection with bona fide tax planning and reorganization activities as determined in good faith by the Borrower;
- (s) Investments made in the ordinary course of business in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to, and guarantees with respect to obligations of, distributors, suppliers, licensors and licensees in the ordinary course of business;
- (t) Investments of a Subsidiary acquired after the Closing Date or of an entity merged into or amalgamated or consolidated with a Subsidiary in a transaction that is not prohibited by Section 7.03 after the Closing Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(u) (i) Investments by Loan Parties in Joint Ventures and Subsidiaries that are not Loan Parties in an aggregate amount not to exceed \$10,000,000 at any time outstanding, (ii) Investments by a Subsidiary that is not a Loan Party in another Subsidiary that is not a Loan Party and (iii) Investments by a Loan Party in another Loan Party;

(v) Investments made with Equity Interests (other than Disqualified Equity Interest) of the Borrower or from the Net Cash Proceeds received by the Borrower from the sale or issuance of Equity Interests of the Borrower so long as such Investment is made within ninety (90) days of the receipt of such Net Cash Proceeds;

(w) to the extent constituting Investments, Investments in the form of Permitted Bond Hedge Transactions and Permitted Warrant Transactions, in each case, entered into in connection with Permitted Convertible Debt; and

(x) (i) cash and Cash Equivalents and (ii) Investments consisting of deposit accounts and securities accounts maintained in accordance with the terms of this Agreement and the other Loan Documents containing cash and such Cash Equivalents.

7.04 Fundamental Changes.

Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary of the Borrower may merge with (i) except in the case of Harmony, the Borrower; *provided* that the Borrower shall be the continuing or surviving Person, (ii) Harmony; *provided* that Harmony shall be the continuing or surviving Person, or (iii) any one or more other Subsidiaries, *provided* that when any Loan Party is merging with another Subsidiary (that is not also a Loan Party), such Loan Party shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Harmony or to another Subsidiary of the Borrower that is a Loan Party;

(c) any Subsidiary that is not a Loan Party may Dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another wholly owned Subsidiary of the Borrower that is not a Loan Party or (ii) to Harmony or any other wholly-owned Subsidiary of the Borrower;

(d) any Subsidiary of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; *provided* that (i) in the case of any merger or consolidation involving Harmony, Harmony shall be the continuing or surviving Person, (ii) the Person surviving such merger shall be a wholly-owned Subsidiary of the Borrower and (iii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, a Loan Party is the surviving Person;

(e) each of the Borrower and any of its Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; *provided, however*, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the Borrower is a party, the Borrower is the surviving Person and (ii) in the case of any such merger to which any Loan Party (other than the Borrower) is a party, a Loan Party is the surviving Person;

(f) Investments permitted under Section 7.03 and Dispositions permitted by Section 7.05, which, in each case, may be structured as a merger, consolidation or amalgamation; and

(g) any Subsidiary of the Borrower (other than Harmony) may dissolve, liquidate or wind up its affairs at any time, provided, that, such dissolution, liquidation or winding up could not reasonably be expected to have a Material Adverse Effect and all of its assets and business are transferred to a Loan Party or solely in the case of a Subsidiary that is not a Loan Party, another Subsidiary that is not a Loan Party prior to or concurrently with such dissolution, liquidation or winding up.

7.05 Dispositions.

Make any Disposition or enter into any agreement to make any Disposition, except for the following Dispositions:

- (a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;
- (b) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;
- (c) Dispositions permitted by Section 7.04;
- (d) Dispositions consisting of Permitted Liens;
- (e) other Dispositions of assets for not less than the fair market value (as determined by the Borrower in good faith) thereof so long as (1) at least 75.0% of the consideration paid in connection therewith shall be cash or Cash Equivalents paid substantially concurrently with consummation of the transaction, (2) immediately after giving effect to such Disposition and after giving effect to the application of the proceeds thereof as required hereunder, the Borrower would be in compliance with the Liquidity covenant set forth in Section 7.11, (3) the Net Cash Proceeds received in respect of a Disposition made in reliance on this Section 7.05(e) shall be applied in accordance with Section 2.03(b), (4) the aggregate value of assets Disposed of pursuant to this Section 7.05(e) shall not exceed \$5,000,000 per fiscal year of the Borrower and (5) none of the assets Disposed of pursuant to this Section 7.05(e) shall include any Material IP Rights; *provided* that for the purposes of this Section 7.05(e), the following shall be deemed to be cash (x) any securities received by the Loan Parties or any Subsidiary from such transferee that are converted by such Person into cash or Cash Equivalents upon the closing of the applicable Disposition, (y) any purchase price adjustment, milestone payment, royalty, earnout, contingent payment, back-end or other deferred payment of a similar nature and (z) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (z) that is at that time outstanding, not to exceed \$2,500,000, determined at the time of such Disposition;
- (f) other Dispositions in an amount not to exceed \$5,000,000 in any fiscal year of the Borrower;
- (g) Permitted Licenses and the transfer of any non-U.S. Product Authorization in connection therewith;

- (h) the settlement or early termination or cancellation of any Permitted Bond Hedge Transaction or any related Permitted Warrant Transaction;
- (i) Dispositions to landlords of improvements made to leased real property pursuant to customary terms of leases entered into in the ordinary course of business;
- (j) Dispositions of inventory, including to end users (through wholesalers or other typical sales channels) or to distributors, in the ordinary course of business;
- (k) Dispositions of property to the Borrower or any Subsidiary; provided, that if the transferor of such property is a Loan Party then the transferee thereof must be a Loan Party;
- (l) Dispositions of receivables in connection with the collection, settlement or compromise thereof, and the forgiveness, release or compromise of any amount owed to any Loan Party or Subsidiary in the ordinary course of business;
- (m) other than with respect to Intellectual Property, licenses, sublicenses, leases or subleases granted to others not interfering in any material respect with the business of the Borrower and its Subsidiaries;
- (n) dispositions of cash and Cash Equivalents in the ordinary course of business or otherwise in transactions permitted hereunder;
- (o) Involuntary Dispositions;
- (p) the unwinding of any Swap Contract permitted by Section 7.02(f) pursuant to its terms;
- (q) in connection with any transaction permitted under Section 7.01, 7.03 or 7.06;
- (r) dispositions in the ordinary course of business consisting of the abandonment of Intellectual Property (other than Material IP Rights) which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of Borrower or any of its Subsidiaries;
- (s) the sale, transfer, issuance or other disposition of a *de minimis* number of shares of the Equity Interests of a Foreign Subsidiary in order to qualify members of the governing body of such Foreign Subsidiary if required by Applicable Law; and
- (t) the exercise by the Borrower or any Subsidiary of termination rights under any lease, sublease, license, sublicense, concession or other agreements.

For the avoidance of doubt, and notwithstanding the foregoing, no Disposition of Material IP Rights shall be permitted under this Section 7.05 or otherwise, other than Dispositions (i) constituting a Permitted License or (ii) among Loan Parties.

7.06 Restricted Payments.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

- (a) Each Subsidiary may make Restricted Payments to any Loan Party that owns Equity Interests in such Subsidiary, and each non Loan Party Subsidiary may make Restricted Payments to its equityholders ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;
- (b) The Borrower may declare and pay dividends with respect to its capital stock and Equity Interests payable solely in additional shares of its common stock and its Qualified Equity Interests;
- (c) The Borrower may make Restricted Payments pursuant to and in accordance with restricted stock agreements, stock option plans or other benefit plans for management, directors or employees of the Borrower and its Subsidiaries in an aggregate amount not to exceed \$250,000 in any fiscal year of the Borrower;
- (d) The Borrower may make repurchases of its common stock deemed to occur upon the cash-less or net exercise of stock options, warrants or other convertible or exchangeable securities;
- (e) The Borrower may make repurchases of Equity Interests deemed to occur upon the withholding of a portion of the Equity Interests granted or awarded to a current or former officer, director, employee or consultant to pay for the taxes payable by such Person upon such grant or award (or upon vesting or exercise thereof);
- (f) The Borrower may make payments of cash in lieu of the issuance of fractional shares of Equity Interests in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of or upon exercise, conversion or exchange of Equity Interests, warrants, options or other securities exercisable or convertible into, Equity Interests of the Borrower;
- (g) The Borrower may declare or make, or agree to pay or make Restricted Payments which are contingent upon either (i) the prior consent of the Required Lenders or (ii) the repayment in full of the Obligations (other than contingent indemnification and expense reimbursement obligations for which no claims have been made) and the termination of the Commitments;
- (h) The Borrower may make other Restricted Payments not to exceed \$1,000,000 in any fiscal year of the Borrower;
- (i) The Borrower may make any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;
- (j) So long as, after giving effect thereto, the Borrower is in compliance with Section 7.11, the Borrower may make Restricted Payments for the purpose of redeeming from former directors, officers, employees, members of management, managers or consultants of the Borrower or any Subsidiary (or their respective family members, former spouses or estate) Equity Interest of the Borrower (and/or making payments on Indebtedness issued by the Borrower or its Subsidiaries pursuant to Section 7.02) and any tax payments related thereto, in an aggregate amount not to exceed \$10,000,000 (it being agreed that, to the extent constituting an Investment permitted by Section 7.03, the amount of any Indebtedness of such Persons owing to the Borrower or any

Subsidiary forgiven in connection with such Restricted Payment shall be excluded from any determination pursuant to this clause (j));

(k) The Borrower and its Subsidiaries may make loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower or any Subsidiary of the Borrower in connection with such Person's purchase of Equity Interests of the Borrower; *provided* that (1) no cash is actually advanced pursuant to this clause (l) other than to pay taxes due in connection with such purchase, unless immediately repaid and (2) such loan or advance is permitted under Section 7.03; and

(l) The Borrower may purchase, redeem, retire, or otherwise acquire shares of its Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its Qualified Equity Interests.

7.07 Change in Nature of Business.

Engage in any material line of business substantially different from those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business reasonably related, complementary, incidental, ancillary thereto or any reasonable extensions thereto.

7.08 Transactions with Affiliates.

Enter into or permit to exist any transaction or series of transactions with any officer, director or Affiliate of such Person (including for the purchase, lease or exchange of property or the rendering of services) (other than the Borrower or any Subsidiary) with a value in excess of \$50,000, other than (a) compensation, employee benefits, reimbursement of expenses and indemnification of officers, directors and employees, and customary payment of insurance premiums on behalf of officers and directors, in each case, in the ordinary course of business, (b) transactions in the ordinary course of business that are on terms that are not less favorable to the Borrower or a Subsidiary in any material respect than would be obtainable by the Borrower or such Subsidiary at such time in a comparable arm's-length transaction with a Person other than an Affiliate (as determined in good faith by the senior management or the board of directors of the Borrower), (c) Restricted Payments permitted by Section 7.06, (d) transactions between Loan Parties, (e) transactions permitted pursuant to any of Sections 7.01(l), 7.03(a), 7.03(o) and 7.05(s), and (f) transactions existing on the Closing Date and described on Schedule 7.08 (and any amendment thereto or replacement thereof to the extent such an amendment or replacement is not materially adverse to the Lenders).

7.09 Burdensome Agreements.

Enter into, or permit to exist, any Contractual Obligation (except for this Agreement and the other Loan Documents) that encumbers or restricts the ability of any such Person to (i) make Restricted Payments to any Loan Party, (ii) pay any Obligations owed to any Loan Party, (iii) make loans or advances to any Loan Party, or (iv) create any Lien upon any of their properties or assets, whether now owned or hereafter acquired that constitute Collateral, except the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(a) contractual encumbrances or restrictions of the Borrower or any Subsidiary in effect on the Closing Date, including pursuant to this Agreement and the other Loan Documents, related Swap Contracts and Indebtedness permitted pursuant to Section 7.02(b);

(b) Applicable Law or any applicable rule, regulation or order;

(c) any agreement or other instrument of a Person acquired by or merged, amalgamated or consolidated with or into Loan Party that was in existence at the time of such acquisition (or at the time it merges with or into any Loan Party in connection with the acquisition of assets from such Person (but, in each case, not created in contemplation thereof)), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired or designated; *provided* that in connection with a merger, amalgamation or consolidation under this clause (c), if a Person other than any Loan Party is the successor company with respect to such merger, amalgamation or consolidation, any agreement or instrument of such Person or any Subsidiary of such Person, shall be deemed acquired or assumed, as the case may be, by any Loan Party, as the case may be, at the time of such merger, amalgamation or consolidation;

(d) customary encumbrances or restrictions contained in contracts or agreements for the sale of assets applicable to such assets pending consummation of such sale, including customary restrictions with respect to a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of capital stock or assets of such Subsidiary;

(e) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(f) customary provisions in operating or other similar agreements, asset sale agreements and stock sale agreements entered into in connection with the entering into of such transaction, which limitation is applicable only to the assets that are the subject of those agreements;

(g) purchase money obligations for property acquired and obligations in respect of Finance Leases, to the extent such obligations impose restrictions on the property so acquired, solely as permitted by, the terms of this Agreement;

(h) customary provisions contained in leases, sub-leases, licenses, sublicenses, contracts and other similar agreements entered into in the ordinary course of business restricting the assignment thereof or restricting the assignment, pledge, transfer or sublease or sublicense of the property leased, licensed or otherwise the subject thereof;

(i) any encumbrance or restriction contained in other Indebtedness of the Borrower or any Subsidiary that is incurred subsequent to the Closing Date pursuant to Section 7.02 (including, for the avoidance of doubt, the Revolving Credit Facility), *provided* that (i) such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Borrower's ability to make anticipated principal or interest payments under this Agreement (as determined by the Borrower in good faith) and (ii) such encumbrances and restrictions contained in any agreement or instrument taken as a whole are not materially more restrictive on the Borrower and its Subsidiaries than the encumbrances and restrictions contained in this Agreement (as determined by the Borrower in good faith);

(j) any encumbrance or restriction arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, (x) detract from the value of the property or assets of the Borrower or any Subsidiary in any manner material to the Borrower or any Subsidiary or (y) materially affect the Borrower's ability to make future principal or interest payments under this Agreement, in each case, as determined by the Borrower in good faith;

(k) any encumbrance or restriction contained in secured Indebtedness otherwise permitted to be incurred pursuant to Sections 7.01 and 7.02 to the extent limiting the right of the debtor to dispose of the assets securing such Indebtedness;

(l) customary provisions in joint venture agreements or arrangements and other similar agreements or arrangements relating solely to the applicable joint venture;

(m) any encumbrances or restrictions of the type referred to in the immediately preceding clauses (a) through (m) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to such immediately preceding clauses (a) through (m) above; *provided* that such encumbrances and restrictions contained in any such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than the encumbrances and restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(n) any encumbrance or restriction contained in any agreements governing any Permitted License;

(o) restrictions or encumbrances in any agreement evidencing Permitted Convertible Debt that restricts the merger or consolidation of, or the sale of all or substantially all of the assets of, the Borrower or taken as a whole, are not more restrictive on the Borrower and its Subsidiaries in any material respect than the comparable restrictions and encumbrances in the Loan Documents, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith);

(p) prohibitions, restrictions and conditions contained in any agreement or document relating to the consummation of a transaction which is conditioned upon (i) the amendment, restatement, modification or replacement of this Agreement which would have the effect of consenting to such prohibition, restriction or condition or (ii) the repayment in full (other than contingent indemnification and expense reimbursement obligations for which no claim has been made) of Obligations owing under this Agreement and the termination of the Commitments; and

(q) limitations associated with Permitted Liens pursuant to any document or instrument governing any Permitted Lien restricting the assignment, pledge or transfer of the property the subject thereof.

7.10 Use of Proceeds.

Use the proceeds of any Borrowing, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Liquidity Covenant.

Permit Liquidity as of the last day of any fiscal month of the Borrower to be less than \$10,000,000.

7.12 Fiscal Year; Legal Name, State of Formation; Form of Entity and Accounting Changes.

- (a) Amend any of its Organization Documents in any manner materially adverse to the interests of the Lenders in their capacities as such (as reasonably determined by the Borrower);
- (b) change its fiscal year without delivery of prior written notice to the Administrative Agent;
- (c) without providing ten (10) days prior written notice to the Administrative Agent and the Lender Representative (or such extended period of time as agreed to by the Lender Representative), change its name, state of formation, form of organization or principal place of business; or
- (d) make any material change in accounting policies or reporting practices without delivery of prior written notice to the Administrative Agent, except as required by GAAP.

7.13 Sale/Leaseback Transactions.

Enter into any Sale/Leaseback Transaction unless (a) the Disposition of the property thereunder is permitted by Section 7.05 and (b) any Liens arising in connection therewith (including Liens deemed to arise in connection with any such Capital Lease Obligations and Synthetic Lease Obligations) are permitted by Section 7.01.

7.14 Prepayments, Etc. of Certain Debt.

Pay, prepay, redeem, purchase, defease or otherwise satisfy or make any payment of any Subordinated Debt or prepay, redeem, repurchase, defease or otherwise satisfy or make any payment of any other Indebtedness, except (a) any payment of the Loans in accordance with the terms of this Agreement, (b) regularly scheduled or required repayments or redemptions of Indebtedness under the Indebtedness set forth in Schedule 7.02 and refinancings and refundings of such Indebtedness in compliance with Section 7.02(b), (c) payments, prepayments, redemptions, purchases and repurchases of Indebtedness (other than Permitted Convertible Debt and other Subordinated Debt), (d) in the case of Permitted Convertible Debt, (i) payments solely made or settled in Equity Interests and cash in lieu of fractional shares and (ii) scheduled payments of PIK interest on such Indebtedness, (e) the redemption, purchase, exchange, early termination or cancellation of Permitted Convertible Debt in an aggregate principal amount not to exceed the Net Cash Proceeds received by the Borrower from the issuance of additional Permitted Convertible Debt or Equity Interests (other than Disqualified Equity Interests) in connection with a refinancing of the Permitted Convertible Debt being redeemed, purchased, exchanged, terminated or cancelled, (f) issuance of Equity Interests (other than Disqualified Equity Interests) (and cash in lieu of fractional shares in connection with such issuance) of the Borrower in connection with any Permitted Warrant Transaction, and (h) payments of the initial purchase price for each Swap Contract and Permitted Bond Hedge Transaction.

7.15 Amendment, Etc. of Debt Documents.

Amend, modify or change in any manner any term or condition of any Subordinated Debt if such amendment or modification would violate the terms of any subordination agreement in respect of such Subordinated Debt or amend, modify or change in any manner any term or condition of any Permitted Convertible Debt that would result in such Permitted Convertible Debt no longer constituting Permitted Convertible Debt.

7.16 Sanctions.

Directly or indirectly, use any Borrowing or the proceeds of any Borrowing, or lend, contribute or otherwise make available such Borrowing or the proceeds of any Borrowing to any Person, to unlawfully fund any activities of or business with any Person, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Administrative Agent, or otherwise) of Sanctions.

7.17 Anti-Corruption Laws.

Directly or indirectly, use any Borrowing or the proceeds of any Borrowing for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other anti-corruption legislation in other jurisdictions.

7.18 Key Contracts.

Without the Lender Representative's prior written consent:

(a) (i) No Loan Party or any of its Subsidiaries shall agree to any set-off, counter-claim or other deduction under or with respect to the License Agreement, other than any such set-off, counter-claim or other deduction that is expressly required by the terms of the License Agreement as in effect on the date hereof, and (ii) no Loan Party or any of its Subsidiaries shall amend or permit the amendment of any provision of the License Agreement or waive their respective rights under, or effect any waiver or modification of or with respect to, the License Agreement;

(b) No Loan Party or any of its Subsidiaries shall agree to any material set-off, counter-claim or other deduction under or with respect to any Key Contract (other than the License Agreement) other than any such set-off, counter-claim or other deduction that is expressly required by the terms of such Key Contract as in effect on the date hereof or as in effect when such Key Contract is entered into and in each case that would have an adverse and material effect on the business of the Borrower and its Subsidiaries; and

(c) No Loan Party or any of its Subsidiaries shall amend or permit the amendment of any material provision of any Key Contract (other than the License Agreement) or waive any of their respective rights under any such Key Contract which would have an adverse and material effect on the rights and obligations of the Loan Parties and their Subsidiaries.

7.19 Passive Holding Company. The Borrower shall not have any operations, own any assets, or incur any liabilities, other than (a) such operations and transactions as are incidental to its status as a holding company, (b) ownership of Equity Interests of Harmony and other Subsidiaries and such immaterial assets as are incidental to its status as a holding company, (c) the Obligations and such immaterial liabilities as are incidental to its status as a holding company, (d) entering into the Loan Documents and the transactions required in this Agreement or permitted in this Agreement to be performed by the Borrower, (e) receiving and distributing the Restricted Payments and other amounts in respect of its Equity Interests, in each case, to the extent permitted hereunder, (f) entering into engagement letters and similar agreements with attorneys, accountants, and other professionals and other immaterial contractual arrangements in the ordinary course; (g) issuing Equity Interests and performing its obligations under its organizational documents, its governing documents, and agreements with the holders of its Equity Interests, (h) holding any cash, (i) maintaining its separate legal existence and other immaterial business activities, (j) making of any Restricted Payments or Investments in the other Loan Parties and their Subsidiaries including, without limitation, intercompany loans, in each case, to the extent permitted hereunder, (k) providing

indemnification to officers and directors, (l) incurring Indebtedness permitted by Section 7.02, including any Permitted Convertible Debt and any Revolving Credit Facility, and entering into the agreements and other documents evidencing such Indebtedness and the transactions required therein and (m) any activities incidental or reasonably related to the foregoing.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default.

Any of the following shall constitute an event of default (each, an "Event of Default"):

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any Applicable Premium, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or any fee due hereunder, or (iii) within seven (7) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a), Section 6.05 (solely with respect to the Borrower), 6.10, 6.11, or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after the earlier to occur of the date on which (i) a Responsible Officer of any Loan Party becomes aware of such failure or (ii) written notice thereof by the Administrative Agent (given at the written direction of the Required Lenders) to the Borrower; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) for borrowed money having an aggregate outstanding principal amount of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) after the expiration of any applicable grace or cure period therefor to cause, with the giving of notice if required, such Indebtedness for borrowed money to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; *provided*

that it is understood that (x) a conversion (or the occurrence of any customary “conversion triggers”) of Permitted Convertible Debt and (y) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, in each case, shall not constitute an Event of Default under this Section 8.01(e)(i); or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; *provided* that this clause (e)(ii) shall not apply to any early payment requirement or unwinding or termination with respect to any Permitted Bond Hedge Transaction or Permitted Warrant Transaction, or satisfaction of any condition giving rise to or permitting the foregoing, in accordance with the terms thereof, so long as, in any such case, Borrower is not the “defaulting party” (or substantially equivalent term) under the terms of such Permitted Bond Hedge Transaction or Permitted Warrant Transaction, as applicable; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any of its Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered (other than to the extent of customary deductibles) by independent third-party insurance), or (ii) any one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of sixty (60) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. In each case, any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party or any other Person contests in writing the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any provision of any Loan Document, or purports in writing to revoke or rescind any provision of any Loan Document; or it is or becomes unlawful for a Loan Party to perform any of its obligations under the Loan Documents; or

(k) Collateral Documents. Subject in all respects to any applicable post-closing periods and certain other time periods and exceptions under the Loan Documents for any Loan Party or Subsidiary to take perfection actions, any Collateral Document after delivery thereof pursuant to the terms of the Loan Documents shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on any material portion of the Collateral purported to be covered thereby, or any Loan Party shall assert the invalidity of such Liens; or

(l) Change of Control. There occurs any Change of Control; or

(m) Key Permit Events. Any Key Permit or any of the Borrower's or any of its Subsidiary's material rights or interests thereunder is terminated or amended in any manner adverse to the Borrower or any Subsidiary in any material respect and such termination or amendment is not otherwise revoked within 90 days after the occurrence thereof; or

(n) License Agreement. A CoC Transaction (as defined in the License Agreement on the date hereof) or an event of the type described in the last paragraph of Section 20.09 of the License Agreement (as in existence on the date hereof and subject to any exceptions contained therein but without regard to whether Bioprojet has provided its consent to such CoC Transaction or event (to the extent such consent is required under the terms thereof), unless such consent shall have been obtained without the payment of any consideration in excess of \$1,000,000 with respect thereto) shall occur, unless the Lender Representative has provided its prior written consent to such CoC Transaction or event; or

(o) Regulatory Matters. If any of the following occurs: (i) the FDA, CMS, EMA or any other Governmental Authority (A) delivers a letter or other written communication to the Borrower or its Subsidiaries asserting that any Specified Product lacks a required material Product Authorization which assertion is not withdrawn or otherwise resolved within 90 days after such Person's receipt of such letter or other written communication or (B) initiates enforcement action against or issues a warning letter with respect to the Borrower or any of the Subsidiaries, or any of their Specified Products or the manufacturing facilities therefor, that causes the Borrower or such Subsidiary to discontinue or suspend the sale of, or withdraw, any of its Specified Products or causes a delay in the offering of any of its Specified Products, which discontinuance, withdrawal or delay would reasonably be expected to last for more than 90 days; (ii) a recall that would reasonably be expected to result in a Material Adverse Effect; or (iii) the Borrower or any of the Subsidiaries enters into a settlement agreement with the FDA, CMS, EMA or any other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions in excess of \$2,000,000; or

(p) Key Contracts. (i) Any material default or material breach by the Borrower or any of the Subsidiaries occurs and is continuing under any of the Key Contracts, which material default or material breach is not cured or waived within any express grace period therein provided and

would permit any Person (other than the Borrower or any Subsidiary) party to any Designated Key Contract to have any termination right thereunder; provided that any Default or Event of Default under this Section 8.01(q) caused by such material breach shall be automatically waived and cured under this Agreement and the other Loan Documents without any action on the part of any Secured Party immediately following the waiver and/or cure of the breach or default under the applicable Designated Key Contract or (ii) any of the Designated Key Contracts is terminated for any reason, other than (A) as a result of any expiration of such Designated Key Contract in accordance with its own terms or (B) with respect to the Designated Key Contracts described in clauses (c) – (h) in the definition of “Key Contracts,” in connection with the replacement or termination of such Designated Key Contracts by the Borrower or the applicable Subsidiary in accordance with its reasonable business judgment and so long as the replacement or termination thereof does not result in a material and adverse diminution or deterioration of the business of the Borrower and its Subsidiaries (taken as a whole) relative to the business as was in effect immediately prior to such replacement or termination.

Without limiting the provisions of Article IX, if a Default shall have occurred under the Loan Documents, then such Default will continue to exist until it either is cured (to the extent specifically permitted) in accordance with the Loan Documents or is otherwise expressly waived by the Lender Representative as determined in accordance with Section 11.01; and once an Event of Default occurs under the Loan Documents, then such Event of Default will continue to exist until it is expressly waived by the Lender Representative or by the Administrative Agent with the approval of the Required Lenders, as required hereunder in Section 11.01. The Administrative Agent and the Lenders agree that in connection with any foreclosure or other exercise of rights under this Agreement or any other Loan Document with respect to Intellectual Property, the rights of the licensees under Permitted Licenses will not be terminated, limited or otherwise adversely affected so long as no default exists under the Permitted License that would permit the licensor to terminate such Permitted License (commonly known as a non-disturbance).

8.02 Remedies upon Event of Default.

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

- (a) declare the Commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder (including the Applicable Premium) or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and
- (c) exercise on behalf of itself, the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or Applicable Law or equity;

provided, however, that upon the occurrence of an event described in Section 8.01(f) with respect to the Borrower, the Commitment of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts (including the Applicable Premium) as aforesaid shall automatically become due and payable, in each case without further act of the Lender Representative, the Administrative Agent or any Lender.

8.03 Application of Funds.

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02) or if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all Obligations then due hereunder, any amounts received on account of the Obligations shall, subject to the provisions of Section 2.12, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest), including the Applicable Premium, payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender)) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this Second clause payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this Third clause payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

ARTICLE IX

ADMINISTRATIVE AGENT

9.01 Appointment and Authority.

(a) Appointment. Each of the Lenders hereby irrevocably appoints, designates and authorizes Wilmington Trust, National Association to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX (other than Sections 9.06 and 9.10) are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) Collateral Agent. The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto, and all references to Administrative Agent in this Article IX and Article XI (including Section 11.04(c)) shall, where applicable, be read as including a reference to the Administrative Agent acting as the “collateral agent”. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to (i) execute any and all documents (including releases) with respect to the Collateral (including any intercreditor agreement and any amendment, supplement, modification or joinder with respect thereto) and the rights of the Secured Parties with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by the Administrative Agent shall bind the Lenders and (ii) negotiate, enforce or settle any claim, action or proceeding affecting the Lenders in their capacity as such, at the direction of the Required Lenders, which negotiation, enforcement or settlement will be binding upon each Lender.

(c) Lender Representative. Each of the Lenders hereby irrevocably appoints Blackstone to act on its behalf as the Lender Representative hereunder and under the other Loan Documents and authorizes the Lender Representative to take such actions on its behalf and to exercise such powers as are delegated to the Lender Representative by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto, including to direct the Administrative Agent as expressly provided in the Loan Documents without any further action or consent of the Lenders. The Lender Representative shall be fully justified in failing or refusing to take any action hereunder, unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liabilities, losses, costs and expenses (including attorneys’ fees and expenses) which may be incurred by it by reason of taking or continuing to take any such action. The Lender Representative shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with written instructions signed by the Required Lenders (or such greater percentage of Lenders expressly required hereunder), and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. Notwithstanding the foregoing, the Lender Representative shall have authority, in its sole discretion, to take or not to take any action, unless this Agreement or any of the other Loan Documents specifically requires the consent of the Required Lenders, a greater percentage of Lenders or of all of the Lenders.

(d) Any corporation or association into which the Administrative Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Administrative Agent is a party, will be and become the successor Administrative Agent, as applicable, under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

9.02 Rights as a Lender.

If a Lender or the Lender Representative is serving as the Administrative Agent hereunder, such Person shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include, if applicable, the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial, advisory, underwriting or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

9.03 Exculpatory Provisions.

(a) Neither the Administrative Agent nor any of its officers, partners, directors, employees or agents shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. The Lender Representative shall have no duties or obligations hereunder or any other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent and the Lender Representative each of their respective officers, partners, directors, employees or agents:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term "agent" herein and in other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under any agency doctrine of any Applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent or the Lender Representative, as the case may be, is required to exercise as directed in writing by the Lender Representative or the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt refraining from any action that, in its respective opinion or the opinion of its respective counsel, may be a violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(iii) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates that is communicated to, or in the possession of, the Administrative Agent, the Lender Representative or any of their respective Related Parties in any capacity, except for notices, reports and other documents

expressly required to be furnished to the Lenders by the Administrative Agent or the Lender Representative, as applicable, herein

(iv) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Lender Representative or the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.02 and 11.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction. Neither the Administrative Agent nor the Lender Representative shall be deemed to have knowledge of any Default or Event of Default unless and until written notice describing such Default or Event of Default is given to the Administrative Agent or the Lender Representative, respectively, by the Borrower or a Lender;

(v) shall not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (B) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (D) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (E) the value or the sufficiency of any Collateral, or (F) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent;

(vi) shall not be responsible for (A) perfecting, maintaining, monitoring, preserving or protecting the security interest or Lien granted under this Agreement, the Collateral Documents, any other Loan Document or any agreement or instrument contemplated hereby or thereby, (B) the filing, re-filing, recording, re-recording or continuing or any document, financing statement, mortgage, assignment, notice, instrument of further assurance or other instrument in any public office at any time or times or (C) providing, maintaining, monitoring or preserving insurance on or the payment of taxes with respect to any of the Collateral. The actions described in items (A) through (C) shall be the sole responsibility of the Borrower;

(vii) shall not be liable for any failure or delay in the performance of its obligations under this Agreement or any related documents because of circumstances beyond the Administrative Agent's control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depository, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Agreement or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes

beyond the Administrative Agent's control whether or not of the same class or kind as specified above;

(viii) shall not be (A) required to qualify in any jurisdiction in which it is not presently qualified to perform its obligations as such Administrative Agent or (B) required to take any enforcement action against a Loan Party or any other obligor outside of the United States;

(ix) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor the list or identities of, or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (A) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (B) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution;

(x) shall not be responsible for the negligence, misconduct or other action or inaction of any sub-agent that it selects as provided in Section 9.05 absent gross negligence or willful misconduct by the Administrative Agent (as determined in a final and non-appealable judgment by a court of competent jurisdictions) in the selection of such sub-agents;

(xi) shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Agreement and any other Loan Document to which Administrative Agent is a party, whether or not an original or a copy of such agreement has been provided to the Administrative Agent; and

(xii) shall not be responsible for nor have any duty to monitor the performance or any action of the Loan Parties, the Lenders, or any of their directors, members, officers, agents, affiliates or employee, nor shall they have any liability in connection with the malfeasance or nonfeasance by such party; the Administrative Agent and the Lender Representative may assume performance by all such Persons of their respective obligations.

(b) Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Administrative Agent or the Lender Representative to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to any anti-terrorism Law, including any programs involving any of the following items relating to or in connection with the Loan Parties or their respective Subsidiaries, any of their respective Affiliates or agents, the Loan Documents or the transactions hereunder: (i) any identity verification procedures, (ii) any record keeping, (iii) any comparisons with government lists, (iv) any customer notices or (v) any other procedures required under any anti-terrorism Law.

(c) The delivery by the Borrower or any other Loan Party of any reports, information and documents to the Administrative Agent or the Lender Representative is for informational purposes only and the Administrative Agent's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein. Each party to this Agreement acknowledges and agrees that the Administrative Agent may, but

shall not be obligated to, from time to time use one or more outside service providers for the tracking of all UCC financing statements (and/or other collateral related filings and registrations from time to time) required to be filed or recorded pursuant to the Loan Documents and the notification to the Administrative Agent, of, among other things, the upcoming lapse or expiration thereof, and that each of such service providers will be deemed to be acting at the request and on behalf of Borrower and the other Loan Parties. The Administrative Agent shall not be liable for any action taken or not taken by any such service provider. Neither the Administrative Agent nor any of its officers, partners, directors, employees or agents shall be liable to the Lenders for any action taken or omitted by the Administrative Agent under or in connection with any of the Loan Documents.

(d) Nothing in this Agreement or any other Loan Document shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

9.04 Reliance by Administrative Agent.

The Administrative Agent and the Lender Representative shall each be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent and the Lender Representative also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent and the Lender Representative may presume that such condition is satisfactory to such Lender unless the Administrative Agent or the Lender Representative, respectively, shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent and the Lender Representative may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent or the Lender Representative shall have received written notice from such Lender prior to the proposed Closing Date specifying its objections.

9.05 Delegation of Duties.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Lender Representative may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent, the Lender Representative and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent or the Lender Representative and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent or Lender Representative. Neither the Administrative Agent nor the Lender Representative shall 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 or the Lender Representative, respectively, acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation.

(a) Notice. The Administrative Agent may at any time give notice of its resignation to the Lender and the Borrower. Upon receipt of any such notice of resignation, the Lender Representative shall have the right to appoint a successor with the prior written consent of the Borrower (unless a Specified Event of Default has occurred and is continuing), which shall be a financial institution with an office in the United States, or an Affiliate of any such financial institution with an office in the United States. If no such successor shall have been so appointed by the Lender Representative and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lender Representative appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. In addition, upon not less than ten (10) days prior written notice (the "Removal Effective Date"), the Administrative Agent may be removed (with or without cause) by the Lender Representative at any time in its sole discretion, but with the prior written consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed).

(b) Effect of Resignation or Removal. With effect from the Resignation Effective Date or the Removal Effective Date, as applicable (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Lender Representative appoints a successor Administrative Agent with the consent of the Borrower as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Administrative Agent (other than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article XI and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (A) while the retiring Administrative Agent was acting as Administrative Agent and (B) after such resignation for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including, without limitation, (1) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Secured Parties and (2) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(c) Lender Representative Resignation. The Lender Representative may at any time with the prior written consent of the Borrower (unless a Specified Event of Default has occurred and is continuing) resign from its position as the Lender Representative hereunder by giving written notice of its resignation to the Administrative Agent, the Lenders and the Borrower, such resignation to become effective upon the date set forth in such notice of resignation.

9.07 Non-Reliance on Administrative Agent, the Lender Representative and the Other Lenders.

Each Lender expressly acknowledges that none of the Administrative Agent nor the Lender Representative has made any representation or warranty to it, and that no act by the Administrative Agent or the Lender Representative hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Lender Representative to any Lender as to any matter, including whether the Administrative Agent or the Lender Representative have disclosed material information in their (or their Related Parties') possession. Each Lender represents to the Administrative Agent and the Lender Representative that it has, independently and without reliance upon the Administrative Agent, the Lender Representative, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Lender Representative, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 No Other Duties, Etc.

The Administrative Agent may at any time request instructions from the Lender Representative or the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Loan Documents the Administrative Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, the Administrative Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from the Lender Representative, the Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Person shall

have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Lender Representative or the Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of the Lender Representative or the Required Lenders (or such other applicable portion of the Lenders), the Administrative Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable law or exposes the Administrative Agent to any liability for which it is not entitled to satisfactory reimbursement and indemnification in accordance with the provisions of Section 11.04. Anything herein to the contrary notwithstanding, none of the titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

9.09 Administrative Agent May File Proofs of Claim: Credit Bidding.

(a) In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) 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 to the extent provided for herein and all other amounts due the Lenders and the Administrative Agent under Sections 2.07 and 11.04) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.07 and 11.04.

(b) Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

(c) The Secured Parties hereby irrevocably authorize the Administrative Agent or the Lender Representative, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (i)

at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (A) the Administrative Agent and/or the Lender Representative shall be authorized to form one or more acquisition vehicles to make a bid, (B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent or the Lender Representative with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement), and (C) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders *pro rata* and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.10 Collateral and Guaranty Matters.

(a) Each of the Lenders irrevocably consents to the release (or subordination, as applicable, in the case of Section 9.10(ii)), and hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, to automatically release (or subordinate, in the case of Section 9.10(ii)),

(i) any Lien on any property granted to or held by the Administrative Agent under any Loan Document (A) upon the Facility Termination Date, (B) that is sold or otherwise Disposed of or to be sold or otherwise Disposed of as part of or in connection with any sale or other Disposition permitted hereunder or under any other Loan Document, including, for the avoidance of doubt, in connection with any Permitted License (it being understood and agreed with respect to release of Liens under this subsection that the Administrative Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the release of Liens being made in full compliance with the provisions of the Loan Documents), (C) any assets becoming Excluded Property (it being understood and agreed with respect to release of Liens under this subsection that the Administrative Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the release of Liens being made in full compliance with the provisions of the Loan Documents), or (D) if approved, authorized or ratified in writing by the Required Lenders in accordance with Section 11.01;

(ii) any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(j) or (q); and

(iii) any Guarantor from its obligations under the Guaranty, the Collateral Documents and all other Loan Documents to which it is a party if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents (it being understood and agreed with respect to release of Liens under this subsection that the Administrative Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the release of Liens being made in full compliance with the provisions of the Loan Documents).

(b) Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents and deliver to the Borrower, at the expense of the Borrower, any portion of such Collateral so released that is in possession of the Administrative Agent or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

(c) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

(d) In addition, in connection with any Permitted Licenses, each Lender hereby authorizes Administrative Agent to, and at the request of the Borrower, the Administrative Agent shall enter into a non-disturbance agreement and other similar agreements in form and substance reasonably satisfactory to Administrative Agent and the Lender Representative.

(e) In connection with the performance of its obligations under Section 9.10(a) or (b), the Administrative Agent shall be entitled to request from the Borrower, and the Borrower shall deliver to the Administrative Agent prior to the Administrative Agent taking any actions under either Section, a certificate of a Responsible Officer certifying that the transaction giving rise to the requested release is permitted under the Loan Documents (and the Lenders authorize the Administrative Agent to rely on such certificate in performing its obligations under such Sections).

9.11 Survival.

This Article IX shall survive the termination of this Agreement, the repayment, satisfaction or discharge of all Obligations and the resignation, removal or replacement of the Administrative Agent.

ARTICLE X

CONTINUING GUARANTY

10.01 Guaranty.

Each Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Obligations, (for each Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); *provided* that the liability of each Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Obligations absent manifest error. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of the Guarantors, or any of them, under this Guaranty, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than that the Obligations have been paid in full).

10.02 Rights of Lenders.

Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Lender Representative and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

10.03 Certain Waivers.

Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower or any other Loan Party; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrower or any other Loan Party; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrower or any other Loan Party, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party whatsoever;

(e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by Applicable Law, any and all other defenses or benefits that may be derived from or afforded by Applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

10.04 Obligations Independent.

The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

10.05 Subrogation.

No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until the Facility Termination Date. If any amounts are paid to a Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

10.06 Termination; Reinstatement.

This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or a Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Obligations 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 any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this Section 10.06 shall survive termination of this Guaranty.

10.07 Stay of Acceleration.

If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against a Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor, jointly and severally, immediately upon demand by the Secured Parties.

10.08 Condition of Borrower.

Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as such Guarantor requires,

and that none of the Secured Parties has any duty, and such Guarantor is not relying on the Secured Parties at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

10.09 Appointment of Borrower.

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or a Lender to the Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Borrower on behalf of each of the Loan Parties.

10.10 Right of Contribution.

The Guarantors agree among themselves that, in connection with payments made hereunder, each Guarantor shall have contribution rights against the other Guarantors as permitted under Applicable Law.

ARTICLE XI . MISCELLANEOUS

11.01 Amendments, Etc.

(a) Subject to Section 3.03(c) and Section 11.01(d), no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or Event of Default or a mandatory reduction in Commitments is not considered an extension or increase in Commitments of any Lender);

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding Mandatory Prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;

(iii) reduce the principal of, or the rate of interest specified herein (including, for the avoidance of doubt, the 1.00% floor with respect to the Eurodollar Rate) on, any Loan, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend the definition of

“Default Rate” or to waive any obligation of the Borrower to pay interest at the Default Rate;

(iv) change (i) Section 8.03, Section 2.10 or Section 2.12 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) Section 2.10(f) in a manner that would alter the *pro rata* application required thereby without the written consent of each Lender directly affected thereby;

(v) change any provision of this Section 11.01 or the definition of “Required Lenders” or any other provision of any Loan Document specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or thereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(vi) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender, except upon the occurrence of the Facility Termination Date;

(vii) subordinate the Loans in right of payment to any other Indebtedness, without the written consent of each Lender directly affected thereby;

(viii) release the Guaranty of Harmony, without the written consent of each Lender;

(ix) release all or substantially all of the value of the Guarantees, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10; or

(x) release the Borrower or permit the Borrower to assign or transfer any of its rights or obligations under this Agreement or the other Loan Documents without the consent of each Lender;

and *provided, further*, that (A) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document and (B) the Agency Fee Letter and the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) Notwithstanding anything to the contrary herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender, or all Lenders, may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (A) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender; (ii) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code of the United States supersedes the unanimous consent provisions set forth herein and (iii) the Required Lenders shall determine

whether or not to allow a Loan Party to use cash collateral in the context of a bankruptcy or insolvency proceeding and such determination shall be binding on all of the Lenders.

(c) Notwithstanding anything to the contrary herein, this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower, the Lender Representative and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

(d) Notwithstanding any provision herein to the contrary, if the Administrative Agent, the Lender Representative and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent, the Lender Representative and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

11.02 Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party, the Administrative Agent, or the Lender Representative, to the address, fax number, e-mail address or telephone number specified for such Person on Schedule 1.01(a); and

(ii) if to any other Lender, to the address, fax number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in clause (b) below shall be effective as provided in such clause (b).

(b) Electronic Communications.

(i) Notices and other communications to the Administrative Agent, the Lenders and the Lender Representative hereunder may be delivered or furnished by

electronic communication (including e-mail, FPML messaging, and Internet or intranet websites) pursuant to an electronic communications agreement (or such other procedures approved by the Administrative Agent in its sole discretion); *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent, the Lender Representative or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (B) notices and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; *provided* that for both clauses (A) and (B), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of their Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, and the Lender Representative may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent and the Lender Representative. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and e-mail address to which notices and other

communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one (1) individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and Applicable Law, including United States federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States federal or state securities laws.

(e) Reliance by Administrative Agent, the Lender Representative and Lenders. The Administrative Agent, the Lender Representative and the Lenders shall be entitled to rely and act upon any notices (including, without limitation, telephonic or electronic notices, Loan Notices and Notice of Loan Prepayment) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, the Lender Representative, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement.

(a) No failure by any Lender, the Lender Representative or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.12), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

(a) Costs and Expenses. The Loan Parties shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Lender Representative (limited, in the case of legal counsel, to the reasonable and documented fees, charges and disbursements of one legal counsel to the Lender Representative and one legal counsel to the Administrative Agent and, if reasonably necessary, of one local counsel to the Administrative Agent and of one local counsel to the Lender Representative, in each case, in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions, in each case, in relevant jurisdictions material to the interests of the Administrative Agent and the Lenders), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all reasonable, documented out-of-pocket expenses incurred by the Administrative Agent, the Lender Representative or any Lender (limited to the reasonable fees, documented out-of-pocket disbursements and other charges of one legal counsel to the Administrative Agent and one legal counsel to the Lender Representative and the Lenders (taken as a whole), and, if reasonably necessary, of one local counsel to the Administrative Agent and of one local counsel to the Lender Representative and the Lenders (taken as a whole), in each case, in each relevant material jurisdiction (which may include a single special counsel acting in multiple jurisdictions, in each case, in relevant jurisdictions material to the interests of the Administrative Agent and the Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 11.04, or (B) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Loan Parties. The Loan Parties shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Lender Representative, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (limited, in the case of legal counsel, to the reasonable fees, documented out-of-pocket disbursements and other charges of one legal counsel to the Administrative Agent and its Related Parties and one legal counsel to the other Indemnitees (taken as a whole), and, if reasonably necessary, of one local counsel to the Administrative Agent and its Related Parties and one local counsel to the other Indemnitees (taken as a whole), in each case, in each relevant material jurisdiction (which may include a single special counsel acting in multiple jurisdictions, in each case, in relevant jurisdictions material to the interests of the Lenders)) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) (provided that, in the case of any conflict (perceived or actual), one additional primary and local counsel in each relevant material jurisdiction for similarly situated Indemnitees shall also be covered) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned, leased or operated by a Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to a Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether

based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) other than in the case of the Administrative Agent and its Related Parties, result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for a material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from a claim not involving an act or omission of the Borrower and that is brought by an Indemnitee against another Indemnitee (other than against the Administrative Agent, any sub-agents and their Related Parties, in their capacities as such). Each applicable Indemnitee shall use commercially reasonable efforts to consult with the Borrower prior to entering into a settlement of any proceeding that would result in any liability to any Loan Party. Without limiting the provisions of Section 3.01(c), this Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Loan Parties for any reason fail to indefeasibly pay any amount required under clause (a) or (b) of this Section 11.04 to be paid by them to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought (or, in the event at such time all the Commitments shall have terminated and all the Loans shall have been repaid in full, as of the time most recently prior thereto when any Loans or Commitments remained outstanding)) of such unpaid amount; *provided*, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against its Related Party acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. For purposes hereof, "pro rata share" shall mean, with respect to any Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the unused Commitments and the Outstanding Amount of the Loans of such Lender at such time and the denominator of which is the aggregate amount of the unused Commitments and the aggregate Outstanding Amount of the Loans at the time. Each Lender hereby agrees that, notwithstanding any exclusions from the Loan Parties' indemnification obligations under Section 11.04(b) for gross negligence or willful misconduct of the applicable Indemnitee, no action taken (or not taken) by the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing in accordance with the directions of the Lender Representative or the Required Lenders (or such other number or percentage of the Lenders as shall be provided by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for the purposes of the Lenders' payment and indemnification obligations under this clause (c). 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 such Lender from any source against any amount due to the Administrative Agent under this clause (c). The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.10(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising

out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section 11.04 shall be payable not later than fifteen (15) Business Days after demand therefor together with a reasonably detailed invoice with respect thereto.

(f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(e) shall survive the resignation or removal of the Administrative Agent or the Lender Representative, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside.

To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other of the other Loan Documents without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 11.06(d) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in clause (b)(i)(B) of this Section 11.06 in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) of this Section 11.06, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Specified Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement and the other Loan Documents with respect to the Loans and/or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section 11.06 and, in addition, the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) a Specified Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *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 notice thereof.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent (x) an Administrative Questionnaire and its applicable tax form required under Section 3.01(f) and (y) if requested by the Administrative Agent, information reasonably requested by the Administrative Agent reasonably required by regulatory authorities under "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of one or more natural Persons) or (D) except during an Event of Default pursuant to Section 8.01(f) or following an acceleration of the Loans, any Disqualified Institution.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (B) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this clause (b)(vi), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Effect of Assignment. Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 11.06(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment); *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (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 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and

addresses of the Lenders, and the Commitments of, and principal amounts (and interest amounts) 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 (with respect to such Lender's interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations.

(i) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons, a Defaulting Lender, a Disqualified Institution or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participations.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(f) (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 11.06; *provided* that such Participant (A) shall be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under clause (b) of this Section 11.06 and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.12 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 interest amounts) 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, letters of credit 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, letter of credit 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.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note or Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

11.07 Treatment of Certain Information: Confidentiality.

(a) Treatment of Certain Information. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of, and not to disclose to any Person, the Information (as defined below), except that Information may be disclosed (i) to its respective Affiliates, its auditors and its and their respective Related Parties (and, if such Person is a member of the Blackstone Group, then it may make disclosures to any other member of the Blackstone Group) (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners) (in which case the disclosing Administrative Agent or Lender, as applicable, agrees (except with respect to any audit or examination conducted by bank accountants or any governmental regulatory authority or self-regulatory authorities exercising examination or regulatory authority), to the extent not prohibited by Applicable Law, to promptly notify the Borrower of such disclosure), (iii) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, in each case based upon the reasonable advice of the disclosing Administrative Agent's or Lender's legal counsel (in which case the disclosing Administrative Agent or Lender, as applicable, agrees (except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority or self-regulatory authorities exercising examination or regulatory authority), to the extent not prohibited by Applicable Law, to promptly notify the Borrower of such disclosure); (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same (or at least as restrictive) as those of this Section 11.07 (or as may otherwise be reasonably acceptable to the Borrower), to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement; *provided* that no such disclosure shall be made by such Lender or any of its respective Affiliates to any such Person that is a Disqualified Institution or that does not agree to be bound by the provisions of this Section 11.07(a); or (B) any actual or prospective party (or its

Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (vii) on a confidential basis to (A) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (B) the provider of any Platform or other electronic delivery service used by the Administrative Agent to deliver Borrower Materials or notices to the Lenders, (viii) with the consent of the Borrower or (ix) to the extent such Information (A) becomes publicly available other than as a result of a breach of this [Section 11.07](#), (B) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or on the Borrower's behalf and not in violation of any confidentiality agreement or obligation owed to the Borrower or (C) is already in the possession of or is independently discovered or developed by a party hereto without utilizing any Information received from the Borrower or violating the terms of this [Section 11.07](#). For purposes of this [Section 11.07](#), "Information" means all information received from, or on behalf of, the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this [Section 11.07](#) shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments; *provided* that such Person is advised of their obligation to keep information of this type confidential.

(b) Non-Public Information. Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning a Loan Party 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.

(c) Press Releases. The Loan Parties and their Affiliates agree that they will not in the future issue any press releases or other public disclosure (other than filings required by applicable securities laws) using the name of the Administrative Agent (other than in any press release announcing the consummation of the Transactions, so long as such press release has been approved in writing by the Lender Representative), the Lender Representative or any Lender or their respective Affiliates or referring to this Agreement or any of the Loan Documents without the prior written consent of the Administrative Agent and the Lender Representative, unless (and only to the extent that) the Loan Parties or such Affiliate reasonably determine that it is necessary or desirable for them to do so under Applicable Law and then, in any event the Loan Parties or such Affiliate will consult with such Person before issuing such press release or other public disclosure.

11.08 Right of Setoff

If an Event of Default shall have occurred and be continuing, each Lender and each of its respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Required Lenders, to the fullest extent permitted by Applicable Law to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or

for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of [Section 2.12](#) and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and its respective Affiliates under this [Section 11.08](#) are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have under Applicable Law. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness.

This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in [Section 4.01](#), this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document, or any certificate delivered thereunder, by fax transmission or e-mail transmission (*e.g.*, "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

11.11 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

11.12 Severability.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders.

(a) If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon written notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided* that:

- (i) the Borrower shall have paid to the Administrative Agent the processing and recordation fee (if any) specified in Section 11.06(b);
- (ii) such Lender shall have received payment of an amount equal to 100% of 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 (including any amounts under Section 3.05) 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);
- (iii) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (iv) such assignment does not conflict with Applicable Laws; and

(v) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

(b) 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.

(c) Each party hereto agrees that (i) an assignment required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to be bound by the terms thereof; *provided*, that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, *provided further* that any such documents shall be without recourse to or warranty by the parties thereto.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION; PROVIDED THAT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY.

(b) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, THE LENDER REPRESENTATIVE, ANY LENDER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY 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. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, THE LENDER REPRESENTATIVE OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (b) OF THIS SECTION 11.14. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

11.16 Subordination.

Each Loan Party (a "Subordinating Loan Party") hereby subordinates the payment of all obligations and indebtedness of any other Loan Party owing to it, whether now existing or hereafter arising, including but not limited to any obligation of any such other Loan Party to the Subordinating Loan Party as subrogee of the Secured Parties or resulting from such Subordinating Loan Party's performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of any such other Loan Party to the Subordinating Loan Party shall be enforced and performance received by the Subordinating Loan Party as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Obligations, but without reducing or affecting in any manner the liability of the Subordinating Loan Party under this Agreement. Without limitation of the foregoing, so long as no Event of Default has occurred and is continuing and,

except in the case of the acceleration of the Obligations or upon the occurrence and during the continuation of an Event of Default pursuant to Section 8.01(f), the Borrower has not received written notice from the Lender Representative, the Loan Parties may make and receive payments with respect to Intercompany Debt; *provided*, that in the event that any Loan Party receives any payment of any Intercompany Debt at a time when such payment is prohibited by this Section 11.16, such payment shall be held by such Loan Party, in trust for the benefit of, and shall be paid forthwith over and delivered, upon written request, to the Administrative Agent.

11.17 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) (i) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Lender Representative and the Lenders and their respective Affiliates are arm's-length commercial transactions between the Borrower each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Lender Representative and the Lenders and their respective Affiliates, on the other hand, (ii) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (b) (i) the Administrative Agent, the Lender Representative and each Lender and each of their respective Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower any other Loan Party or any of their respective Affiliates, or any other Person and (ii) neither the Administrative Agent, the Lender Representative, nor any Lender nor any of their respective Affiliates has any obligation to the Borrower any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (c) the Administrative Agent, the Lender Representative and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Lender Representative, nor any Lender nor any of their respective Affiliates has any obligation to disclose any of such interests to the Borrower any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by Applicable Law, each of the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Lender Representative, the Lenders and their respective Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

(b) The Borrower further acknowledges that the Lender Representative, the Lenders and their respective Affiliates may acquire, hold or sell, for their own accounts and the accounts of investors, the equity, debt and other securities and financial instruments (including, common equity, bank loans and other obligations) of, the Borrower and other companies with which the Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by the Lender Representative, the Lenders or their respective Affiliates or any of their respective investors, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion.

11.18 Electronic Execution; Electronic Records.

(a) The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided* that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, upon the reasonable request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “Communication”) which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention.

(b) The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Loan Documents. The Administrative Agent, the Lender Representative and each Lender may, on behalf of the Borrower, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the other Loan Documents. The Administrative Agent, the Lender Representative and each Lender may store the electronic image of this Agreement and the other Loan Documents in its electronic form and then destroy the paper original as part of the Administrative Agent’s, the Lender Representative’s and each Lender’s normal business practices, with the electronic image deemed to be an original and of the same legal effect, validity and enforceability as the paper originals.

11.19 USA Patriot Act Notice.

Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107–56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act. The Borrower and each other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act.

11.20 Acknowledgement and Consent to Bail-In of EEA and UK Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable: (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BORROWER:

HARMONY BIOSCIENCES HOLDINGS, INC.

By: /s/ John C. Jacobs

Name: John C. Jacobs

Title: President and Chief Executive Officer

[Signature Page to Credit Agreement]

GUARANTOR:

HARMONY BIOSCIENCES, LLC

By: /s/ John C. Jacobs

Name: John C. Jacobs

Title: President and Chief Executive Officer

[Signature Page to Credit Agreement]

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Administrative Agent

By: /s/ Annmarie Warren
Name: Annmarie Warren
Title: Banking Officer

[Signature Page to Credit Agreement]

LENDERS:

BXC JADE SUB 1 LLC,
as a Lender

By: BXC Jade Topco 1 LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

BXC JADE SUB 2 LLC,
as a Lender

By: BXC Jade Topco 2 LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

BXC JADE SUB 3 LLC,
as a Lender

By: BXC Jade Topco 3 LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

BXC JADE SUB 4 LLC,
as a Lender

By: BXC Jade Topco 4 LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

BXC JADE SUB 5-B LLC,
as a Lender

By: BXC Jade Topco 5-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

BXC JADE SUB 6-B LLC,
as a Lender

By: BXC Jade Topco 6-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

BXC JADE SUB 7-B LLC,
as a Lender

By: BXC Jade Topco 7-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

BXC JADE SUB 8-B LLC,
as a Lender

By: BXC Jade Topco 8-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney

Name:Marisa Beeney
Title:Authorized Signatory

BXC JADE SUB 9-B LLC,
as a Lender

By: BXC Jade Topco 9-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name:Marisa Beeney
Title:Authorized Signatory

BXC JADE SUB 10-B LLC,
as a Lender

By: BXC Jade Topco 10-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name:Marisa Beeney
Title:Authorized Signatory

BXC JADE (WH) SUB 5-B LLC,
as a Lender

By: BXC Jade Sub 5-B LLC, its sole member
By: BXC Jade Topco 5-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name:Marisa Beeney
Title:Authorized Signatory

BXC JADE (WH) SUB 6-B LLC,
as a Lender

By: BXC Jade Sub 6-B LLC, its sole member
By: BXC Jade Topco 6-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name:Marisa Beeney
Title:Authorized Signatory

BXC JADE (WH) SUB 7-B LLC,
as a Lender

By: BXC Jade Sub 7-B LLC, its sole member
By: BXC Jade Topco 7-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name:Marisa Beeney
Title:Authorized Signatory

BXC JADE (WH) SUB 8-B LLC,
as a Lender

By: BXC Jade Sub 8-B LLC, its sole member
By: BXC Jade Topco 8-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name:Marisa Beeney
Title:Authorized Signatory

BXC JADE (WH) SUB 9-B LLC,
as a Lender

By: BXC Jade Sub 9-B LLC, its sole member
By: BXC Jade Topco 9-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name:Marisa Beeney
Title:Authorized Signatory

BXC JADE (WH) SUB 10-B LLC,
as a Lender

By: BXC Jade Sub 10-B LLC, its sole member
By: BXC Jade Topco 10-B LP, its sole member
By: BXC Jade Associates LLC, its general partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

GSO CREDIT ALPHA FUND II-C AIV-1, LP,
as a Lender

By: GSO Credit Alpha Associates II LP, its General Partner
By: GSO Credit Alpha Associates II (Delaware) LLC, its General Partner

By: /s/ Marisa Beeney
Name: Marisa Beeney
Title: Authorized Signatory

LENDER:

BLACKSTONE HOLDINGS FINANCE CO. LLC,
as a Lender

By: */s/ Eric Liaw*

Name: Eric Liaw

Title: Authorized Signatory

[Signature Page to Credit Agreement]

LENDER:

BXLS YIELD – DUET (DE) L.P.,

as a Lender

By: Blackstone Life Sciences Advisors L.L.C. on
behalf of BXLS Yield – Duet (DE) L.P.

By: /s/ Robert Liptak

Name: Robert Liptak

Title: Chief Operating Officer

[Signature Page to Credit Agreement]

Schedule 1.01(a)

Certain Addresses for Notices

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 1.01(b)

Initial Commitments and Applicable Percentages

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 1.01(c)

Mortgaged Properties

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 5.10

Insurance

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 5.12

Pension Plans

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 5.23(b)

Licenses etc.

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 5.23(c)

Owned Intellectual Property

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 5.23(d)

Disputes

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 5.23(f)

Contractual Obligations

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 5.25(d)

FDA Communications

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 5.26

Key Contract Matters

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 7.01

Existing Liens

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 7.02

Existing Indebtedness

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 7.03

Existing Investments

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

Schedule 7.08

Existing Transactions with Affiliates

[Omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

EXHIBIT A

ADMINISTRATIVE QUESTIONNAIRE

Deal Name:	HARMONY BIOSCIENCES HOLDINGS, INC. CREDIT FACILITY		
Agent Address:	Wilmington Trust, N.A	Return To:	Loan Agency Middle Admin
	50 South Sixth Street	Phone:	612-217-5649
	Suite 1290	Fax:	612-217-5651
	Minneapolis, MN 55402	E-mail:	LoanAgency@WilmingtonTrust.com

LENDER INFORMATION:

Legal Name of Lender:
Legal Address:
Fund Manager:

ADMINISTRATIVE/OPERATIONS/NOTICES CONTACTS:

	Primary Contact	Secondary Contact
Name:		
Company:		
Title:		
Address:		
Phone:		
Fax:		
E-Mail Address:		

CREDIT CONTACTS:

	Primary Contact	Secondary Contact
Name:		
Company:		
Title:		
Address:		

Phone:		
Fax:		
E-Mail Address:		

INTRALINKS CONTACTS:

Name:		
Phone:		
E-mail Address:		

Name:		
Phone:		
E-mail Address:		

Name:		
Phone:		
E-mail Address:		

DOMESTIC WIRE INSTRUCTIONS:

Currency:		
Bank Name:		
Swift/Routing No.:		
Account Name:		
Account No.:		
FCC Account Name:		
FCC Account No.:		
Attention:		

FOREIGN WIRE INSTRUCTIONS:

Currency:		
Bank Name:		
Swift/Routing No.:		
Account Name:		
Account No.:		
FCC Account Name:		
FCC Account No.:		
Attention:		
Reference:		

Currency:		
Bank Name:		
Swift/Routing No.:		

Account Name:

Account No.:

FCC Account Name:

FCC Account No.:

Attention:

Reference:

Currency:

Bank Name:

Swift/Routing No.:

Account Name:

Account No.:

FCC Account Name:

FCC Account No.:

Attention:

Reference:

TAX FORM PROVIDED:

W-9

W-8BEN

W-8IMY

W-8ECI

W-8EXP

Other

EXHIBIT B
Form of
Assignment and Assumption

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]¹ Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]² Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]³ hereunder are several and not joint.]⁴ Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. Assignor[s]:

¹ For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

² For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

³ Select as appropriate.

⁴ Include bracketed language if there are either multiple Assignors or multiple Assignees.

2. Assignee[s]:

[for each Assignee, indicate [Affiliate][Approved Fund] of [identify Lender]]

3. Borrower: Harmony Biosciences Holdings, Inc.

4. Administrative Agent: Wilmington Trust, National Association, as the Administrative Agent under the Credit Agreement.

5. Credit Agreement: Credit Agreement, dated as of [●], 2021, by and among the Borrower, Harmony Biosciences, LLC, a Delaware limited liability company, the other Guarantors from time to time party thereto, the Lenders party thereto and the Administrative Agent.

6. Assigned Interest[s]:

Assignor[s] ⁵	Assignee[s] ⁶	Type of Commitment or Loan Assigned	Aggregate Amount of Commitments/Loans for all Lenders ⁷	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitments/Loans ⁸
			\$ _____	\$ _____	_____ %
			\$ _____	\$ _____	_____ %
			\$ _____	\$ _____	_____ %

[7. Trade Date]:⁹

Effective Date: _____, 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[SIGNATURE PAGES FOLLOW]

⁵ List each Assignor, as appropriate.

⁶ List each Assignee, as appropriate.

⁷ Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

⁸ Set forth, to at least 9 decimals, as a percentage of the Loans of all Lenders thereunder.

⁹ To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR [NAME OF ASSIGNOR]

By:

Name:
Title:

ASSIGNEE [NAME OF ASSIGNEE]

By:

Name:
Title:

[Signature Page to Assignment and Assumption]

Consented to:¹⁰

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Administrative Agent

By:

Name:
Title:

Consented to:¹¹

HARMONY BIOSCIENCES HOLDINGS, INC.

By:

Name:
Title:

¹⁰ To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

¹¹ To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

[Signature Page to Assignment and Assumption]

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION1. Representations and Warranties.

1.1. Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 11.06(b) of the Credit Agreement (subject to such consents, if any, as may be required under Section 11.06(b)(i)(B) and Section 11.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest and (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and

Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT C
Form of
Compliance Certificate

Financial Statement Date: _____, 20__

TO:	Wilmington Trust, National Association, as Administrative Agent
RE:	Credit Agreement, dated as of August 9, 2021 by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), a Delaware limited liability company, as the sole initial Guarantor, the other Guarantors from time to time party thereto, the Lender, and the Administrative Agent, as Administrative Agent (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Agreement"), as defined shall have the meanings set forth in the Credit Agreement)
DATE:	

The undersigned Responsible Officer, in such capacity and not individually, hereby certifies as of the date hereof that **[he/she]** is the _____ of the Borrower, and that, as such, **[he/she]** is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the Borrower and the other Loan Parties, and that:

[Use following paragraph 1 for fiscal year-end financial statement]

1. The Borrower has delivered the year-end audited financial statements required by Section 6.01(a) of the Credit Agreement for the fiscal year of the Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant selected by the Borrower that satisfies the requirements of Section 6.01(a) of the Credit Agreement.

[Use following paragraph 1 for fiscal quarter-end financial statements]

1. The Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Credit Agreement for the fiscal quarter of the Borrower ended as of the above date and for the portion of the Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year. Such Consolidated financial statements fairly present, in all material respects, the financial condition, results of operations and comprehensive loss, shareholders' equity and cash flows of the Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. A review of the activities of the Borrower and its Subsidiaries during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrower and each of the other Loan Parties performed and observed all its obligations under the Loan Documents, and

[select one:]

[to the knowledge of the undersigned, during such fiscal period each of the Loan Parties performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default has occurred and is continuing.]

[-or-]

[to the knowledge of the undersigned, the following covenants or conditions have not been performed or observed and the following is a list of each such Default and its nature and status:]

3. [The Liquidity covenant analyses and information set forth on Schedule A attached hereto are true and accurate on and as of the Statement Date (as defined in Schedule A).]¹²

4. [Attached hereto as Schedule A is the calculation of the Total Leverage Ratio and Liquidity.]¹³

5. Attached hereto as Schedule [B] is a list of all Persons that are Immaterial Subsidiaries as of the date hereof, including a list of all Persons that have become an Immaterial Subsidiary since the date of the Compliance Certificate most recently delivered by the Borrower prior to the date hereof.

6. [Attached hereto as Schedule [C] is an updated Beneficial Ownership Certification.]¹⁴

7. [Attached hereto as Schedule [D] are copies of each new Key Contract entered into by any Loan Party since the date of the Compliance Certificate most recently delivered by the Borrower prior to the date hereof.]

8. [Attached hereto as Schedule [E] is a report listing all applications for the registration of any Intellectual Property Collateral with the USPTO or any similar office or agency in any other country or any political subdivision thereof filed since the date of the Compliance Certificate most recently delivered by the Borrower prior to the date hereof.]

¹² To be the only item included with the Compliance Certificate delivered for each fiscal month.

¹³ To be included with the Compliance Certificate delivered for each fiscal quarter.

¹⁴ To be included if, since the date of the most recently delivered Compliance Certificate by the Borrower prior to the date hereof, to the extent any Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, there has been any change in the information provided in the Beneficial Ownership Certification delivered to any Lender in relation to such Loan Party and such change would result in a change to the list of beneficial owners identified in such certification.

9. [Attached hereto as Schedule [E] is a list of any application or registration relating to any Material IP Rights which may, in the applicable Loan Party's reasonable commercial judgment, become abandoned or dedicated to the public or placed in the public domain or invalid or unenforceable, or any adverse determination (including the institution of, or any such determination in, any proceeding in the USPTO, the USCO or any foreign counterpart thereof or any court) regarding such Loan Party's ownership of any Material IP Rights, its right to register the same or to keep and maintain and enforce the same, in each case, since the date of the Compliance Certificate most recently delivered by the Borrower prior to the date hereof.]

10. [Attached hereto as Schedule [G] is a list of all Commercial Tort Claims in excess of \$250,000 individually and \$500,000 in the aggregate, in each case, providing a reasonably detailed description thereof, arising since the date of the Compliance Certificate most recently delivered by the Borrower prior to the date hereof.]

11. [Attached hereto as Schedule [H] is a list of interests in any Electronic Chattel Paper or any "transferable record," as that term is defined in Section 201 of the U.S. Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the U.S. Uniform Electronic Transactions Act, as in effect in any relevant jurisdiction, with a value in excess of \$500,000, acquired by any Loan Party since the date of the Compliance Certificate most recently delivered by the Borrower prior to the date hereof.]

12. [Attached hereto as Schedule [I] is a description of Motor Vehicles with a fair market value in excess of \$2,000,000 in the aggregate acquired by any Loan Parties since the date of the Compliance Certificate most recently delivered by the Borrower prior to the date hereof, together with a good faith estimate of the current value of such Motor Vehicles.]

Delivery of an executed counterpart of a signature page of this Certificate by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Certificate.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

HARMONY BIOSCIENCES HOLDINGS, INC.,
a Delaware corporation

By:
Name:
Title:

Schedule A

Calculation of Liquidity

Fiscal Month End Date: [____], [____] (“**Statement Date**”)

The aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties as of the Statement Date maintained in accounts in the United States that are not subject to any Liens other than Liens securing the Obligations, Liens permitted by Section 7.01(c) of the Credit Agreement and bankers’ liens	\$
Accrued Royalty Amount	\$
The difference between (x) the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties as of the Statement Date maintained in accounts in the United States that are not subject to any Liens other than Liens securing the Obligations, Liens permitted by Section 7.01(c) of the Credit Agreement and bankers’ liens <u>minus</u> (y) the Accrued Royalty Amount	\$

Schedule A

Calculation of Liquidity and Total Leverage Ratio

Fiscal Quarter End Date: [_____], [____] (the most recently completed four (4) fiscal quarters ending on such Fiscal Quarter End Date, the "Measurement Period")

Fiscal Month End Date: [_____], [____] ("Statement Date")

Calculation of Liquidity

The aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties as of the Statement Date maintained in accounts in the United States that are not subject to any Liens other than Liens securing the Obligations, Liens permitted by Section 7.01(c) of the Credit Agreement and bankers' liens	\$ _____
Accrued Royalty Amount	\$ _____
The difference between (x) the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties as of the Statement Date maintained in accounts in the United States that are not subject to any Liens other than Liens securing the Obligations, Liens permitted by Section 7.01(c) of the Credit Agreement and bankers' liens <u>minus</u> (y) the Accrued Royalty Amount	\$ _____

Calculation of Consolidated EBITDA:

Consolidated Net Income of the Borrower and its Subsidiaries for the Measurement Period	\$ _____
(a) the following for such period to the extent deducted in calculating such Consolidated Net Income:	
(i) Consolidated interest charges, and, to the extent not reflected in such Consolidated interest charges, the sum of (A) premium payments, debt discount, fees, charges and related expenses incurred in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets <u>plus</u> (B) the portion of rent expense under Finance Leases that is treated as interest expense in accordance with GAAP <u>plus</u> (C) the implied interest component of Synthetic Leases <u>plus</u> (D) any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations or such derivative instruments <u>plus</u> (E) bank and letter of credit fees and costs of surety bonds in connection with financing activities, <u>plus</u> (F) amortization or write-off of deferred financing fees, debt issuance costs, debt discount or premium, terminated hedging obligations and other commissions, financing fees and expenses and, adjusted, to the extent included, to exclude any refunds or similar credits received in connection with the purchasing or procurement of goods or services under any purchasing card or similar program,	\$ _____

(ii) the provision for Federal, state, local and foreign income taxes,	\$ _____
(iii) depreciation and amortization expense,	\$ _____
(iv) (A) compensation paid to employees in the form of common stock and (B) any costs or expenses incurred by the Borrower or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, any severance agreement or any stock subscription or shareholder,	\$ _____
(v) one-time non-recurring transaction fees, costs and expenses (whether or not consummated), including in connection with Acquisitions and other Investments, Dispositions and the incurrence or issuance of Indebtedness and Equity Interests, integration, reorganization and restructuring costs, litigation fees, costs and expenses and facility consolidation and closing costs incurred in connection with reorganizations, restructurings and Investments (including, the incurrence of Indebtedness in connection therewith) and Dispositions not otherwise prohibited hereunder, <i>provided</i> that such fees, costs and expenses (A) are incurred within twelve (12) months of the occurrence of such applicable triggering event and (B) the aggregate amount of such fees, costs and expenses added back pursuant to this <u>clause (v)</u> shall not exceed 10% of Consolidated EBITDA for the Measurement Period (prior to giving effect to such adjustments),	\$ _____
(vi) one-time non-recurring severance costs and expenses, payments to employees on account of their equity ownership and one-time compensation charges incurred in connection with reorganizations, restructurings and Investments (including, the incurrence of Indebtedness in connection therewith), the incurrence or issuance of Indebtedness and Equity Interests and Dispositions not otherwise prohibited hereunder, <i>provided</i> that such costs, expenses and payments (A) are incurred within twelve (12) months of the occurrence of such applicable triggering event and (B) the aggregate amount of such costs, expenses and payments added back pursuant to this <u>clause (vi)</u> shall not exceed 10% of Consolidated EBITDA for the Measurement Period (prior to giving effect to such adjustments),	\$ _____

(vii) fees, costs and other expenses incurred in connection with the Transactions,	\$ _____
(viii) the effects of adjustments pursuant to GAAP resulting from purchase accounting in relation to Investments not prohibited by the Credit Agreement, or the amortization or write-off of any amounts thereof, net of taxes, in each case, which do not represent a cash item in such period or any future period,	\$ _____
(ix) gains or losses associated with the revaluation of earnouts, milestones or other similar contingent obligations incurred in connection with the Transaction or any other Investment not prohibited by the Credit Agreement (including upfront, earnout or milestone payments),	\$ _____
(x) one-time non-recurring up-front and milestone payments payable under research and development licensing agreements, collaboration agreements or development agreements relating to uncommercialized product candidates,	\$ _____
(xi) other non-recurring expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Borrower and its Subsidiaries for the Measurement Period),	\$ _____
(xii) charges, losses, lost profits, expenses (including litigation expenses, fee and charges) or write-offs to the extent indemnified or insured by a third party, including expenses or losses covered by indemnification provisions or by any insurance provider in connection with the Transactions, a Permitted Acquisition or any other acquisition or Investment, Disposition or any Involuntary Disposition, in each case, to the extent that coverage has not been denied and so long as such amounts are actually reimbursed in cash within one (1) year after the related amount is first added to Consolidated EBITDA pursuant to this clause (a)(xii) (and if not so reimbursed within one (1) year, such amount shall be deducted from Consolidated EBITDA during the next Measurement Period),	\$ _____

(xiii) proceeds of business interruption insurance (whether or not then received so long as the Borrower in good faith expects to receive such proceeds within one (1) year after the related amount is first added to Consolidated EBITDA pursuant to this clause (a)(xiii) (and if not so reimbursed within one (1) year, such amount shall be deducted from Consolidated EBITDA during the next Measurement Period)), and	\$ _____
(xiv) such other costs, expenses and adjustments related to the Transaction or other Investments not prohibited by the Credit Agreement as the Lender Representative shall approve, in its reasonable discretion.	\$ _____
(b) sum of (a)(i) through (a)(xiv)	\$ _____
(c) the following to the extent included in calculating such Consolidated Net Income:	
(i) all non-cash gains increasing Consolidated Net Income (in each case of or by the Borrower and its Subsidiaries for the Measurement Period),	\$ _____
(ii) all interest income for such period,	\$ _____
(iii) all Tax benefits for such period to the extent not netted in determining the amount for clause (a)(ii) above	\$ _____
(iv) one-time, nonrecurring gains for such period,	\$ _____
(v) non-cash purchase accounting adjustments, and	\$ _____
(vi) amounts received in respect of non-recurring upfront, earnout or milestone payments or other similar contingent non-recurring amounts in connection with any Disposition.	\$ _____
(d) Sum of (c)(i) through (c)(vi)	\$ _____
(e) Total of (b) minus (d)	\$ _____
Consolidated EBITDA (Consolidated Net Income plus (e))	\$ _____

Calculation of Total Leverage Ratio:

Total Funded Debt as of the last day of the Measurement Period	\$ _____
--	----------

The lesser of (x) the aggregate amount of unrestricted cash and Cash Equivalents of the Borrower and its Subsidiaries as of such date maintained in accounts in the United States and (y) \$10,000,000	\$
Consolidated EBITDA	\$
The ratio of (a) Total Funded Debt as of the last day of the Measurement Period minus the lesser of (x) the aggregate amount of unrestricted cash and Cash Equivalents of the Borrower and its Subsidiaries as of such date maintained in accounts in the United States and (y) \$10,000,000 to (b) Consolidated EBITDA of the Borrower and its Subsidiaries for the Measurement Period	:1.00

Schedule [B]

Immaterial Subsidiaries

Schedule [C]

Beneficial Ownership Certification

Schedule [D]

Key Contracts

Schedule [E]

IP Report

Schedule [F]

Material IP

Schedule [G]

Commercial Tort Claims

Schedule [H]

Electronic Chattel Paper

Schedule [I]
Motor Vehicles

EXHIBIT D

**Form of
Joinder Agreement**

THIS JOINDER AGREEMENT (this "Agreement"), dated as of _____, 20____, is by and among _____, a _____ (the "Subsidiary Guarantor") and Wilmington Trust, National Association, solely in its capacity as administrative agent (in such capacity, the "Administrative Agent") under that certain Credit Agreement, dated as of August 9, 2021, (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"), by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company, as the sole initial Guarantor, the other Guarantors (as defined therein) from time to time party thereto, the Lenders party thereto and the Administrative Agent. Capitalized terms used herein but not otherwise defined shall have the meanings provided in the Credit Agreement.

The Loan Parties are required by Section 6.13 of the Credit Agreement to cause the Subsidiary Guarantor to become a "Guarantor" thereunder.

Accordingly, the Subsidiary Guarantor hereby agrees as follows with the Administrative Agent. for the benefit of the Secured Parties:

The Subsidiary Guarantor hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Subsidiary Guarantor will be deemed to be a party to and a "Guarantor" under the Credit Agreement and shall have all of the obligations of a Guarantor thereunder as if it had executed the Credit Agreement and the other Loan Documents as a Guarantor. The Subsidiary Guarantor hereby ratifies, as of the date hereof, and agrees to be bound by, all representations and warranties, covenants and other terms, conditions and provisions of the Credit Agreement and the other Loan Documents applicable to the Subsidiary Guarantor. Without limiting the generality of the foregoing terms of this Paragraph 1, the Subsidiary Guarantor hereby guarantees, jointly and severally together with the other Guarantors, the prompt payment of the Obligations in accordance with Article X of the Credit Agreement.

The Subsidiary Guarantor hereby agrees that all of the representations and warranties contained in Article V of the Credit Agreement and in each other Loan Document applicable to the Subsidiary Guarantor are (i) with respect to representations and warranties that contain a materiality qualification, true and correct on and as of the date hereof (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 on and as of such earlier date) and (ii) with respect to representations and warranties that do not contain a materiality qualification, true and correct in all material respects on and as of the date hereof (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 material respects on and as of such earlier date).

The Subsidiary Guarantor hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Subsidiary Guarantor will be deemed to be a party to the Security

Agreement, and shall have all the rights and obligations of a "Grantor" (as such term is defined in the Security Agreement) thereunder as if it had executed the Security Agreement. The Subsidiary Guarantor hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Security Agreement. Without limiting the generality of the foregoing terms of this Paragraph 3, the Subsidiary Guarantor hereby grants, pledges and collaterally assigns to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in, and a right of set off, to the extent applicable, against any and all right, title and interest of the Subsidiary Guarantor in and to the Collateral (as such term is defined in Section 2 of the Security Agreement, but excluding, for the avoidance of doubt, any Excluded Property) of the Subsidiary Guarantor.

The Subsidiary Guarantor acknowledges and confirms that it has received a copy of the Credit Agreement and the schedules and exhibits thereto and each Loan Document and Collateral Document and the schedules and exhibits thereto. The information on the schedules to the Credit Agreement and the Collateral Documents are hereby supplemented (to the extent required under the Credit Agreement or Collateral Documents) to reflect the information shown on the attached Schedule A.

The Subsidiary Guarantor agrees that at any time and from time to time, upon the written request of the Administrative Agent (given at the written direction of the Required Lenders) or the Lender Representative, it will execute and deliver such further documents and do such further acts as the Administrative Agent or the Lender Representative may reasonably request in accordance with the terms and conditions of the Credit Agreement and the other Loan Documents in order to effect the purposes of this Agreement.

This Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Agreement by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York. The terms of Sections 11.14 and 11.15 of the Credit Agreement are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Subsidiary Guarantor has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Secured Parties, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

SUBSIDIARY GUARANTOR: **[SUBSIDIARY GUARANTOR],**
 a [Jurisdiction and Type of Organization]

By: _____
Name: _____
Title: _____

Acknowledged, accepted and agreed:

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Administrative Agent

By:
Name:
Title:

Schedule A

Schedules to Credit Agreement and Collateral Documents

[TO BE COMPLETED BY SUBSIDIARY GUARANTOR]

EXHIBIT E

Form of
Loan Notice

_____, 20__

Wilmington Trust, National Association
50 South Sixth Street, Suite 1290
Minneapolis, MN 55402
Attention: Annmarie Warren

Ladies and Gentlemen:

Reference is hereby made to that certain Credit Agreement, dated as of August 9, 2021 (as amended, supplemented or otherwise modified from time to time and in effect on the date hereof, the "Credit Agreement"), by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company, as the sole initial Guarantor, the other Guarantors from time to time party thereto, the Lenders and Wilmington Trust, National Association, as administrative agent (together with its successors, transferees and assignees in such capacity, the "Administrative Agent").

Unless otherwise defined herein or the context otherwise requires, terms used herein have the meanings provided in the Credit Agreement.

Pursuant to the provisions of Section 2.02(a) of the Credit Agreement, the Borrower hereby requests [a Borrowing][a conversion of Loans from one Type to the other] [a continuation of Loans]:

- (a) On _____ (a Business Day)
- (b) In the amount of \$ _____¹⁵
- (c) Comprised of:¹⁶

[Borrowing of [Base Rate][Eurodollar Rate] [Initial Loans][Delayed Draw Loans]]

¹⁵ Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, in connection with any conversion or continuation of a Loan, if less, the entire principal thereof then outstanding). Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, in connection with any conversion or continuation of a Loan, if less, the entire principal thereof then outstanding). There shall be no more than 4 separate Delayed Draw Funding Dates, and each funding of Delayed Draw Loans shall be in an aggregate amount of not less than \$25,000,000 or the then-remaining amount of the Delayed Draw Commitments.

¹⁶ If the Borrower fails to specify a Type of Loan in a Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans

[Conversion of [Base Rate Loans to Eurodollar Rate Loans][Eurodollar Rate Loans to Base Rate Loans]]

[Continuation of Eurodollar Rate Loans]

(d) For Eurodollar Rate Loans: with an Interest Period of [one (1) month][two (2)] [three (3)][six (6)] months¹⁷

The Borrower hereby represents and warrants to the Administrative Agent, for the benefit of the Secured Parties, that:

(a) the proceeds of the proposed Loans are to be used for the purposes set forth in Section 6.11 of the Credit Agreement; and

(b) bank account details and wire transfer instructions of the Borrower for disbursement of the proceeds of the proposed Loans are set forth on Schedule A hereto.

The officer signing below is a Responsible Officer of the Borrower and is authorized to request the Loans contemplated hereby and issue this Loan Request on behalf of the Borrower.

[Signature Page Follows]

¹⁷ If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

Very truly yours,

HARMONY BIOSCIENCES HOLDINGS, INC.,
as the Borrower

By:

Name:

Title:

[Signature Page to Loan Request]

Schedule A

Disbursement / Wire Instructions of Borrower's Account

Bank Name: [_____]

Address: [_____]

ABA Number: [_____]

Account Number: [_____]

Account Name: [_____]

EXHIBIT F

**Form of
Solvency Certificate**

TO: Wilmington Trust, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 9, 2021, by and among Harmony Biosciences Holdings, Inc. (the "Borrower"), its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company, as the sole initial Guarantor, the other Guarantors from time to time party thereto, the Lenders party thereto and Wilmington Trust, National Association, as Administrative Agent (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE: _____

The undersigned Responsible Officer of the Borrower, in such capacity and not individually, certifies that, both before and after giving effect to the transactions contemplated by the Credit Agreement:

- 1) The aggregate fair value of the property of the Borrower and its Subsidiaries, on a Consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of the Borrower and its Subsidiaries on a Consolidated basis.
 - 2) The aggregate present fair salable value of the assets of the Borrower and its Subsidiaries, on a Consolidated basis, is not less than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries, on a Consolidated basis, on their debts as they become absolute and matured in the ordinary course of business.
 - 3) the Borrower and its Subsidiaries, on a Consolidated basis, do not intend to, and do not believe that it will, incur debts or liabilities beyond the Borrower and its Subsidiaries' ability, on a Consolidated basis, to pay such debts and liabilities as they mature in the ordinary course of business.
 - 4) Neither the Borrower nor any of its Subsidiaries is engaged in business or a transaction, and is not about to engage in business or a transaction, for which the Borrower and its Subsidiaries' property, on a Consolidated basis, would constitute an unreasonably small capital.
 - 5) The Borrower and its Subsidiaries, on a Consolidated basis, are able to pay their debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business.
-

6) The amount of contingent liabilities at any time have been computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Delivery of an executed counterpart of a signature page of this Solvency Certificate by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Solvency Certificate.

[SIGNATURE PAGE TO FOLLOW.]

HARMONY BIOSCIENCES HOLDINGS, INC.,
a Delaware corporation

By:
Name:
Title:

[Signature Page to Solvency Certificate]

EXHIBIT G

**Form of
Note**

, 20

FOR VALUE RECEIVED, the undersigned Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), hereby promises to pay to _____ or its registered assigns (the "Lender"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Loan from time to time made by the Lender to the Borrower under that certain Credit Agreement, dated as of August 9, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among the Borrower, its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company, as the sole initial Guarantor, the other Guarantors, the Lenders from time to time party thereto, and Wilmington Trust, National Association, as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Loan made by the Lender from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds to the Administrative Agent's Account. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Note is one of the Notes referred to in the Credit Agreement and the holder is entitled to the benefits thereof. Each Loan made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

Delivery of an executed counterpart of a signature page of this Note by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Note.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

HARMONY BIOSCIENCES HOLDINGS, INC.,
a Delaware corporation

By:
Name:
Title:

[Signature Page to Note]

EXHIBIT H
Form of
Officer's Certificate

TO: Wilmington Trust, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 9, 2021, by and among Harmony Biosciences Holdings, Inc. (the "Borrower"), its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company, as the sole initial Guarantor, the other Guarantors from time to time party thereto, the Lenders party thereto and Wilmington Trust, National Association, as Administrative Agent (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement)

DATE:

The undersigned Responsible Officer of _____ (the "Company") hereby certifies as follows:

- Attached hereto as Exhibit A is a true and complete copy of the **[[articles]/[certificate] of incorporation] [certificate of formation]** of the Company and all amendments thereto as in effect on the date hereof certified as of a recent date by the appropriate Governmental Authorities of the state of **[incorporation] [organization]** of the Company.
 - Attached hereto as Exhibit B is a true and complete copy of the **[bylaws] [operating agreement]** of the Company and all amendments thereto as in effect on the date hereof.
 - Attached hereto as Exhibit C is a true and complete copy of resolutions duly adopted by the **[board of directors][members][managers]** of the Company on _____, 20___. Such resolutions have not in any way been rescinded or modified and have been in full force and effect since their adoption to and including the date hereof, and such resolutions are the only corporate proceedings of the Company now in force relating to or affecting the matters referred to therein.
 - Attached hereto as Exhibit D are true and complete copies of the certificates of good standing, existence or its equivalent of the Company certified as of a recent date by the appropriate Governmental Authorities of the state of **[incorporation] [organization]** of the Company.
 - The persons listed on Exhibit E are the duly elected or appointed and qualified officers of the Company, holding the offices indicated next to the names on the date hereof, and the signatures appearing opposite the names of the officers are their true and genuine signatures, and each of such officers is duly authorized to execute and
-

deliver, on behalf of the Company, the Credit Agreement, the Notes and the other Loan Documents to be issued pursuant thereto.

Delivery of an executed counterpart of a signature page of this Officer's Certificate (the "Certificate") by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Certificate.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, I hereunder subscribe my name effective as of the day and year set forth above.

By:
Name:
Title:

I, _____, the _____ of the Company, hereby certify that _____ is the duly elected and qualified _____ of the Company and that his/her true and genuine signature is set forth above.

By:
Name:
Title:

EXHIBIT A

[[ARTICLES]/[CERTIFICATE] OF INCORPORATION]/[CERTIFICATE OF FORMATION]

EXHIBIT B

[BYLAWS] [LIMITED LIABILITY COMPANY AGREEMENT]

EXHIBIT C
RESOLUTIONS

EXHIBIT D

CERTIFICATE OF GOOD STANDING

EXHIBIT E
INCUMBENCY

Name	Office	Signature

EXHIBIT I-1

**Form of
U.S. Tax Compliance Certificate**

(For Foreign Lenders That Are Not Partnerships
For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of August 9, 2021, by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "**Borrower**"), Harmony Biosciences, LLC, a Delaware limited liability company, the Guarantors, the Lenders and Wilmington Trust, National Association, as Administrative Agent (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "**Credit Agreement**"). Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (b) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF FOREIGN LENDER]

By:
Name:
Title:

Date: _____, 20__

EXHIBIT I-2

**Form of
U.S. Tax Compliance Certificate**

(For Foreign Participants That Are Not Partnerships
For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of August 9, 2021, by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), Harmony Biosciences, LLC, a Delaware limited liability company, the Guarantors, the Lenders and Wilmington Trust, National Association, as Administrative Agent (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"). Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (b) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By:
Name:
Title:

Date: _____, _____

EXHIBIT I-3

**Form of
U.S. Tax Compliance Certificate**

(For Foreign Participants That Are Partnerships
For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of August 9, 2021, by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), Harmony Biosciences, LLC, a Delaware limited liability company, the Guarantors, the Lenders and Wilmington Trust, National Association, as Administrative Agent (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"). Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN or IRS Form W-8BEN-E or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By:
Name:
Title:

Date: _____, _____

EXHIBIT I-4

**Form of
U.S. Tax Compliance Certificate**

(For Foreign Lenders That Are Partnerships
For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of August 9, 2021, by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "**Borrower**"), Harmony Biosciences, LLC, a Delaware limited liability company, the Guarantors, the Lenders and Wilmington Trust, National Association, as Administrative Agent (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "**Credit Agreement**"). Pursuant to the provisions of Section 3.01 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN or IRS Form W-8BEN-E or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (ii) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By:
Name:
Title:

Date: _____, _____

EXHIBIT J

**Form of
Notice of Loan Prepayment**

TO: Wilmington Trust, National Association, as Administrative Agent

RE: Credit Agreement, dated as of August 9, 2021, by and among Harmony Biosciences Holdings, Inc. (the "Borrower"), its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company, as the sole initial Guarantor, the other Guarantors from time to time party thereto, the Lenders party thereto and Wilmington Trust, National Association, as Administrative Agent, (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Credit Agreement).

DATE: **[Date]**

The Borrower hereby notifies the Administrative Agent that on _____, 20__18 pursuant to the terms of Section 2.03 (Prepayments) of the Credit Agreement, the Borrower intends to [voluntarily][pursuant to the mandatory prepayment provisions of Section 2.03(b)(i)][(iii)] prepay/repay the following Loans as more specifically set forth below:

Indicate: Requested Amount	Indicate: Base Rate Loan or Eurodollar Rate Loan	Indicate: Interest Period (e.g. 1, 2, 3 or 6 month interest period)¹⁹

Pursuant to Section 2.03 of the Credit Agreement, the prepayment of Loans pursuant to this notice shall be applied [in accordance with the terms of Section 2.03 of the Credit Agreement]²⁰[to the [Initial Term Loans][Delayed Draw Term Loans] and to reduce amortization payments in respect thereof [direct][inverse] order of maturity]²¹.

¹⁸ Note to Borrower. Specify date of such prepayment.

¹⁹ Note to Borrower. For Eurodollar Rate Loans only.

²⁰ Note to Borrower: For mandatory prepayments

²¹ Note to Borrower: For voluntary prepayments

[This notice is being delivered upon the condition of the effectiveness of _____²². This notice may be revoked or postponed by the Borrower upon notice to the Administrative Agent on or prior to the date hereof if such conditions are not satisfied].

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

²² Note to Borrower. Describe other credit facilities, indentures or similar agreements or transactions, as applicable.

HARMONY BIOSCIENCES HOLDINGS, INC.,
a Delaware corporation

By:
Name:
Title:

PLEDGE AND SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT, dated as of August 9, 2021 (as amended, restated, supplemented or otherwise modified from time to time, this “Security Agreement”), is made by HARMONY BIOSCIENCES HOLDINGS, INC., a Delaware corporation (the “Borrower”), its wholly owned subsidiary HARMONY BIOSCIENCES, LLC, a Delaware limited liability company (“Harmony” and together with the Borrower and any other entity that may become a party hereto as provided herein, are referred to each as a “Grantor” and, collectively as the “Grantors”), in favor of WILMINGTON TRUST, NATIONAL ASSOCIATION, as Administrative Agent (together with its successors, transferees and assignees in such capacity, the “Administrative Agent”) for the Secured Parties (defined below).

W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among the Borrower, Harmony, the other Guarantors from time to time party thereto, the Lenders party thereto and the Administrative Agent, the Lenders have extended a Commitment to make Loans to the Borrower;

WHEREAS, as a condition precedent to the making of the Loans and as an inducement for the Lenders to make the Loans, in each case, under the Credit Agreement, each Grantor is required to execute and deliver this Security Agreement; and

WHEREAS, it is required under the terms of the Credit Agreement that the Grantors shall have granted, pledged and assigned the security interests and undertaken the obligations contemplated by this Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees, for the benefit of the Secured Parties, as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Certain Terms. The following terms (whether or not underscored) when used in this Security Agreement, including its preamble and recitals, shall have the following meanings (such definitions to be equally applicable to the singular and plural forms thereof):

“Administrative Agent” is defined in the preamble.

“Bioprojet Agreements” means the Key Contracts listed in clauses (a) through (b) of the definition thereof as of the date hereof, including any replacement thereof.

“Borrower” is defined in the preamble.

“Collateral” is defined in Section 2.1.

“Collateral Accounts” is defined in Section 4.3(b).

“Copyright Collateral” means all Copyrights, including: (a) the Copyrights referred to in Item A of Schedule V, and registrations and recordings thereof and all applications for registration thereof, whether pending or in preparation; (b) all Copyright licenses, including each material Copyright license referred to in Item B of Schedule V; (c) the right to sue for past, present and future infringements of any of the foregoing, all rights corresponding thereto, all extensions and renewals of any thereof; and (d) all Proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages and Proceeds of suit, which are owned or licensed by the Grantors.

“Copyrights” is defined in the Credit Agreement.

“Credit Agreement” is defined in the first recital.

“Distributions” means all dividends paid on Equity Interests, liquidating dividends paid on Equity Interests, shares (or other designations) of Equity Interests resulting from (or in connection with the exercise of) stock splits, reclassifications, warrants, options, non-cash dividends, mergers, consolidations, and all other distributions (whether similar or dissimilar to the foregoing) on or with respect to any Equity Interests constituting Collateral.

“Excluded Account” is defined in the Credit Agreement.

“Excluded Property” is defined in the Credit Agreement.

“Financing Statements” is defined in Section 3.7(b).

“General Intangibles” means all “general intangibles” and all “payment intangibles”, each as defined in Section 9-102 of the UCC and shall include, without limitation, all contracts (including the Key Contracts), agreements, instruments, indentures interest rate or currency protection or hedging arrangements, tax refunds, licenses, permits, concessions and authorizations and all Intellectual Property Collateral (in each case, regardless of whether characterized as general intangibles under the UCC).

“Grantor” and “Grantors” are defined in the preamble.

“Harmony” is defined in the preamble.

“Intellectual Property Collateral” has the meaning given to “Intellectual Property” as defined in the Credit Agreement.

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

“Investment Property” means, collectively, (a) all “investment property” as such term is defined in Section 9-102(a)(49) of the UCC and (b) all “financial assets” as such term is defined in Section 8-102(a)(9) of the UCC, and (c) whether or not constituting “investment property” as so defined, all Pledged Notes and all Pledged Equity.

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

“Material IP Rights” is defined in the Credit Agreement.

“Motor Vehicles” means motor vehicles, tractors, trailers and other like property, if the title thereto is governed by a certificate of title or ownership.

“Organization Document” is defined in the Credit Agreement.

“Patent” is defined in the Credit Agreement.

“Patent Collateral” means:

- Schedule III:
- (a) all of the Patents, including all Patent applications in preparation for filing and each Patent and Patent application referred to in Item A of Schedule III;
 - (b) all Patent licenses, and other agreements providing any Grantor with the right to use any items of the type referred to in clause (a) above, including each Patent license referred to in Item B of Schedule III (excluding any licenses to any Grantor for commercially available off-the- shelf software); and
 - (c) all Proceeds of, and rights associated with, the foregoing (including licenses, royalties income, payments, claims, damages and Proceeds of infringement suits) and the right to sue third parties for past, present or future infringements of any Patent and for breach or enforcement of any patent license.

“Permitted Liens” means all Liens permitted by Section 7.01 of the Credit Agreement.

“Pledged Equity” means, without limitation, the Equity Interests listed on Schedule II, together with any other Equity Interests, certificates, options or rights of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, any Grantor while this Security Agreement is in effect.

“Pledged Notes” means all promissory notes listed on Item J of Schedule II (as such schedule may be amended or supplemented from time to time), all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor.

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

“Qualifying Control Agreement” is defined in the Credit Agreement.

“Secured Parties” means, collectively, the Administrative Agent and the Lenders and “Secured Party” means any one of them.

“Securities Act” is defined in Section 6.2(a).

“Security Agreement” is defined in the preamble.

“Trademark” is defined in the Credit Agreement.

“Trade Secrets” is defined in the definition of “Trade Secrets Collateral.”

“Trade Secrets Collateral” means (a) all of the Grantors’ common Law and statutory trade secrets and all other confidential and proprietary information, and all know-how obtained by or used in the business of any Grantor (all of the foregoing being collectively called a “Trade Secret”), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret; (b) all Trade Secret licenses, including each Trade Secret license referred to in Schedule VI (excluding any licenses to any Grantor for commercially available off-the-shelf software); and (c) including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret license.

“Trademark Collateral” means:

(a) (i) all of the Grantors’ Trademarks and all goodwill of the business associated therewith, now existing or hereafter adopted or acquired including, including, but not limited to, those referred to in Item A of Schedule IV, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the United States Patent and Trademark (the “USPTO”) or in any office or agency of the United States of America, or any state thereof or any other country or political subdivision thereof or otherwise, and all common-law rights relating to the foregoing, and (ii) the right to obtain all reissues, extensions or renewals of the foregoing;

(b) all Trademark licenses for the grant by or to any Grantors of any right to use any Trademark, including each Trademark license referred to in Item B of Schedule IV (excluding any licenses to any Grantor for commercially available off-the-shelf software);

(c) the right to sue third parties for past, present and future infringements of any Trademark Collateral described in clause (a) and, to the extent applicable, clause (b); and

(d) all Proceeds of, and rights associated with, the foregoing, including any claim by any Grantor against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark license, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license and all rights corresponding thereto throughout the world.

“UCC” is defined in the Credit Agreement.

“USCO” is defined in Section 3.6(c).

“USPTO” is defined in the definition of “Trademark Collateral”.

Section 1.2. Credit Agreement Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

Section 1.3. UCC Definitions. When used herein the terms “Account”, “Certificated Securities”, “Chattel Paper”, “Commercial Tort Claim”, “Commodity Account”, “Commodity Contract”, “Deposit Account”, “Document”, “Electronic Chattel Paper”, “Equipment”, “Fixtures”, “Goods”, “Instrument”, “Inventory”, “Letter of Credit Rights”, “Payment Intangibles”, “Proceeds”, “Promissory Notes”, “Securities Account”, “Security Entitlement”, “Supporting Obligations” and “Uncertificated Securities” have the meaning provided in Article 8 or Article 9, as applicable, of the UCC. “Letters of Credit” has the meaning provided in Section 5-102 of the UCC.

ARTICLE II SECURITY INTEREST

Section 2.1. Grant of Security Interest. Each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in all of such Grantor’s right, title and interest in and to the following property, whether now or hereafter existing, owned or acquired by such Grantor, and wherever located (collectively, the “Collateral”)

- (a) Accounts;
- (b) Chattel Paper;
- (c) Commercial Tort Claims, including those listed on Item I of Schedule II (as such schedule may be amended or supplemented from time to time);
- (d) Deposit Accounts;
- (e) Documents;
- (f) Equipment;
- (g) Fixtures;
- (h) General Intangibles;
- (i) Goods (including Goods held on consignment with third parties);
- (j) Instruments;
- (k) Investment Property;

(l) Letter of Credit Rights and Letters of Credit;

(m) Supporting Obligations;

(n) all books, records, writings, databases, information and other property relating to, used or useful in connection with, evidencing, embodying, incorporating or referring to, any of the foregoing in this Section 2.1;

(o) all Proceeds of any of the foregoing and, to the extent not otherwise included, (i) all payments under insurance (whether or not the Administrative Agent is the loss payee thereof) in respect of Collateral and (ii) all tort claims; and

(p) all other property and rights of every kind and description and interests therein.

Notwithstanding anything to the contrary, (i) the term "Collateral" shall not include the Excluded Property and (ii) the representations and covenants set forth herein regarding the assets of the Grantors shall not apply to the Excluded Collateral.

Section 2.2. Security for Obligations. This Security Agreement and the Collateral in which the Administrative Agent, for the benefit of the Secured Parties, is granted a security interest hereunder by the Grantors to secure the payment and performance of all of the Obligations.

Section 2.3. Grantors Remain Liable. Anything herein to the contrary notwithstanding:

(a) the Grantors will remain jointly and severally liable under the contracts and agreements included in the Collateral to the extent set forth therein, and will perform all of their duties and obligations under such contracts and agreements to the same extent as if this Security Agreement had not been executed;

(b) the exercise by any Secured Party of any of its rights hereunder will not release any Grantor from any of its duties or obligations under any such contracts or agreements included in the Collateral; and

(c) the Secured Parties will not have any obligation or liability under any contracts or agreements included in the Collateral by reason of this Security Agreement, nor will the Secured Parties be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 2.4. Distributions on Equity Interests; Payments on Pledged Notes. In the event that any (a) Distribution with respect to any Equity Interests or (b) payment with respect to any Pledged Notes, in each case pledged hereunder, is not prohibited under Sections 7.05 or 7.06 of the Credit Agreement, such Distribution or payment may be paid directly to the applicable Grantor. If any Distribution or payment is made to a Grantor in contravention of Sections 7.05 or 7.06 of the Credit Agreement, such Grantor shall hold the same segregated and in trust for the Administrative Agent, for the benefit of the Secured Parties, until paid to the Administrative Agent in accordance with Section 4.1.5.

Section 2.5. Security Interest Absolute, Etc. This Security Agreement shall in all respects be a continuing, absolute, unconditional and irrevocable grant of security interest and shall remain in full force and effect, in each case, until the Facility Termination Date. All rights of the Secured Parties and the security interests granted to the Administrative Agent, for the benefit of the Secured Parties, hereunder, and all obligations of the Grantors hereunder, shall, to the fullest extent permitted by applicable Law, in each case, be absolute, unconditional and irrevocable irrespective of:

(a) any lack of validity, legality or enforceability of any Loan Document (other than this Security Agreement);

(b) the failure of any Secured Party (i) to assert any claim or demand or to enforce any right or remedy against the Borrower or any of its Subsidiaries or any other Person (including any other Grantor) under the provisions of any Loan Document or otherwise, or (ii) to exercise any right or remedy against any other guarantor (including any other Grantor) of, or Collateral securing, any Obligations;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Obligations, or any other extension, compromise or renewal of any Obligations;

(d) any reduction, limitation, impairment or termination of any Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise and shall not be subject to (and each Grantor hereby waives, until payment of all Obligations, any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligations or otherwise;

(e) any amendment to, rescission, waiver, or other modification of, or any consent to or departure from, any of the terms of any Loan Document;

(f) any addition, exchange or release of any Collateral or of any Person that is (or will become) a Grantor (including the Grantors hereunder), or any surrender or non-perfection of any Collateral, or any amendment to or waiver or release or addition to, or consent to or departure from, any other guaranty held by the Administrative Agent, for the benefit of the Secured Parties, securing any of the Obligations; or

(g) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of the Borrower or any of its Subsidiaries, any surety or any guarantor.

Section 2.6. Postponement of Subrogation. Each Grantor agrees that it will not exercise any rights against another Grantor which it may acquire by way of rights of subrogation under any Loan Document to which it is a party until following the Facility Termination Date. No Grantor shall seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Grantor, in respect of any payment made under any Loan Document or otherwise, until following the Facility Termination Date. Any amount paid to any Grantor on account of any such subrogation

rights prior to the Facility Termination Date shall be held in trust for the benefit of the Secured Parties and shall immediately be paid and turned over to the Administrative Agent, for the benefit of the Secured Parties, in the exact form received by such Grantor (duly endorsed in favor of the Administrative Agent, if required), to be credited and applied against the Obligations, whether matured or unmatured, in accordance with Section 6.1(b); provided that if such Grantor has made payment to the Administrative Agent of all or any part of the Obligations and the Facility Termination Date has occurred, then at such Grantor's request, the Administrative Agent will, at the expense of such Grantor, execute and deliver to such Grantor appropriate documents (without recourse and without representation or warranty) necessary to evidence the transfer by subrogation to such Grantor of an interest in the Obligations resulting from such payment. In furtherance of the foregoing, at all times prior to the Facility Termination Date, such Grantor shall refrain from taking any action or commencing any proceeding against the Borrower or any other Grantor (or their successors or assigns, whether in connection with a bankruptcy proceeding or otherwise) to recover any amounts in respect of payments made under this Security Agreement to the Administrative Agent or any other Secured Party.

ARTICLE III REPRESENTATIONS AND WARRANTIES

In order to induce the Secured Parties to enter into the Credit Agreement and make the Loans thereunder, the Grantors represent and warrant to the Administrative Agent, for the benefit of the Secured Parties, as set forth below.

Section 3.1. As to Equity Interests of the Subsidiaries, Investment Property.

(a) With respect to any Subsidiary of any Grantor that is:

(i) a corporation, business trust, joint stock company or similar Person, all Equity Interests issued by such Subsidiary are duly authorized and validly issued, fully paid and non-assessable, and represented by a certificate or certificates; and

(ii) a partnership or limited liability company, no Equity Interests issued by such Subsidiary (including the Borrower) (A) are dealt in or traded on securities exchanges or in securities markets, (B) expressly provides that such Equity Interest is a security governed by Article 8 of the UCC or (C) is held in a Securities Account, except, with respect to this clause (a)(ii), Equity Interests (x) for which the Administrative Agent is the registered owner or (y) with respect to which the Issuer has agreed in an authenticated record with such Grantor and the Administrative Agent to comply with any instructions of the Administrative Agent without the consent of such Grantor.

(b) Each Grantor has delivered all Certificated Securities constituting Collateral held by such Grantor in a Subsidiary (including the Borrower) on the Closing Date (or, solely with respect to a Grantor that becomes a party to this Security Agreement after the Closing Date, on the date such Grantor becomes a party to this Security Agreement) to the Administrative Agent, together with duly executed undated blank stock powers, or other equivalent instruments of transfer acceptable in form and substance to the Lender Representative.

(c) [Reserved]

(d) The percentage of the issued and outstanding Equity Interests of each Subsidiary (including the Borrower) pledged on the Closing Date (or, solely with respect to a Grantor that becomes a party to this Security Agreement after the Closing Date, on the date such Grantor becomes a party to this Security Agreement) by each Grantor hereunder is as set forth on Schedule I. All shares of such Equity Interests have been duly and validly issued and are fully paid and non-assessable (in the case of any Equity Interests issued by a corporation) or duly issued and outstanding (in the case of any Equity Interests in any partnership or limited liability company).

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

Section 3.2. Grantor Name, Location, Etc. In each case as of the Closing Date (other than as expressly required under this Security Agreement or, solely with respect to a Grantor that becomes a party to this Security Agreement after the Closing Date, on the date such Grantor becomes a party to this Security Agreement):

(a) (i) The jurisdiction in which each Grantor is located for purposes of Sections 9-301 and 9-307 of the UCC and (ii) the address of each Grantor's chief executive office and principal place of business is set forth in Item A of Schedule II. The location of all material books and records and Equipment and Inventory of each Grantor (other than (A) Equipment or Inventory that is in transit or in the possession of employees, customers, development partners or vendors, in each case in the ordinary course of business, (B) Collateral which is out for repair or processing, (C) Equipment that is mobile in nature, including vehicles and portable computing equipment and (D) locations within the United States having Collateral, in each case, with a fair market value of less than \$100,000 per location and \$250,000 in the aggregate for all locations) is set forth in Item A of Schedule II.

(b) The Grantors do not have any trade names other than those set forth in Item C of Schedule II hereto.

(c) During the twelve (12) months preceding the date hereof (or, solely with respect to a Grantor that becomes a party to this Security Agreement after the Closing Date, preceding the date such Grantor becomes a party to this Security Agreement), no Grantor has been known by any legal name different from the one set forth on the signature page hereto, nor has such Grantor been the subject of any merger or other corporate reorganization, except as set forth in Item D of Schedule II hereto.

(d) Each Grantor's federal taxpayer identification number (or foreign equivalent) is (and, during the twelve (12) months preceding the date hereof (or, solely with respect to a Grantor that becomes a party to this Security Agreement after the Closing Date, preceding the date such Grantor becomes a party to this Security Agreement), such Grantor has not had a federal

taxpayer identification number (or equivalent) different from that) set forth in Item E of Schedule II hereto.

(e) No Grantor is a party to any material federal, state or local government contract except as set forth in Item E of Schedule II hereto.

(f) No Grantor maintains any Deposit Accounts, Securities Accounts or Commodity Accounts with any Person, in each case, except as set forth on Item G of Schedule II.

(g) No Grantor is the beneficiary of any Letters of Credit in excess of \$500,000, except as set forth on Item H of Schedule II.

(h) No Grantor has Commercial Tort Claims in favor of such Grantor in excess of \$500,000 except as set forth on Item I of Schedule II.

(i) The name set forth on the signature page attached hereto (or the signature page of the supplement hereto by which such Grantor has become a party to this Security Agreement, as applicable) is the true and correct legal name (as defined in the UCC) of each Grantor.

Section 3.3. Ownership, No Liens, Etc. Each Grantor owns its Collateral free and clear of any and all Liens, except for (a) any security interest created by this Security Agreement and (b) Permitted Liens. No effective Financing Statement or other filing similar in effect covering all or any part of the Collateral is on file in any recording office, except those filed in favor of the Administrative Agent relating to this Security Agreement, Permitted Liens or as to which a duly authorized termination statement relating to such Financing Statement or other instrument has been delivered to the Administrative Agent on the Closing Date. No Grantor has granted a Lien (other than non-consensual Permitted Liens and Permitted Liens described in clauses (c), (i) and (ee) of Section 7.01 of the Credit Agreement) in any Bioprojet Agreement to any Person, other than the Secured Parties to the extent contemplated under this Security Agreement.

Section 3.4. Possession of Inventory, Control, Etc.

(a) Each Grantor has, and agrees that it will maintain, exclusive possession of its Documents, Instruments, Promissory Notes, Goods, Equipment and Inventory, other than (i) Equipment or Inventory that is in transit in the ordinary course of business, (ii) Equipment or Inventory that in the ordinary course of business is in the possession or control of a warehouseman, bailee agent or other Person (other than a Person controlled by or under common control with such Grantor), with respect to any such assets with an aggregate value in excess of \$2,000,000, that has been notified of the security interest created in favor of the Administrative Agent, for the benefit of the Secured Parties, pursuant to this Security Agreement and with respect to which such Grantor has exercised commercially reasonable efforts to have authenticated a record acknowledging that such warehouseman, bailee agent or other Person holds possession of such Collateral for the benefit of the Secured Parties and waives any Lien held by it against such Collateral, (iii) Inventory that is in the possession of any Person in connection with a conditional sale, title retention, consignment or similar arrangements for sale of goods or products in the ordinary course of

business and (iv) any Documents, Instruments, Promissory Notes, Goods, Equipment and Inventory that have been delivered to the Administrative Agent.

(b) Each Grantor is the sole entitlement holder of its Securities Accounts, and no other Person (other than the Administrative Agent pursuant to this Security Agreement or any other Person with respect to Permitted Liens) has control or possession of, or any other interest in, any of its Securities Accounts or any other securities or property credited thereto, in each case, except as otherwise expressly permitted under the Credit Agreement.

Section 3.5. Negotiable Instruments and Chattel Paper. Each Grantor has delivered to the Administrative Agent possession of all originals of all Instruments, Promissory Notes and tangible Chattel Paper (other than any Intercompany Note, any Instrument, Promissory Note or tangible Chattel Paper held in a Securities Account or any Instrument, Promissory Note or tangible Chattel Paper not exceeding \$500,000 in principal amount individually or \$1,000,000 in principal amount in the aggregate) held by such Grantor on the Closing Date (or, solely with respect to a Grantor that becomes a party to this Security Agreement after the Closing Date, on the date such Grantor becomes a party to this Security Agreement).

Section 3.6. Intellectual Property Collateral. Except as disclosed on Schedules III through VI, with respect to any Intellectual Property Collateral:

(a) any Material IP Rights owned by any Grantor is, to the knowledge of such Grantor, valid, subsisting, unexpired and enforceable and has not been abandoned or adjudged invalid or unenforceable, in whole or in part;

(b) each Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to all Material IP Rights owned by such Grantor and to the knowledge of such Grantor, no claim has been made that the use of such Intellectual Property Collateral by such Grantor does or may, conflict with, infringe, misappropriate, dilute, misuse or otherwise violate in any material respect, any of the rights of any third party;

(c) each Grantor has made all necessary filings and recordings to protect its interest in any Material IP Rights owned by such Grantor to the extent such filing or recordation is necessary for the conduct of the business substantially in the manner presently conducted, including recordings of all of its interests in the owned Patent Collateral and Trademark Collateral in the USPTO or foreign equivalent, and its claims to the owned Copyright Collateral in the United States Copyright Office (the "USCO") or foreign equivalent, and, to the extent necessary, has used proper statutory notice in connection with its use of any material Patent, Trademark and Copyright in any of such Intellectual Property Collateral;

(d) each Grantor has taken all reasonable steps to safeguard its Trade Secrets that constitute Material IP Rights and to the knowledge of any Responsible Officer of such Grantor (i) none of the Trade Secrets that constitute Material IP Rights of such Grantor has been used, divulged, disclosed or appropriated for the benefit of any other Person other than a Grantor; (ii) no employee, independent contractor or agent of such Grantor has misappropriated any Trade Secrets of any other Person in the course of the performance of his or her duties as an employee, independent contractor or agent of such Grantor; and (iii) no employee, independent contractor or

agent of such Grantor is in default or breach of any material term of any employment agreement, non-disclosure agreement, assignment of inventions agreement or similar agreement or contract relating in any material way to the protection, ownership, development, use or transfer of such Grantor's Material IP Rights;

(e) to each Grantor's knowledge, no third party is infringing upon any Intellectual Property owned or used by such Grantor in any material respect, or any of its respective licensees in any material respect;

(f) no written settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by any Grantor or to which any Grantor is bound that adversely affects its rights to own or use any of its Material IP Rights;

(g) each Grantor has not granted a Lien in any Intellectual Property Collateral owned by such Grantor that has not been terminated or released except Permitted Liens;

(h) each Grantor has executed and delivered to the Administrative Agent Intellectual Property Collateral security agreements for all applications and registrations for all Copyrights, Patents and Trademarks owned by such Grantor as of the Closing Date;

(i) each Grantor (i) uses commercially reasonable efforts designed to ensure the quality of the manufacture, distribution and sale of all products sold by the Grantor and in the provision of all services rendered under or in connection with all Trademarks and (ii) has taken all commercially reasonable actions necessary to ensure that all licensees of the Trademarks owned by such Grantor use such adequate standards of quality;

(j) the consummation of the transactions contemplated by the Credit Agreement and this Security Agreement will not result in the termination or material impairment of any Material IP Rights; and

(k) to each Grantor's knowledge, such Grantor owns or is entitled to use by license, lease or other agreement, all Patents, Trademarks, Trade Secrets, Copyrights, mask works, licenses, technology, know-how, processes and rights with respect to any of the foregoing as necessary to conduct the business and operations of such Grantor substantially in the manner presently conducted.

Section 3.7. Validity, Etc.

(a) This Security Agreement creates a valid security interest in all of the Collateral in favor of the Administrative Agent for the ratable benefit of the Lenders securing the payment of the Obligations to the extent such security interest may be created pursuant to Article 9 of the UCC.

(b) Upon the filing of a UCC-1 financing statement naming the applicable Grantor as debtor, the Administrative Agent as secured party and listing all personal property as the collateral (collectively, the "Financing Statements") in the jurisdiction of organization of each Grantor set forth in Item A of Schedule II with the appropriate agencies therefor, the security

interests created under this Security Agreement shall constitute a valid perfected first priority security interest in the Collateral described on such Financing Statements in favor of the Administrative Agent to the extent that a security interest therein may be perfected by filing a financing statement pursuant to the relevant UCC, prior to all other Liens, except for Permitted Liens.

Section 3.8. Authorization, Approval, Etc. Except as have been obtained or made and are in full force and effect, except for any applicable filings in under securities laws by the Borrower except with respect to the Financing Statements or, with respect to Intellectual Property Collateral, the recordation of any agreements with the USPTO or the USCO, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for the grant by the Grantors of the security interest granted hereby or for the execution, delivery and performance of this Security Agreement by the Grantors.

Section 3.9. Best Interests. It is in the best interests of each Grantor (other than the Borrower) to execute this Security Agreement inasmuch as such Grantor will, as a result of being an Affiliate of the Borrower, derive substantial direct and indirect benefits from the Loans made to the Borrower by the Lenders pursuant to the Credit Agreement, and each Grantor agrees that the Lenders are relying on this representation in agreeing to make such Loans pursuant to the Credit Agreement to the Borrower.

ARTICLE IV COVENANTS

Each Grantor covenants and agrees that, until the Facility Termination Date, such Grantor will perform, comply with and be bound by the obligations set forth below.

Section 4.1. As to Investment Property, Etc.

Section 4.1.1. Equity Interests of Subsidiaries. No Grantor will allow any of its Subsidiaries (including the Borrower):

(a) that is a corporation, business trust, joint stock company or similar Person, to issue Uncertificated Securities;

(b) that is a partnership or limited liability company, to (i) issue Equity Interests that are to be dealt in or traded on securities exchanges or in securities markets, (ii) except as permitted by Section 4.1.2(d) below, expressly provide in its Organization Documents that its Equity Interests are securities governed by Article 8 of the UCC or (iii) place such Subsidiary's Equity Interests in a Securities Account; and

(c) to issue Equity Interests in addition to or in substitution for the Equity Interests pledged hereunder, except to such Grantor (and such Equity Interests are promptly pledged and delivered to the Administrative Agent pursuant to the terms of this Security Agreement and, in the case of any non-wholly owned Subsidiary, to the extent permitted under the Credit Agreement).

Section 4.1.2. Investment Property (other than Certificated Securities).

(a) Subject to Section 6.18 of the Credit Agreement, within thirty (30) days (or such later date as the Lender Representative may agree to) after a Grantor's acquisition or creation of any Deposit Accounts or Securities Accounts (other than Excluded Accounts), such Grantor will cause the bank or securities intermediary maintaining such Deposit Accounts or Securities Account to execute a Qualifying Control Agreement relating thereto.

(b) With respect to any Uncertificated Securities (other than Uncertificated Securities credited to a Securities Account) issued by a Person other than the Borrower or a Subsidiary constituting Investment Property owned or held by any Grantor, such Grantor will, upon written request from Administrative Agent or the Lender Representative, use commercially reasonable efforts cause the issuer of such securities to either (i) register the Administrative Agent as the registered owner thereof on the books and records of the Issuer or (ii) execute a Qualifying Control Agreement relating to such Investment Property pursuant to which the Issuer agrees to comply with the Administrative Agent's instructions with respect to such Uncertificated Securities without further consent by such Grantor. With respect to Uncertificated Securities of the Borrower or any Subsidiary, the Grantor which is the Issuer of such Securities hereby agrees to comply with the Administrative Agent's written instructions with respect to such Uncertificated Securities without further consent by such Grantor, and the Administrative Agent hereby agrees not to give such written instructions unless an Event of Default has occurred and is continuing.

(c) Except as expressly permitted under the Credit Agreement (including any Permitted Liens), no Grantor shall cause or permit any Person other than Administrative Agent or the Secured Parties to have "control" (as defined in Section 9-104, 9-105, 9-106 or 9-107 of the UCC) of any Investment Property constituting part of the Collateral.

(d) No Grantor shall take any action to cause any Pledged Equity issued by a Subsidiary which consists of "general intangibles" pursuant to Article 9 of the UCC to be or become a "security" within the meaning of, or to be governed by Article 8 of the UCC as in effect under the laws of any state having jurisdiction and shall not permit any Subsidiary to, "opt in" or to take any other action seeking to establish any such Pledged Equity as a "security" or to become certificated unless such Grantor notifies the Administrative Agent of any such action and, as applicable, (i) upon written request from Administrative Agent, promptly causes the Issuer of such securities to execute a Control Agreement relating to such Pledged Equity pursuant to which the Issuer agrees to comply with the Administrative Agent's instructions with respect to such Uncertificated Securities without further consent by such Grantor or (ii) promptly pledges and delivers to the Administrative Agent certificates evidencing such Pledged Equity, accompanied by duly executed undated blank stock powers, or other equivalent instruments of transfer reasonably acceptable to the Lender Representative.

Section 4.1.3. Certificated Securities (Stock Powers). Each Grantor agrees that all Certificated Securities constituting Collateral, including the Equity Interests delivered by such Grantor pursuant to this Security Agreement, will be accompanied by duly executed undated blank stock powers, or other equivalent instruments of transfer reasonably acceptable to the Lender Representative.

Section 4.1.4. Continuous Pledge. Each Grantor will (subject to the terms of the Credit Agreement) deliver to the Administrative Agent all Investment Property and all Payment Intangibles that constitute Collateral to the extent that such Investment Property or Payment Intangibles are evidenced by a Document, Instrument, Promissory Note or Chattel Paper (other than any Intercompany Notes, any Document, Instrument, Promissory Note or Chattel Paper held in a Securities Account or any Document, Instrument, Promissory Note or Chattel Paper not exceeding \$500,000 in principal amount individually or \$1,000,000 in principal amount in the aggregate).

Section 4.1.5. Voting Rights, Dividends, Etc. Each Grantor agrees:

(a) upon receipt of written notice of the occurrence and continuance of an Event of Default from the Administrative Agent and request therefor by the Administrative Agent, so long as such Event of Default shall continue, to deliver (properly endorsed where required hereby or requested by the Administrative Agent) to the Administrative Agent all dividends and Distributions with respect to Investment Property constituting Collateral; all interest, principal, other cash payments on Payment Intangibles; and all Proceeds of the Collateral, in each case thereafter received by such Grantor, all of which shall be held by the Administrative Agent as additional Collateral; and

(b) immediately upon the occurrence and during the continuance of an Event of Default and so long as the Administrative Agent has notified such Grantor in writing of the Administrative Agent's intention to exercise its voting power under this clause (b),

(i) with respect to Collateral consisting of general partner interests or limited liability company interests, to promptly modify its Organization Documents to admit the Administrative Agent (or its designee) as a general partner or member, as applicable;

(ii) that the Administrative Agent may exercise (to the exclusion of such Grantor) the voting power and all other incidental rights of ownership with respect to any Investment Property constituting Collateral, and such Grantor hereby grants the Administrative Agent an irrevocable proxy, exercisable under such circumstances, to vote such Investment Property; and

(iii) to promptly deliver to the Administrative Agent such additional proxies and other documents as are reasonably requested by Administrative Agent which are necessary to allow the Administrative Agent to exercise such voting power.

All dividends, Distributions, interest, principal, cash payments, Payment Intangibles and Proceeds constituting Collateral that may at any time and from time to time be held by such Grantor, but which such Grantor is then obligated to deliver to the Administrative Agent, shall, until delivery to the Administrative Agent, be held by such Grantor separate and apart from its other property in trust for the Administrative Agent. The Administrative Agent agrees that unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given the written notice referred to in this clause (b), such Grantor will have the exclusive voting power with respect to any Investment Property and the Administrative Agent will, upon the written request of such Grantor, promptly deliver such proxies and other documents, if any, as shall be reasonably

requested by such Grantor which are necessary to allow such Grantor to exercise that voting power; provided that no vote shall be cast, or consent, waiver or ratification given, or action taken by such Grantor that would directly and materially impair the Collateral or violate any provision of any Loan Document.

Section 4.2. Change of Name, Location, etc. No Grantor shall change its name, form of organization, principal place of business or place of incorporation or organization or federal taxpayer identification number, except as permitted by the Credit Agreement. No Grantor shall change the location of its chief executive office or the location of material books and records, Equipment or Inventory (other than Equipment or Inventory that is (a) in transit in the ordinary course of business or in the possession of employees, customers, development partners or vendors, in each case in the ordinary course of business, (b) Collateral which is out for repair or processing (c) Equipment that is mobile in nature, including vehicles and portable computing equipment and (d) in locations within the United States having Collateral, in each case, with a fair market value of less than \$100,000 per location and \$250,000 in the aggregate for all locations) without prior written notice to the Administrative Agent (acting at the direction of the Lender Representative).

Section 4.3. As to Accounts.

(a) Each Grantor shall have the right to collect all Accounts so long as no Event of Default shall have occurred and be continuing.

(b) Upon (i) the occurrence and continuance of an Event of Default and (ii) the delivery of written notice by the Administrative Agent to each Grantor, all Proceeds of Collateral received by such Grantor shall be delivered in kind to the Administrative Agent and, until delivered to Administrative Agent, shall be deposited in a Deposit Account of such Grantor maintained with the Administrative Agent or that otherwise is subject to a Qualifying Control Agreement or a Securities Account that is subject to a Qualifying Control Agreement (such Deposit Accounts or Securities Accounts, collectively, the "Collateral Accounts"), and such Grantor shall not commingle any such Proceeds and shall hold, separate and apart from all other property, all such Proceeds in express trust for the benefit of the Administrative Agent until delivery thereof is made to the Administrative Agent.

(c) Following the delivery of written notice pursuant to clause (b)(ii) above, the Administrative Agent shall have the right to apply any amount in the Collateral Accounts to the payment of any Obligations which are then due and payable in accordance with Section 8.03 of the Credit Agreement.

Section 4.4. As to Grantors' Use of Collateral.

(a) Subject to clause (b) below, each Grantor: (i) may in the ordinary course of its business, at its own expense, sell, lease or furnish under contracts of service any of the Inventory normally held by such Grantor for such purpose, and use and consume, in the ordinary course of its business, any raw materials, work in process or materials normally held by such Grantor for such purpose, (ii) will, at its own expense, endeavor to collect, as and when due, all amounts due with respect to any of the Collateral, including the taking of such action with respect to such collection as the Administrative Agent may reasonably request following the occurrence and

during the continuance of an Event of Default or, in the absence of such request, as such Grantor may deem advisable, (iii) may grant, in the ordinary course of business, to any party obligated on any of the Collateral, any rebate, refund or allowance to which such party may be lawfully entitled, and may accept, in connection therewith, the return of Goods, the sale or lease of which shall have given rise to such Collateral, and (iv) may make Dispositions permitted under the Credit Agreement.

(b) At any time following the occurrence and during the continuance of an Event of Default, whether before or after the maturity of any of the Obligations until the Facility Termination Date, the Administrative Agent may: (i) revoke any or all of the rights of each Grantor set forth in clause (a) above, (ii) notify any parties obligated on any of the Collateral to make payment to the Administrative Agent of any amounts due or to become due thereunder and (iii) enforce collection of any of the Collateral by suit or otherwise and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder or evidenced thereby.

(c) Upon the written request of the Administrative Agent following the occurrence and during the continuance of an Event of Default, each Grantor will, at its own expense, notify any parties obligated on any of the Collateral to make payment to the Administrative Agent of any amounts due or to become due thereunder.

(d) At any time following the occurrence and during the continuance of an Event of Default, the Administrative Agent may endorse, in the name of such Grantor, any item, howsoever received by the Administrative Agent, representing any payment on or other Proceeds of any of the Collateral.

(e) No Grantor may grant a Lien (other than non-consensual Permitted Liens and Permitted Liens described in clauses (c), (i) and (ee) of Section 7.01 of the Credit Agreement) on any Bioprojet Agreement to any Person, other than the Secured Parties.

Section 4.5. As to Intellectual Property Collateral. Each Grantor covenants and agrees to comply with the following provisions, in each case, as such provisions relate to any Intellectual Property Collateral material to the operations or business of such Grantor:

(a) such Grantor will not (i) do or fail to perform any act whereby any of the Patent Collateral constituting Material IP Rights may lapse or become abandoned or dedicated to the public or unenforceable, (ii) authorize any of its licensees to (A) fail to continue to use any of the Trademark Collateral constituting Material IP Rights in order to maintain all of the Trademark Collateral constituting Material IP Rights in full force free from any claim of abandonment for non-use, (B) fail to maintain the quality of products and services offered under all of the Trademark Collateral constituting Material IP Rights at a level substantially consistent with the quality of products and services offered under such Trademark as of the date hereof, (C) [reserved], (D) [reserved], (E) [reserved] or (F) do or permit any act or knowingly omit to do any act whereby any of the Trademark Collateral constituting Material IP Rights may become invalid or unenforceable or (iii) do or permit any act or knowingly omit to do any act whereby any of the Copyright Collateral or any of the Trade Secrets Collateral, in each case, constituting Material IP Rights may

lapse or become invalid or unenforceable or placed in the public domain except upon expiration of the end of an unrenuable term of a registration thereof, unless, in the case of any of the foregoing requirements in clauses (i), (ii) and (iii), such Grantor reasonably and in good faith determines that either (x) such Intellectual Property Collateral is of negligible economic value to such Grantor or (y) the loss of such Intellectual Property Collateral would not be materially adverse to such Grantor;

(b) such Grantor shall notify the Administrative Agent on a quarterly basis, together with the delivery of the applicable Compliance Certificate for such quarter, if it knows that any application or registration relating to any Material IP Rights may, in the Grantor's reasonable commercial judgment, become abandoned or dedicated to the public or placed in the public domain or invalid or unenforceable, or of any adverse determination (including the institution of, or any such determination in, any proceeding in the USPTO, the USCO or any foreign counterpart thereof or any court) regarding such Grantor's ownership of any Material IP Rights, its right to register the same or to keep and maintain and enforce the same;

(c) deliver, on a quarterly basis, together with the delivery of the applicable Compliance Certificate for such quarter, a report listing all applications for the registration of any Intellectual Property Collateral with the USPTO or any similar office or agency in any other country or any political subdivision thereof filed during such quarter, and upon the written request of the Administrative Agent (subject to the terms of the Credit Agreement and this Security Agreement), the applicable Grantor shall execute and deliver all agreements, instruments and documents as the Administrative Agent or the Lender Representative may reasonably request to evidence the Administrative Agent's security interest in any Intellectual Property Collateral;

(d) [reserved]

(e) such Grantor will take all reasonable and necessary steps (in such Grantor's reasonable business judgement), including in any proceeding before the USPTO, the USCO or any similar office or agency in any other country or any political subdivision thereof (subject to the terms of the Credit Agreement), to maintain and pursue any material application (and to obtain the relevant registration) filed with respect to, and to maintain any registration of, Material IP Rights, including the filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings and the payment of fees and taxes (except to the extent that dedication, abandonment or invalidation is permitted under the foregoing clause (a) or (b)); and

(f) such Grantor will promptly upon written request by Administrative Agent or the Lender Representative execute and deliver to the Administrative Agent (as applicable) a Patent Security Agreement, Trademark Security Agreement and/or Copyright Security Agreement, as the case may be, in the forms of Exhibit A, Exhibit B and Exhibit C hereto following its obtaining an interest in any such Intellectual Property described in the foregoing clause (e) and shall execute and deliver to the Administrative Agent any other document reasonably required to evidence the Administrative Agent's interest in any part of such item of Intellectual Property Collateral unless such Grantor shall determine in good faith (with the consent of the Lender

Representative, such consent not to be unreasonably withheld) that any Intellectual Property Collateral is of negligible economic value to such Grantor.

Section 4.6. As to Letter of Credit Rights.

(a) Each Grantor, by granting a security interest in its Letter of Credit Rights to the Administrative Agent, intends to (and hereby does) collaterally assign to the Administrative Agent its rights (including its contingent rights) to the Proceeds of all Letter of Credit Rights of which it is or hereafter becomes a beneficiary or assignee.

(b) Upon the occurrence of an Event of Default, such Grantor will, promptly upon request by the Administrative Agent, (i) notify (and such Grantor hereby authorizes the Administrative Agent to notify) the issuer and each nominated person with respect to each of the Letters of Credit that the Proceeds thereof have been assigned to the Administrative Agent hereunder and any payments due or to become due in respect thereof are to be made directly to the Administrative Agent and (ii) arrange for the Administrative Agent to become the transferee beneficiary of such Letter of Credit.

Section 4.7. As to Commercial Tort Claims. Each Grantor covenants and agrees that, until the Facility Termination Date, with respect to any Commercial Tort Claim in excess of \$250,000 individually and \$500,000 in the aggregate, such Grantor shall on a quarterly basis, together with the delivery of the applicable Compliance Certificate for such quarter, notify the Administrative Agent of such Commercial Tort Claim in writing, therein providing a reasonably detailed description thereof, and upon delivery thereof to Agent, such Grantor shall be deemed to thereby grant to Agent (and such Grantor hereby grants to Agent) a security interest in such Commercial Tort Claim and all proceeds thereof.

Section 4.8. Electronic Chattel Paper and Transferable Records. If any Grantor at any time holds or acquires an interest in any Electronic Chattel Paper or any “transferable record,” as that term is defined in Section 201 of the U.S. Federal Electronic Signatures in Global and National Commerce Act or in Section 16 of the U.S. Uniform Electronic Transactions Act, as in effect in any relevant jurisdiction, with a value in excess of \$500,000, such Grantor shall on a quarterly basis, together with the delivery of the applicable Compliance Certificate for such quarter, notify the Administrative Agent thereof and, at the request of the Administrative Agent, shall take such action as the Administrative Agent or the Lender Representative may reasonably request to vest in the Administrative Agent control under Section 9-105 of the UCC of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Administrative Agent agrees with such Grantor that the Administrative Agent will arrange, pursuant to procedures reasonably satisfactory to the Administrative Agent and so long as such procedures will not result in the Administrative Agent’s loss of control, for the Grantor to make alterations to the Electronic Chattel Paper or transferable record permitted under Section 9-105 of the UCC or, as the case may be, Section 201 of the U.S. Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the U.S. Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after

taking into account any action by such Grantor with respect to such Electronic Chattel Paper or transferable record.

Section 4.9. Further Assurances, Etc. Each Grantor agrees that, from time to time at its own expense, it will, subject to the terms of this Security Agreement, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that the Administrative Agent or the Lender Representative may reasonably request, in order to perfect, preserve and protect any security interest granted hereby or to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, such Grantor will:

(a) from time to time upon the written request of the Administrative Agent or the Lender Representative, promptly deliver to the Administrative Agent such stock powers, instruments and similar documents, reasonably satisfactory in form and substance to the Administrative Agent, with respect to Equity Interests constituting Collateral as are necessary to perfect the security interest created hereunder and will, from time to time upon the prior written request of the Administrative Agent, after the occurrence and during the continuance of any Event of Default, promptly transfer any Equity Interests constituting Collateral into the name of any nominee designated by the Administrative Agent; if any Collateral shall be evidenced by an Instrument, negotiable Document, Promissory Note or tangible Chattel Paper, deliver and pledge to the Administrative Agent hereunder such Instrument, negotiable Document, Promissory Note or tangible Chattel Paper (other than any Intercompany Note, any Instrument, negotiable Document, Promissory Note or tangible Chattel Paper held in a Securities Account subject to a Qualifying Control Agreement or any Instrument, negotiable Document, Promissory Note or tangible Chattel Paper not exceeding \$500,000 in principal amount individually) duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Administrative Agent;

(b) file (and hereby authorize the Administrative Agent or its designee to file) such Financing Statements or continuation statements, or amendments thereto, and such other instruments or notices (including, upon the written request of the Administrative Agent (acting at the direction of the Required Lenders, any assignment of claim form under or pursuant to the federal assignment of claims statute, 31 U.S.C. § 3727, any successor or amended version thereof or any regulation promulgated under or pursuant to any version thereof), as may be necessary or that the Administrative Agent or the Lender Representative may reasonably request in order to perfect and preserve the security interests and other rights granted or purported to be granted to the Administrative Agent, for the benefit of the Secured Parties, hereby;

(c) [reserved];

(d) not take or omit to take any action the taking or the omission of which would result in any impairment or alteration of any obligation of the maker of any Payment Intangible or other Instrument constituting Collateral, except as provided in Section 4.4; and

(e) not create any tangible Chattel Paper with a value in excess of \$500,000 individually or \$1,000,000 in the aggregate, without placing a legend on such tangible Chattel

Paper reasonably acceptable to the Lender Representative indicating that the Administrative Agent has a security interest in such Chattel Paper.

With respect to the foregoing and the grant of the security interest hereunder, each Grantor hereby authorizes the Administrative Agent (or its designee) to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral as may be necessary or desirable to create, preserve, perfect or maintain the perfection of or validate the security interest granted hereunder. Each Grantor agrees that a carbon, photographic or other reproduction of this Security Agreement or any Financing Statement covering the Collateral or any part thereof shall be sufficient as a Financing Statement where permitted by Law. Each Grantor hereby authorizes the Administrative Agent (or its designee) to file Financing Statements describing as the collateral covered thereby "all of the debtor's personal property or assets" or words to that effect, notwithstanding that such wording may be broader in scope than the Collateral described in this Security Agreement.

Section 4.10. Motor Vehicles. Each Grantor shall (a) cause all Motor Vehicles owned as of the Closing Date with a fair market value in excess of \$2,000,000 in the aggregate to be properly titled in the name of such Grantor, and if requested by the Administrative Agent or the Lender Representative, with the Administrative Agent's Lien noted thereon and (b) if requested by the Administrative Agent or the Lender Representative, promptly deliver to the Administrative Agent (or its custodian) originals of all such certificates of title or certificates of ownership for such owned Motor Vehicles, with the Administrative Agent's Lien noted thereon. Upon the acquisition after the date hereof by any Grantor of any Motor Vehicles with a fair market value in excess of \$2,000,000 in the aggregate, such Grantor shall on a quarterly basis, together with the delivery of the applicable Compliance Certificate for such quarter notify the Administrative Agent of such acquisition, set forth a description of such Motor Vehicles acquired and a good faith estimate of the current value of such Motor Vehicles, and if so requested by the Lender Representative, promptly deliver to the Administrative Agent (or its custodian) originals of the certificates of title or certificates of ownership for such Motor Vehicles, together with the manufacturer's statement of origin, and an application duly executed by the appropriate Grantor to evidence the Administrative Agent's Lien thereon.

ARTICLE V THE ADMINISTRATIVE AGENT

Section 5.1. Agent Appointed Attorney-in-Fact. Each Grantor hereby designates and appoints the Administrative Agent, on behalf of the Secured Parties, and each of its designees or agents, as attorney-in-fact of such Grantor, irrevocably and with power of substitution, with authority to take any or all of the following actions upon the occurrence and during the continuance of an Event of Default until the Facility Termination Date in accordance with the terms hereof:

(a) to demand, collect, settle, compromise and adjust, and give discharges and releases concerning the Collateral, all as the Administrative Agent may deem reasonably appropriate;

- respect thereof;
- (b) to commence and prosecute any actions at any court for the purposes of collecting any of the Collateral and enforcing any other right in respect thereof;
 - (c) to defend, settle or compromise any action brought in respect of the Collateral and, in connection therewith, give such discharge or release as the Administrative Agent may deem reasonably appropriate;
 - (d) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral;
 - (e) to direct any parties liable for any payment in connection with any of the Collateral to make payment of any and all monies due and to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct;
 - (f) to receive payment of and receipt for any and all monies, claims, and other amounts due and to become due at any time in respect of or arising out of any Collateral;
 - (g) to sign and endorse any drafts, assignments, proxies, stock powers, verifications, notices and other documents relating to the Collateral;
 - (h) to execute and deliver all assignments, conveyances, statements, Financing Statements, renewal Financing Statements, security and pledge agreements, affidavits, notices and other agreements, instruments and documents that the Administrative Agent may deem reasonably appropriate in order to perfect and maintain the security interests and liens granted in this Security Agreement and in order to fully consummate all of the transactions contemplated therein;
 - (i) to exchange any of the Collateral or other property upon any merger, consolidation, reorganization, recapitalization or other readjustment of the issuer thereof and, in connection therewith, deposit any of the Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms as the Administrative Agent may deem reasonably appropriate;
 - (j) to vote for a shareholder or member resolution, or to sign an instrument in writing, sanctioning the transfer of any or all of the Collateral into the name of the Administrative Agent or one or more of the Secured Parties or into the name of any transferee to whom the Collateral or any part thereof may be sold pursuant to Article VI hereof; and
 - (k) to perform the affirmative obligations of such Grantor hereunder.

This power of attorney is a power coupled with an interest and shall be irrevocable for so long as any of the Obligations (other than contingent indemnification obligations for which no claim has been asserted) shall remain outstanding and until all of the commitments relating thereto shall have been terminated. The Administrative Agent shall be under no duty to exercise or withhold the exercise of any of the rights, powers, privileges and options expressly or implicitly granted to the Administrative Agent in this Security Agreement, and shall not be liable for any failure to do so or any delay in doing so. The Administrative Agent shall not be liable for any act or omission or for any error of judgment or any mistake of fact or law in its individual capacity or

its capacity as attorney-in-fact except acts or omissions resulting from its gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction. This power of attorney is conferred on the Administrative Agent solely to protect, preserve and realize upon its security interest in the Collateral.

Section 5.2. Assignment by the Administrative Agent. The Administrative Agent may from time to time assign its security interest in the Collateral to a successor agent in accordance with the Credit Agreement, and the assignee shall be entitled to all of the rights and remedies of the Administrative Agent under this Security Agreement in relation thereto.

Section 5.3. The Administrative Agent's Duty of Care. Other than the exercise of reasonable care to assure the safe custody of the Collateral while being held by the Administrative Agent hereunder and to account for all proceeds thereof, the Administrative Agent shall have no duty or liability to preserve rights pertaining thereto, it being understood and agreed that the Grantors shall be responsible for preservation of all rights in the Collateral, and the Administrative Agent shall be relieved of all responsibility for the Collateral upon surrendering it or tendering the surrender of it to the Grantors. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Administrative Agent accords its own property, which shall be no less than the treatment employed by a reasonable and prudent agent in the industry, it being understood that the Administrative Agent shall not have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Administrative Agent has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against any parties with respect to any of the Collateral. The provisions of Article IX of the Credit Agreement, including the rights, privileges, protections, benefits, indemnities and immunities of the Administrative Agent are incorporated herein, mutatis mutandis, as if a part hereof, and shall also apply to the Administrative Agent acting under or in connection with this Security Agreement.

Section 5.4. Release of Collateral. The Administrative Agent may, in accordance with the terms of the Credit Agreement, release any of the Collateral from this Security Agreement or may substitute any of the Collateral for other Collateral without altering, varying or diminishing in any way the force, effect, lien, pledge or security interest of this Security Agreement as to any Collateral not expressly released or substituted, and this Security Agreement shall continue as a first priority (subject to Permitted Liens) lien on all Collateral not expressly released or substituted.

Section 5.5. Application of Proceeds. Upon the occurrence and during the continuation of an Event of Default, any payments in respect of the Obligations and any proceeds of the Collateral, when received by the Administrative Agent or any of the Secured Parties in cash or its equivalent, will be applied in reduction of the Obligations in the order set forth in Section 8.03 of the Credit Agreement, and each Grantor irrevocably waives the right to direct the application of such payments and proceeds and acknowledges and agrees that the Administrative Agent shall have the continuing and exclusive right to apply and reapply any and all such payments and proceeds in accordance with Section 8.03 of the Credit Agreement.

**ARTICLE VI
REMEDIES**

Section 6.1. Certain Remedies. If any Event of Default shall have occurred and be continuing:

(a) The Administrative Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of the Administrative Agent on default under the UCC (whether or not the UCC is in effect in the jurisdiction where the rights and remedies are asserted) and also may:

(i) take possession of any Collateral not already in its possession without demand and without legal process;

(ii) require each Grantor to, and each Grantor hereby agrees that it will, at its expense and upon request of the Administrative Agent forthwith, assemble all or part of the Collateral as reasonably directed by the Administrative Agent and make it available to the Administrative Agent at a place to be designated by the Administrative Agent that is reasonably convenient to both the Administrative Agent and such Grantor;

(iii) enter onto the property where any Collateral is located and take possession thereof without demand and without legal process; and

(iv) without notice except as specified below, lease, license, sell or otherwise dispose of the Collateral or any part thereof in one or more parcels at any public or private sale, at any of the Administrative Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Administrative Agent may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale shall be required by Law, at least ten (10) days' prior notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All cash Proceeds received by the Administrative Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral shall be applied by the Administrative Agent against all or any part of the Obligations as set forth in Section 8.03 of the Credit Agreement.

(c) The Administrative Agent may:

(i) transfer all or any part of the Collateral into the name of the Administrative Agent or its nominee, with or without disclosing that such Collateral is subject to the Lien hereunder;

(ii) notify the parties obligated on any of the Collateral to make payment to the Administrative Agent of any amount due or to become due thereunder;

(iii) withdraw, or cause or direct the withdrawal, of all funds with respect to any Collateral Account;

(iv) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto;

(v) endorse any checks, drafts, or other writings in any Grantor's name to allow collection of the Collateral;

(vi) take control of any Proceeds of the Collateral; and

(vii) execute (in the name, place and stead of any Grantor) endorsements, assignments, stock powers and other instruments of conveyance or transfer with respect to all or any of the Collateral.

Section 6.2. Securities Laws. If the Administrative Agent shall determine to exercise its right to sell all or any of the Collateral that are Equity Interests pursuant to Section 6.1(a)(iv), each Grantor agrees that, upon written request of the Administrative Agent, such Grantor will, at its own expense:

(a) execute and deliver, and cause (or, with respect to any Issuer which is not a Subsidiary of such Grantor, use its best efforts to cause) each Issuer of the Collateral contemplated to be sold and the directors and officers thereof to execute and deliver, all such instruments and documents, and do or cause to be done all such other acts and things, as may be necessary or, in the opinion of the Administrative Agent, advisable to register such Collateral under the provisions of the Securities Act of 1933, as from time to time amended and the rules and regulations of the SEC thereunder (the "Securities Act"), and cause the registration statement relating thereto to become effective and to remain effective for such period as prospectuses are required by Law to be furnished, and to make all amendments and supplements thereto and to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto;

(b) use its best efforts to exempt the Collateral under the state securities or "Blue Sky" laws and to obtain all necessary governmental approvals for the sale of the Collateral, as requested by the Administrative Agent;

(c) cause (or, with respect to any Issuer that is not a Subsidiary of such Grantor, use its best efforts to cause) each such Issuer to make available to its security holders, as soon as practicable, an earnings statement that will satisfy the provisions of Section 11(a) of the Securities Act; and

(d) do or cause to be done all such other acts and things as may be necessary to make such sale of the Collateral or any part thereof valid and binding and in compliance with applicable Law.

Section 6.3. Compliance with Restrictions. Each Grantor agrees that in any sale of any of the Collateral whenever an Event of Default shall have occurred and be continuing, the Administrative Agent is hereby authorized to comply with any limitation or restriction in connection with such sale as it may be advised by counsel is necessary in order to avoid any violation of applicable Law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications, and restrict such prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Collateral), or in order to obtain any required approval of the sale or of the purchaser by any Governmental Authority or official, and such Grantor further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall the Administrative Agent be liable nor accountable to such Grantor for any discount allowed by the reason of the fact that such Collateral is sold in compliance with any such limitation or restriction.

Section 6.4. Protection of Collateral. The Administrative Agent may from time to time, at its option, upon the occurrence and continuance of an Event of Default, perform and take any action which the Administrative Agent deems reasonably necessary for the maintenance, preservation or protection of any of the Collateral or of its security interest therein.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.1. Loan Document. This Security Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article XI thereof.

Section 7.2. Binding on Successors, Transferees and Assigns; Assignment. This Security Agreement shall remain in full force and effect until the Facility Termination Date has occurred, shall be binding upon the Grantors and their successors, permitted transferees and permitted assigns and shall inure to the benefit of and be enforceable by the Administrative Agent and the Secured Parties; provided that no Grantor may assign or transfer any of its rights or obligations hereunder without the prior consent of the Administrative Agent.

Section 7.3. Amendments, Etc. No amendment or modification to or waiver of any provision of this Security Agreement, nor consent to any departure by any Grantor from its obligations under this Security Agreement, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and the Grantors and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 7.4. Notices. All notices and other communications provided for hereunder shall be delivered or made as provided in Section 11.02 of the Credit Agreement.

Section 7.5. Release of Liens and Grantors. The Liens created under this Security Agreement and Grantors obligated hereunder shall in each case be released in accordance with the terms of

Section 9.10 of the Credit Agreement. Upon the occurrence of the Facility Termination Date, this Security Agreement shall automatically terminate.

Section 7.6. Additional Grantors. Upon the execution and delivery by any other Person of a supplement in the form of Annex I hereto, such Person shall become a “Grantor” hereunder with the same force and effect as if it were originally a party to this Security Agreement and named as a “Grantor” hereunder. The execution and delivery of such supplement shall not require the consent of any other Grantor hereunder, and the rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Security Agreement. Any schedules delivered by any additional Grantor pursuant to such supplement shall supplement the relevant schedules to this Security Agreement.

Section 7.7. No Waiver; Remedies. In addition to, and not in limitation of Section 2.5, no failure on the part of the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by Law.

Section 7.8. Rights of Required Lenders. If the Administrative Agent has resigned and no successor agent has been appointed pursuant to Section 9.06 of the Credit Agreement, all rights of the Administrative Agent hereunder may be exercised by the Lender Representative.

Section 7.9. Counterparts, Effectiveness, Severability, Governing Law, Jurisdiction, Waiver of Jury Trial, Etc. Sections 11.10, 11.12, 11.14 and 11.15 of the Credit Agreement are hereby incorporated by reference *mutatis mutandis*.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Security Agreement to be duly executed and delivered by its Authorized Officer as of the date first above written.

HARMONY BIOSCIENCES HOLDINGS, INC.

By: /s/ John C. Jacobs

Name: John C. Jacobs
Title: President and Chief Executive Officer

HARMONY BIOSCIENCES, LLC

By: /s/ John C. Jacobs

Name: John C. Jacobs
Title: President and Chief Executive Officer

WILMINGTON TRUST, NATIONAL ASSOCIATION
as the Administrative Agent

By: /s/ Annmarie Warren

Name: Annmarie Warren
Title: Banking Officer

[Signature Page to Security Agreement]

[Schedule of pledged Equity Interests omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

[Schedule of Grantor information omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

[Schedule of Patents omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

[Schedule of Trademarks omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

[Schedule of Copyrights omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

[Schedule of Trade Secrets or Know-How Licenses omitted pursuant to Item 601(a)(5) of Regulation S-K. Such schedule will be furnished to the Securities and Exchange Commission upon request.]

PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT, dated as of _____, 20 (this "Agreement"), is made by [NAME OF GRANTOR], a [_____] (the "Grantor"), in favor of WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association (together with its successors, transferees and assignees, the "Administrative Agent") for the Secured Parties.

WITNESSETH:

WHEREAS, pursuant to the Credit Agreement, dated as of August 9, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company ("Harmony") as the sole initial Guarantor, the other Guarantors (as defined therein) from time to time party thereto, the Lenders (as defined therein) party thereto and the Administrative Agent, the Lenders have extended Commitments to make Loans to the Borrower;

WHEREAS, in connection with the Credit Agreement, the Grantor and its Affiliates have executed and delivered a Pledge and Security Agreement in favor of the Administrative Agent, for the benefit of the Secured Parties, dated as of August 9, 2021 (as amended, supplemented or otherwise modified from time to time, the "Security Agreement");

WHEREAS, pursuant to the Credit Agreement and pursuant to clause (f) of Section 4.5 of the Security Agreement, the Grantor is required to execute and deliver this Agreement and to grant to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in all of the Patent Collateral (as defined below) to secure all of the Obligations; and

WHEREAS, the Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees, for the benefit of the Secured Parties, as follows:

Section 1. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided (or incorporated by reference) in the Security Agreement.

Section 2. Grant of Security Interest. The Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in all of the Grantor's right, title and interest in and to the Patent Collateral, including each Patent and Patent application referred to in Item A of Schedule I attached hereto and each Patent license referred to in Item B of Schedule

I attached hereto (excluding any licenses to the Grantor for commercially available off-the-shelf software).

Section 3. Security Agreement. This Agreement has been executed and delivered by the Grantor for the purpose of registering the security interest of the Administrative Agent in the Patent Collateral with the USPTO. The security interest granted hereby has been granted in furtherance of, and not in limitation of, the security interest granted to the Administrative Agent for the benefit of the Secured Parties under the Security Agreement. The Security Agreement (and all rights and remedies of the Secured Parties thereunder) shall remain in full force and effect in accordance with its terms.

Section 4. Release of Liens. Upon (a) the Disposition of Patent Collateral in accordance with the Credit Agreement or (b) the occurrence of the Facility Termination Date, the security interests granted herein shall automatically terminate with respect to (i) such Patent Collateral (in the case of clause (a)) or (ii) all Patent Collateral (in the case of clause (b)). Upon any such Disposition or termination, the Administrative Agent will, at the Grantor's sole expense, deliver to the Grantor, without any representations, warranties or recourse of any kind whatsoever, all Patent Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination (in the case of a termination or release not occurring as a result of the Facility Termination Date, subject to the Administrative Agent's receipt of the certificate of a Responsible Officer referred to in Section 9.10 of the Credit Agreement certifying that the transaction giving rise to the release is permitted under the Loan Documents).

Section 5. Acknowledgment. The Grantor does hereby further acknowledge and affirm that the rights and remedies of the Secured Parties with respect to the security interest in the Patent Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

Section 6. Loan Document. This Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof.

Section 7. Effectiveness. This Agreement shall become effective when a counterpart hereof executed by the Grantor, shall have been received by the Administrative Agent. Delivery of an executed counterpart of a signature page to this Agreement by email (in "pdf" or "tiff" or similar format) or telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor hereto has caused this Agreement to be duly executed and delivered by its Authorized Officer as of the date first above written.

[NAME OF GRANTOR]

By:

Name:
Title:

[Signature Page to Patent Security Agreement]

Item A. Patents.

Issued Patents

Country, Patent No., Issue Date, Inventor(s), Title

Pending Patent Applications

Country, Serial No., Filing Date, Inventor(s), Title

Item B. Patent Licenses (excluding any licenses to the Grantor for commercially available off- the-shelf software)

<u>Country or Territory</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>	<u>Subject Matter</u>
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TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT, dated as of _____, 20 (this "Agreement"), is made by [NAME OF GRANTOR], a [_____] (the "Grantor"), in favor of WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association (together with its successors, transferees and assignees, the "Administrative Agent") for the Secured Parties.

WITNESSETH:

WHEREAS, pursuant to the Credit Agreement, dated as of August 9, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company ("Harmony") as the sole initial Guarantor, the other Guarantors (as defined therein) from time to time party thereto, the Lenders (as defined therein) party thereto and the Administrative Agent, the Lenders have extended Commitments to make Loans to the Borrower;

WHEREAS, in connection with the Credit Agreement, the Grantor and its Affiliates have executed and delivered a Pledge and Security Agreement in favor of the Administrative Agent, dated as of August 9, 2021 (as amended, supplemented, or otherwise modified from time to time, the "Security Agreement");

WHEREAS, pursuant to the Credit Agreement and pursuant to clause (f) of Section 4.5 of the Security Agreement, the Grantor is required to execute and deliver this Security Agreement and to grant to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in all of the Trademark Collateral (as defined below) to secure all of the Obligations; and

WHEREAS, the Grantor has duly authorized the execution, delivery and performance of this Security Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees, for the benefit of the Secured Parties, as follows:

Section 1. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Security Agreement, including its preamble and recitals, have the meanings provided (or incorporated by reference) in the Security Agreement.

Section 2. Grant of Security Interest. The Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in all of Grantor's right, title and interest in and to the Trademark Collateral, including those Trademarks referred to in Item A of Schedule I hereto and each Trademark license referred to in Item B of Schedule I hereto (excluding any licenses to the Grantor for commercially available off-the-shelf software).

Section 3. Security Agreement. This Security Agreement has been executed and delivered by the Grantor for the purpose of registering the security interest of the Administrative Agent in the

Trademark Collateral with the USPTO. The security interest granted hereby has been granted in furtherance of, and not in limitation of, the security interest granted to the Administrative Agent for the benefit of the Secured Parties under the Security Agreement. The Security Agreement (and all rights and remedies of the Secured Parties thereunder) shall remain in full force and effect in accordance with its terms.

Section 4. Release of Liens. Upon (a) the Disposition of Trademark Collateral in accordance with the Credit Agreement or (b) the occurrence of the Facility Termination Date, the security interests granted herein shall automatically terminate with respect to (i) such Trademark Collateral (in the case of clause (a)) or (ii) all Trademark Collateral (in the case of clause (b)). Upon any such Disposition or termination, the Administrative Agent will, at the Grantor's sole expense, deliver to the Grantor, without any representations, warranties or recourse of any kind whatsoever, all Trademark Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination (in the case of a termination or release not occurring as a result of the Facility Termination Date, subject to the Administrative Agent's receipt of the certificate of a Responsible Officer referred to in Section 9.10 of the Credit Agreement certifying that the transaction giving rise to the release is permitted under the Loan Documents).

Section 5. Acknowledgment. The Grantor does hereby further acknowledge and affirm that the rights and remedies of the Secured Parties with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

Section 6. Loan Document. This Security Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article XI thereof.

Section 7. Effectiveness. This Security Agreement shall become effective when a counterpart hereof executed by the Grantor, shall have been received by the Administrative Agent. Delivery of an executed counterpart of a signature page to this Security Agreement by email (in "pdf" or "tiff" or similar format) or telecopy shall be effective as delivery of a manually executed counterpart of this Security Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor hereto has caused this Security Agreement to be duly executed and delivered by Authorized Officer as of the date first above written.

HARMONY BIOSCIENCES, LLC

By:

Name:

Title:

[Signature Page to Trademark Security Agreement]

COPYRIGHT SECURITY AGREEMENT

This COPYRIGHT SECURITY AGREEMENT, dated as of _____, 20 (this "Agreement"), is made by [NAME OF GRANTOR], a [_____] (the "Grantor"), in favor of WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association (together with its successors, transferees and assignees, the "Administrative Agent") for the Secured Parties.

WITNESSETH:

WHEREAS, pursuant to the Credit Agreement, dated as of August 9, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Harmony Biosciences Holdings, Inc., a Delaware corporation (the "Borrower"), its wholly owned subsidiary, Harmony Biosciences, LLC, a Delaware limited liability company ("Harmony") as the sole initial Guarantor, the other Guarantors (as defined therein) from time to time party thereto, the Lenders (as defined therein) party thereto and the Administrative Agent, the Lenders have extended Commitments to make Loans to the Borrower;

WHEREAS, in connection with the Credit Agreement, the Grantor and its Affiliates have executed and delivered a Pledge and Security Agreement in favor of the Administrative Agent, dated as of August 9, 2021 (as amended, supplemented or otherwise modified from time to time, the "Security Agreement");

WHEREAS, pursuant to the Credit Agreement and pursuant to clause (f) of Section 4.5 of the Security Agreement, the Grantor is required to execute and deliver this Agreement and to grant to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in all of the Copyright Collateral (as defined below) to secure all of the Obligations; and

WHEREAS, the Grantor has duly authorized the execution, delivery and performance of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees, for the benefit of the Secured Parties, as follows:

Section 1. Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided (or incorporated by reference) in the Security Agreement.

Section 2. Grant of Security Interest. The Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a continuing security interest in all of the Grantor's right, title and interest in and to the Copyright Collateral, including the Copyrights referred to in Item A of Schedule I hereto and the exclusive Copyright licenses referred to in Item B of Schedule I hereto (excluding any licenses to the Grantor for commercially available off-the-shelf software).

Section 3. Security Agreement. This Agreement has been executed and delivered by the Grantor for the purpose of registering the security interest of the Administrative Agent in the Copyright Collateral with the USCO. The security interest granted hereby has been granted in furtherance of, and not in limitation of, the security interest granted to the Administrative Agent for the benefit of the Secured Parties under the Security Agreement. The Security Agreement (and all rights and remedies of the Secured Parties thereunder) shall remain in full force and effect in accordance with its terms.

Section 4 Release of Liens. Upon (a) the Disposition of Copyright Collateral in accordance with the Credit Agreement or (b) the occurrence of the Facility Termination Date, the security interests granted herein shall automatically terminate with respect to (i) such Copyright Collateral (in the case of clause (a)) or (ii) all Copyright Collateral (in the case of clause (b)). Upon any such Disposition or termination, the Administrative Agent will, at the Grantor's sole expense, deliver to the Grantor, without any representations, warranties or recourse of any kind whatsoever, all Copyright Collateral held by the Administrative Agent hereunder, and execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such termination (in the case of a termination or release not occurring as a result of the Facility Termination Date, subject to the Administrative Agent's receipt of the certificate of a Responsible Officer referred to in Section 9.10 of the Credit Agreement certifying that the transaction giving rise to the release is permitted under the Loan Documents).

Section 5. Acknowledgment. The Grantor does hereby further acknowledge and affirm that the rights and remedies of the Secured Parties with respect to the security interest in the Copyright Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

Section 6. Loan Document. This Agreement is a Loan Document executed pursuant to the Credit Agreement and shall (unless otherwise expressly indicated herein) be construed, administered and applied in accordance with the terms and provisions thereof, including Article X thereof.

Section 7. Effectiveness. This Agreement shall become effective when a counterpart hereof executed by the Grantor, shall have been received by the Administrative Agent. Delivery of an executed counterpart of a signature page to this Agreement by email (in "pdf" or "tiff" or similar format) or telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor hereto has caused this Agreement to be duly executed and delivered by its Authorized Officer as of the date first above written.

[NAME OF GRANTOR]

By:

Name:
Title:

[Signature Page to Copyright Security Agreement]

Item A. Copyrights/Mask Works.

Registered Copyrights/Mask Works
Country Registration No. Registration Date Author(s) Title

Copyrights/Mask Work Pending Registration Applications
Country Serial No. Filing Date Author(s) Title

Item B. Exclusive Copyright/Mask Work Licenses

<u>Country or Territory</u>	<u>Licensor</u>	<u>Licensee</u>	<u>Effective Date</u>	<u>Expiration Date</u>



SUPPLEMENT TO PLEDGE AND SECURITY AGREEMENT

This SUPPLEMENT, dated as of [●], 20 (this "Supplement"), is to the Pledge and Security Agreement, dated as of August 9, 2021 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Security Agreement"), among the Grantors (such term, and other terms used in this Supplement, to have the meanings set forth in Article I of the Security Agreement, unless otherwise defined herein or if the context otherwise requires) from time to time party thereto, in favor of WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association (together with its successors, transferees and assignees, the "Administrative Agent") for the Secured Parties (as defined below).

W I T N E S S E T H :

WHEREAS, pursuant to the Credit Agreement, dated as of August 9, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among HARMONY BIOSCIENCES, LLC, a Delaware limited liability company (the "Borrower"), the Lenders and the Administrative Agent, the Lenders have extended Commitments to make Loans to the Borrower;

WHEREAS, pursuant to the provisions of Section 7.6 of the Security Agreement, each of the undersigned is becoming a Grantor under the Security Agreement; and

WHEREAS, each of the undersigned desires to become a "Grantor" under the Security Agreement in order to induce the Lenders to continue to extend Loans under the Credit Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the undersigned agrees, for the benefit of the Secured Parties, as follows.

Section 1. Party to Security Agreement, Etc. In accordance with the terms of the Security Agreement, by its signature below, each of the undersigned hereby irrevocably agrees to become a Grantor under the Security Agreement with the same force and effect as if it were an original signatory thereto and each of the undersigned hereby (a) agrees to be bound by and comply with all of the terms and provisions of the Security Agreement applicable to it as a Grantor and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct as of the date hereof, unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date. In furtherance of the foregoing, each reference to a "Grantor" or "Grantors" in the Security Agreement shall be deemed to include each of the undersigned.

Section 2. Schedules. Each of the undersigned hereby authorizes the Administrative Agent to add the information set forth on the Schedules to this Supplement to the correlative Schedules attached to the Security Agreement.

Section 3. Representations. Each of the undersigned hereby represents and warrants that this Supplement has been duly authorized, executed and delivered by it and that this Supplement and the Security Agreement constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms.

Section 4. Full Force of Security Agreement. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect in accordance with its terms.

Section 5. Severability. Wherever possible each provision of this Supplement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Supplement shall be prohibited by or invalid under such Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Supplement or the Security Agreement.

Section 6. Governing Law, Entire Agreement, Etc. THIS SUPPLEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING FOR SUCH PURPOSE SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK). This Supplement, along with the other Loan Documents, constitutes the entire understanding among the parties hereto with respect to the subject matter thereof and supersedes any prior agreements, written or oral, with respect thereto.

Section 7. Effectiveness. This Supplement shall become effective with respect to a Grantor when a counterpart hereof executed by such undersigned Grantor shall have been received by the Administrative Agent. Delivery of an executed counterpart of a signature page to this Supplement by email (in "pdf" or "tiff" or similar format) or telecopy shall be effective as delivery of a manually executed counterpart of this Supplement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Supplement to be duly executed and delivered by its Authorized Officer as of the date first above written.

[NAME OF ADDITIONAL SUBSIDIARY]

By:

Name:
Title:

[NAME OF ADDITIONAL SUBSIDIARY]

By:

Name:
Title:

[Signature Page to Security Agreement Supplement]

[COPY SCHEDULES FROM SECURITY AGREEMENT]

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, John C. Jacobs, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Harmony Biosciences Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2021

By: /s/ John C. Jacobs
John C. Jacobs
Chief Executive Officer, President and Director
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Sandip Kapadia, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Harmony Biosciences Holdings, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2021

By: /s/ Sandip Kapadia
Sandip Kapadia
Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

**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 Harmony Biosciences Holdings, Inc. (the "Company") for the period ended June 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 10, 2021

By: /s/ John C. Jacobs
John C. Jacobs
Chief Executive Officer, President and Director
(Principal Executive Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as a part of the Report or on a separate disclosure document.

**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 Harmony Biosciences Holdings, Inc. (the "Company") for the period ended June 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 10, 2021	By: /s/ Sandip Kapadia
	Sandip Kapadia
	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as a part of the Report or on a separate disclosure document.