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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2016
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: 001-34475

OMEROS CORPORATION
(Exact name of registrant as specified in its charter)

Washington	**91-1663741**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
201 Elliott Avenue West Seattle, Washington	**98119**
(Address of principal executive offices)	**(Zip Code)**

(206) 676-5000
(Registrant's telephone number, including area code)

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, as amended, 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 x No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes x No ☐

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

Large accelerated filer	☐	Accelerated filer	x
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☐

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

As of November 2, 2016, the number of outstanding shares of the registrant's common stock, par value $0.01 per share, was 42,915,928.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, or the Exchange Act, which are subject to the "safe harbor" created by those sections for such statements. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. All statements other than statements of historical fact are "forward-looking statements." Terms such as "anticipate," "believe," "could," "estimate," "expect," "goal," "intend," "may," "plan," "potential," "predict," "project," "should," "will," "would," and similar expressions and variations thereof are intended to identify forward-looking statements, but these terms are not the exclusive means of identifying such statements. Examples of these statements include, but are not limited to, statements regarding:

- *our plans for sales, marketing and distribution of OMIDRIA® (phenylephrine and ketorolac injection) 1%/0.3%;*
- *our expectations regarding our product sales and our estimate regarding how long our existing cash, cash equivalents, short-term investments and revenues will be sufficient to fund our anticipated operating expenses, capital expenditures and interest and principal payments on our outstanding notes under our Term Loan Agreement with CRG Servicing LLC and the lenders identified therein;*
- *our ability to raise additional capital through the capital markets, including under our at-the-market equity facility with JonesTrading Institutional Services LLC, or through one or more corporate partnerships, equity offerings, debt financings, collaborations, licensing arrangements or asset sales;*
- *our ability to forecast accurately wholesaler demand as well as our estimates of chargebacks and rebates, distribution fees and estimated product returns;*
- *our expectations regarding the clinical, therapeutic and competitive benefits of OMIDRIA and our product candidates;*
- *our ability to design and successfully complete clinical trials and other studies for our products and product candidates and our plans and expectations regarding our clinical trials, including our clinical trials for OMS721 and for OMS824;*
- *our anticipation that we will rely on contract manufacturers to manufacture OMIDRIA for commercial sale and to manufacture our product candidates and our expectations regarding product supply and manufacturing of OMIDRIA;*
- *our ability to enter into acceptable arrangements with potential corporate partners, including with respect to OMIDRIA;*
- *our expectations about the commercial competition that OMIDRIA and our product candidates, if commercialized, face or may face;*
- *our expectation that the OMIDRIAssure™ Reimbursement Services Program will increase patient access to OMIDRIA;*
- *the extent of protection that our patents provide and that our pending patent applications will provide, if patents issue from such applications, for our technologies, programs, products and product candidates;*
- *when or whether the dosing limitations in our OMS824 program may be removed;*
- *in our OMS721 program, whether enrollment in a Phase 3 clinical trial in patients with atypical hemolytic uremic syndrome, or aHUS, opens in 2016, or whether accelerated approval, fast track designation, breakthrough therapy designation and/or orphan drug designation may be granted by the U.S. Food and Drug Administration, or FDA, for indications for which we are pursuing such approval or designation;*
- *the expected course and costs of existing claims, legal proceedings and administrative actions, our involvement in potential claims, legal proceedings and administrative actions, and the potential outcomes and effects of both existing and potential claims, legal proceedings and administrative actions, as well as regulatory determinations, on our business, prospects, financial condition and results of operations;*
- *our expectations regarding our OMS103 exclusive license agreement including, without limitation, the manufacturing and commercialization of OMS103 and the commencement and subsequent continuation of product sales on which we could receive royalty revenue; and*
- *our expected financial position, performance, revenues, growth, costs and expenses, magnitude of net losses and the availability of resources.*

Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including the risks, uncertainties and other factors described in Item IA of Part II of this Quarterly Report on Form 10-Q under the headings "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and in our other filings with the Securities and Exchange Commission, or SEC. Given these risks, uncertainties and other factors, actual results or anticipated developments may not be realized or, even if substantially realized, may not have the

expected consequences to or effects on our company, business or operations. Accordingly, you should not place undue reliance on these forward-looking statements, which represent our estimates and assumptions only as of the date of the filing of this Quarterly Report on Form 10-Q. You should read this Quarterly Report on Form 10-Q completely and with the understanding that our actual results in subsequent periods may materially differ from current expectations. Except as required by applicable law, we assume no obligation to update or revise any forward-looking statements contained herein, whether as a result of any new information, future events or otherwise.

OMEROS CORPORATION
FORM 10-Q FOR THE QUARTER ENDED September 30, 2016

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PART I—FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

OMEROS CORPORATION

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands, except share and per share data)

(unaudited)

	September 30, 2016	December 31, 2015
Assets		
Current assets:		
Cash and cash equivalents	$ 10,297	$ 1,365
Short-term investments	37,144	26,898
Receivables	10,457	6,517
Inventory	1,396	472
Prepaid expense	1,355	1,894
Total current assets	60,649	37,146
Property and equipment, net	1,206	951
Restricted cash and investments	10,835	10,679
Other assets	73	219
Total assets	$ 72,763	$ 48,995
Liabilities and shareholders' deficit		
Current liabilities:		
Accounts payable	$ 3,985	$ 6,428
Accrued expenses	11,882	9,752
Current portion of notes payable	190	73
Total current liabilities	16,057	16,253
Notes payable, net of current portion	70,289	49,769
Deferred rent	9,189	9,207
Commitments and contingencies (Note 8)		
Shareholders' deficit:		
Preferred stock, par value $0.01 per share, 20,000,000 shares authorized and none issued and outstanding at September 30, 2016 and December 31, 2015	—	—
Common stock, par value $0.01 per share, 150,000,000 shares authorized at September 30, 2016 and December 31, 2015; 42,910,489 and 38,040,891 issued and outstanding at September 30, 2016 and December 31, 2015, respectively	429	380
Additional paid-in capital	427,054	376,528
Accumulated deficit	(450,255)	(403,142)
Total shareholders' deficit	(22,772)	(26,234)
Total liabilities and shareholders' deficit	$ 72,763	$ 48,995

See notes to condensed consolidated financial statements

OMEROS CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

(In thousands, except share and per share data)

(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Revenues				
Product sales, net	$ 11,289	$ 3,244	$ 28,539	$ 6,607
Grant revenue	—	15	173	227
Total revenue	11,289	3,259	28,712	6,834
Costs and expenses				
Cost of product sales	378	248	1,032	624
Research and development	12,492	13,264	38,157	33,482
Selling, general and administrative	10,457	9,048	31,942	25,926
Total costs and expenses	23,327	22,560	71,131	60,032
Loss from operations	(12,038)	(19,301)	(42,419)	(53,198)
Interest expense	(2,135)	(871)	(5,367)	(2,765)
Other income (expense), net	211	251	673	693
Net loss	$ (13,962)	$ (19,921)	$ (47,113)	$ (55,270)
Comprehensive loss	$ (13,962)	$ (19,921)	$ (47,113)	$ (55,270)
Basic and diluted net loss per share	$ (0.34)	$ (0.53)	$ (1.19)	$ (1.48)
Weighted-average shares used to compute basic and diluted net loss per share	41,058,754	37,923,353	39,518,128	37,417,915

See notes to condensed consolidated financial statements

OMEROS CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(unaudited)

	Nine Months Ended September 30,	
	2016	**2015**
Operating activities:		
Net loss	$ (47,113)	$ (55,270)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	211	161
Stock-based compensation expense	9,566	7,273
Non-cash interest expense	1,195	659
Changes in operating assets and liabilities:		
Receivables	(3,940)	(2,118)
Inventory	(924)	123
Prepaid expenses and other assets	685	(282)
Accounts payable and accrued expenses	(303)	721
Deferred rent	(18)	124
Net cash used in operating activities	(40,641)	(48,609)
Investing activities:		
Purchases and sales of property and equipment	(78)	(187)
Purchases of investments	(58,121)	(79,416)
Proceeds from the sale and maturities of investments	47,875	51,550
Net cash used in investing activities	(10,324)	(28,053)
Financing activities:		
Proceeds from issuance of common stock and pre-funded warrants, net	38,003	79,076
Proceeds from borrowings under notes payable, net	19,864	—
Payments on notes payable	(62)	(4,738)
Increase in restricted cash and investments	(156)	—
Proceeds upon exercise of stock options and warrants	2,248	2,571
Net cash provided by financing activities	59,897	76,909
Net increase in cash and cash equivalents	8,932	247
Cash and cash equivalents at beginning of period	1,365	354
Cash and cash equivalents at end of period	$ 10,297	$ 601
Supplemental cash flow information		
Cash paid for interest	$ 3,629	$ 2,141
Issuance of warrants in connection with amendment to notes payable	$ 758	$ —
Property acquired under capital lease	$ 388	$ —

See notes to condensed consolidated financial statements

OMEROS CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 1—Organization and Significant Accounting Policies

Organization

We are a biopharmaceutical company committed to discovering, developing and commercializing both small-molecule and protein therapeutics for large-market as well as orphan indications targeting inflammation, coagulopathies and disorders of the central nervous system. Our first drug product, OMIDRIA, is approved by the United States (U.S.) Food and Drug Administration (FDA) for use during cataract surgery or intraocular lens replacement. We broadly launched OMIDRIA in the U.S. in April 2015.

Basis of Presentation

Our condensed consolidated financial statements include the financial position and results of operations of Omeros Corporation (Omeros) and our wholly owned subsidiaries. All inter-company transactions have been eliminated and we have determined we operate in one segment. The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (GAAP) for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. The information as of September 30, 2016 and for the three and nine months ended September 30, 2016 and 2015 includes all adjustments, which include normal recurring adjustments, necessary to present fairly our interim financial information. The Condensed Consolidated Balance Sheet at December 31, 2015 has been derived from our audited financial statements but does not include all of the information and footnotes required by GAAP for audited annual financial information.

The accompanying unaudited condensed consolidated financial statements and related notes thereto should be read in conjunction with the audited consolidated financial statements and related notes thereto that are included in our Annual Report on Form 10-K for the year ended December 31, 2015, which was filed with the U.S. Securities and Exchange Commission (SEC) on March 15, 2016.

Product Sales, Net

We record revenue from OMIDRIA sales when the product is delivered to our wholesalers.

Product sales are recorded net of estimated chargebacks and rebates, wholesaler distribution fees and estimated product returns. Accruals or allowances are established for these deductions when revenue is recognized, and actual amounts incurred are offset against the applicable accruals and allowances. We reflect each of these accruals or allowances as either a reduction in the related accounts receivable or as an accrued liability, depending on how the accrual or allowance is settled. Product sales to wholesalers are not recorded if we determine that the wholesaler's on-hand OMIDRIA inventory, based on inventory information we regularly receive from our wholesalers, exceeds approximately eight weeks of projected demand.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant items subject to such estimates include revenue recognition, fair market value of investments, stock-based compensation expense and accruals for clinical trials and contingencies. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances; however, actual results could differ from these estimates.

Liquidity and Capital Resources

As of September 30, 2016, we had $47.4 million in cash, cash equivalents and short-term investments. In addition, we had $10.0 million in restricted cash and investments that was required to be maintained in depository and investment accounts with East West Bank (EWB) pursuant to the Loan and Security Agreement (the Oxford/EWB Loan Agreement) entered into in December 2015 with Oxford Finance LLC (Oxford) and EWB, as well as $679,000 to secure a letter of credit for the Omeros Building lease and $156,000 to secure a letter of credit for fleet vehicles used by our OMIDRIA sales force.

On October 26, 2016, we entered into a six-year term Term Loan Agreement (the CRG Loan Agreement) with CRG Servicing LLC (CRG), as administrative agent and collateral agent, the lenders named therein (the Lenders) and nura, inc. as subsidiary guarantor. We initially borrowed $80.0 million and may borrow an additional $45.0 million in two tranches of $25.0 million and $20.0 million contingent on achievement of certain conditions including either satisfying minimum OMIDRIA net revenues or minimum average market capitalization on or before each of June 30, 2017 and December 31, 2017, respectively. The CRG Loan Agreement accrues interest at 12.25% (4.0% of which can be deferred at our option by adding such amount to

the aggregate principal loan amount) and is interest-only for a minimum of four years (through December 31, 2020) and, subject to the achievement of certain milestones, potentially for the full six-year term. The CRG Loan Agreement requires us to maintain $5.0 million in cash and cash equivalents at all times.

We used $75.7 million of the initial borrowing to repay all of the amounts owed by us under the then-outstanding Oxford/EWB Loan Agreement. After deducting the loan initiation costs and related fees, and considering the reduction of the restricted cash requirement associated with the previously outstanding Oxford/EWB Loan Agreement, we gained access to approximately $8.0 million in net additional cash available for operations upon funding.

While we have improved our cash position, improved our access to future debt financing upon achievement of the specific milestones and reduced our near-term debt service funding requirements by entering into the CRG Loan Agreement, we expect to continue to incur losses until such time as OMIDRIA product sales, corporate partnerships and/or licensing revenues from products or programs are adequate to support our ongoing operating expenses and debt service, including maintenance of any restricted cash and investments, if required. We are unable to predict if or when this may occur, and until it does occur, we will need to continue to raise additional funds through public or private equity securities sales, including under our At Market Issuance Sales Agreement (the ATM Agreement) with JonesTrading Institutional Services LLC (JonesTrading) (see Note 9 for further detail), through the incurrence of additional debt, through corporate partnerships, through asset sales or through the pursuit of collaborations and licensing arrangements related to certain of our products or programs. These conditions raise a substantial doubt about our ability to continue as a going concern. If we are unable to become cash-flow positive or to raise additional capital as and when needed, or upon acceptable terms, such failure would have a significant negative impact on our financial condition.

The accompanying unaudited condensed consolidated financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The accompanying unaudited condensed consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from uncertainty related to our ability to continue as a going concern.

Recent Accounting Pronouncements

In August 2014, FASB issued ASU No. 2014-15 related to disclosure of an entity’s ability to continue as a going concern. This standard requires management to evaluate whether substantial doubt exists regarding the entity’s ability to continue as a going concern at each reporting period for a duration of one year after the date the financial statements are issued or available to be issued and to provide related footnote disclosures. This standard must be applied prospectively and is effective for interim and annual periods ending after December 15, 2016. We are monitoring for any conditions and events that could raise substantial doubt about our ability to continue as a going concern. The evaluation of the significance of those conditions and events and the related impact upon our disclosures, if applicable, will be disclosed in our annual financial statements for the year ended December 31, 2016.

In February 2016, FASB issued ASU 2016-02 related to lease accounting. This standard requires lessees to recognize a right-of-use asset and a lease liability for most leases. This standard must be applied using a modified retrospective transition and is effective for all annual and interim periods beginning after December 15, 2018. Earlier adoption is permitted. We are evaluating how this new standard will impact the presentation of our financial statements and related disclosures.

In March 2016, FASB issued ASU 2016-08 related to revenue recognition. This standard is an amendment to ASU 2014-09 relating to revenue from contracts with customers. This amendment clarifies an entity’s revenue recognition for a performance obligation based on principal versus agent considerations. This standard has the same effective date and transition requirements as ASU 2014-09, as amended, which requires that the guidance must be applied retroactively to each prior reporting period presented or retrospectively with the cumulative effect of applying the standard recognized in the period adopted. As amended, the standard is effective for interim and annual periods beginning after December 15, 2017 and cannot be adopted before the original effective date, which was for periods beginning after December 15, 2016. We are currently evaluating the impact that this standard may have on our financial statements once it is adopted.

In March 2016, FASB issued ASU 2016-09 that changes the accounting for certain aspects of share-based payments to employees. The guidance requires the recognition of the income tax effects of awards in the income statement when the awards vest or are settled, thus eliminating additional paid in capital pools. The guidance also allows for the employer to repurchase more of an employee’s shares for tax withholding purposes without triggering liability accounting and for making a policy election to account for forfeitures as they occur rather than on an estimated basis. The guidance is effective for interim and annual periods beginning after December 15, 2016 with early adoption permitted. We are currently evaluating the impact that this standard may have on our financial statements once it is adopted and the timing of adoption.

In April and May 2016, FASB issued ASU 2016-10 and ASU 2016-12, respectively. Both standards are amendments to ASU 2014-09 related to revenue from contracts with customers. ASU 2016-10 clarifies an entity's revenue recognition when identifying performance obligations and licensing. ASU 2016-12 clarifies the objective of the collectibility criterion, one of the five steps of ASU 2014-09. This amendment also establishes practical expedients for sales-tax considerations and contract modifications. Both standards have the same effective date and transition requirements as ASU 2014-09, as amended. We are currently evaluating the impact that these standards may have on our financial statements once they are adopted.

In August 2016, FASB issued ASU 2016-15 related to the Cash Flow Statement. This guidance clarifies how certain cash receipts and cash payments are classified on the statement of cash flows. The guidance is effective for interim and annual periods beginning after December 15, 2017 with early adoption permitted. We are currently evaluating the impact that this standard may have on our financial statements once it is adopted and the timing of adoption.

Note 2—Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common shares outstanding for the period. Diluted net loss per share is computed by dividing the net loss by the weighted-average number of common shares and dilutive common share equivalents outstanding for the period, determined using the treasury-stock method.

The basic and diluted net loss per share amounts for the three and nine months ended September 30, 2016 and 2015 were computed based on the shares of common stock outstanding during the respective periods. Potentially dilutive securities excluded from the diluted loss per share calculation are as follows:

	September 30,	
	2016	2015
Outstanding options to purchase common stock	9,336,681	8,356,816
Warrants and pre-funded warrants to purchase common stock	100,602	1,149,249
Total	9,437,283	9,506,065

Note 3—Cash, Cash Equivalents and Investments

As of September 30, 2016 and December 31, 2015, all investments are classified as short-term and available-for-sale on the accompanying Condensed Consolidated Balance Sheets. We did not own any securities with unrealized loss positions as of September 30, 2016 or December 31, 2015. Investment income, which is included as a component of other income (expense), consists of interest earned.

Note 4—Fair-Value Measurements

On a recurring basis, we measure certain financial assets at fair value. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability, an exit price, in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The accounting standard establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs, where available. The following summarizes the three levels of inputs required:

Level 1—Observable inputs for identical assets or liabilities, such as quoted prices in active markets;

Level 2—Inputs other than quoted prices in active markets that are either directly or indirectly observable; and

Level 3—Unobservable inputs in which little or no market data exists, therefore they are developed using estimates and assumptions developed by us, which reflect those that a market participant would use.

Our fair value hierarchy for our financial assets and liabilities measured at fair value on a recurring basis are as follows:

	September 30, 2016			
	Level 1	Level 2	Level 3	Total
	(In thousands)			
Assets:				
Money-market funds classified as non-current restricted cash and investments	$ 10,835	$ —	$ —	$ 10,835
Money-market funds classified as short-term investments	37,144	—	—	37,144
Total	$ 47,979	$ —	$ —	$ 47,979

	December 31, 2015			
	Level 1	Level 2	Level 3	Total
	(In thousands)			
Assets:				
Money-market funds classified as non-current restricted cash and investments	$ 10,679	$ —	$ —	$ 10,679
Money-market funds classified as short-term investments	26,898	—	—	26,898
Total	$ 37,577	$ —	$ —	$ 37,577

Cash held in demand deposit accounts of $10.3 million and $1.4 million is excluded from our fair-value hierarchy disclosure as of September 30, 2016 and December 31, 2015, respectively. There were no unrealized gains and losses associated with our short-term investments as of September 30, 2016 or December 31, 2015. The carrying amounts reported in the accompanying Condensed Consolidated Balance Sheets for receivables, accounts payable and other current monetary assets and liabilities approximate fair value because of the immediate or short-term maturity of these financial instruments.

Note 5—Inventory

The components of inventory are as follows:

	September 30, 2016	December 31, 2015
	(In thousands)	
Raw materials	$ 101	$ 93
Work-in-process	1,241	158
Finished goods	54	221
Total inventory	$ 1,396	$ 472

Work-in-process consists of manufactured vials of OMIDRIA which have not been packaged into finished goods.

Note 6—Accrued Liabilities

Accrued liabilities consisted of the following:

	September 30, 2016	December 31, 2015
	(In thousands)	
Employee compensation	$ 3,413	$ 2,590
Consulting and professional fees	2,362	2,400
Contract research and development	2,360	2,973
Clinical trials	1,933	1,108
Other accruals	1,814	681
Total accrued liabilities	$ 11,882	$ 9,752

Note 7—Notes Payable

As of September 30, 2016 and pursuant to our Oxford/EWB Loan Agreement, the outstanding principal balance was $70.0 million, our loan maturity fee was $5.0 million, and the remaining unamortized discount and debt issuance costs associated with the debt were $4.7 million and $400,000, respectively. There was no event of default under the Oxford/EWB Loan Agreement as of September 30, 2016.

Subsequent Event: On October 26, 2016, we entered into the CRG Loan Agreement, which is interest-only through December 31, 2020 and, subject to the achievement of certain milestones, potentially through the maturity date of September 30, 2022. We initially borrowed $80.0 million and may borrow an additional $45.0 million in two tranches of $25.0 million and $20.0 million, respectively, contingent upon achievement of certain conditions including either satisfying minimum OMIDRIA net revenues or minimum average market capitalization on or before June 30, 2017 and December 31, 2017, respectively.

We used $75.7 million of the initial loan proceeds to repay all of the amounts owed by us under our existing Oxford/EWB Loan Agreement with Oxford and EWB. After deducting the loan initiation costs and related fees, we received $3.0 million in net proceeds.

Interest on the amounts borrowed under the CRG Loan Agreement accrues at an annual fixed rate of 12.25%, 4.0% of which can be deferred at our option through December 2020 by adding such amount to the aggregate principal loan amount. We are required to pay the Lenders a final payment fee equal to 5.0% of the aggregate principal amount borrowed and to maintain a minimum cash and cash equivalents balance of $5.0 million. We also granted the Lenders a lien on substantially all of our assets, including intellectual property. The CRG Loan Agreement contains covenants that limit or restrict our ability to enter into certain transactions, and it also includes provisions related to events of default, the occurrence of a material adverse effect and changes of control. The occurrence of an event of default could result in the acceleration of the CRG Loan Agreement and, under certain circumstances, could increase our interest rate by 4.0% per annum during the period of default.

As of September 30, 2016, based on the repayment terms under the CRG Loan Agreement entered into on October 26, 2016, we have classified all amounts payable under the Oxford/EWB Loan Agreement as non-current liabilities on the Condensed Consolidated Balance Sheets.

Note 8—Commitments and Contingencies

Development Milestones and Product Royalties

We have retained control of worldwide commercial rights to OMIDRIA, to all of our product candidates and to our programs other than OMS103. We may be required, in connection with existing in-licensing or asset acquisition agreements, to make certain royalty and milestone payments and we cannot, at this time, determine when or if the related milestones will be achieved or whether the events triggering the commencement of payment obligations will occur. See Note 9 to our Consolidated Financial Statements for the year ended December 31, 2015 included in our Annual Report on Form 10-K as filed with the SEC on March 15, 2016.

Contracts

We have various agreements with third parties that collectively require payment of termination fees totaling $912,000 as of September 30, 2016 if we cancel the work within specific time frames, either prior to commencing or during performance of the contracted services. This is in addition to fees associated with the Oxford/EWB Loan Agreement and the CRG Loan Agreement as described within Note 7 and within the Contractual Obligations and Commitments and Financial Condition - Liquidity and Capital Resources sections of Management’s Discussion and Analysis.

Litigation

As described within Note 9 of the “Notes to Consolidated Financial Statements” included in our Annual Report on Form 10-K for the year ended December 31, 2015 filed with the SEC on March 15, 2016, we filed a patent infringement lawsuit against Par Pharmaceutical, Inc. and its subsidiary, Par Sterile Products, LLC (collectively, Par) following our receipt of a Paragraph IV Notice Letter from Par stating that it had filed an Abbreviated New Drug Application (ANDA) seeking approval from the FDA to market a generic version of OMIDRIA before the expiration of three Orange Book-listed patents covering OMIDRIA. In each of April 2016 and August 2016, we amended the lawsuit to assert an additional OMIDRIA patent, both additional patents having been granted by the U.S. Patent and Trademark Office after Par sent its original Paragraph IV Notice Letter. Par has stipulated to infringement of the currently asserted patents, and the court has entered a partial judgment that Par’s filing of its ANDA constitutes an act of infringement of the claims of each of the currently asserted patents. Par maintains defenses and counterclaims alleging that the claims of the patents are invalid. The filing of our suit against Par triggered a stay of the FDA’s final approval of Par’s ANDA, which is expected to remain in effect until January 2018. We continue to believe that the assertions in Par’s Paragraph IV Notice Letter and its defenses and counterclaims asserted in the litigation that the asserted patent claims are allegedly invalid do not have merit, and we intend to defend our patents vigorously in the litigation against Par.

Note 9—Shareholders' Equity

Common Stock

At Market Issuance Sales Agreement - In January 2016, we entered into the ATM Agreement with JonesTrading pursuant to which we may direct JonesTrading to sell shares of our common stock directly on The Nasdaq Global Market, through a market maker other than on an exchange or in negotiated transactions. Any sales made under the ATM Agreement are based solely on our instructions and JonesTrading will receive a 1.7% commission from the gross proceeds. The ATM Agreement may be terminated by either party at any time upon 10 days' notice to the other party or by JonesTrading at any time in certain circumstances including the occurrence of a material adverse effect to Omeros. During the nine months ended September 30, 2016, we sold 64,565 shares of our common stock at an average price of $11.41 per share under the ATM Agreement and received net proceeds of $724,000. We currently may sell shares of our common stock having an aggregate offering price of up to $50.0 million under the ATM Agreement.

Securities Offerings - In February 2015, we sold 3.4 million shares of our common stock at a public offering price of $20.03 per share and sold pre-funded warrants to purchase up to 749,250 shares of our common stock at a public offering price of $20.02 per pre-funded warrant share. The public offering price for the pre-funded warrants was equal to the public offering price of our common stock, less the $0.01 per share exercise price of each pre-funded warrant. After deducting underwriter discounts and offering expenses of $4.9 million, we received net proceeds from the offering of $79.1 million.

In August 2016, we sold 3.5 million shares of our common stock at a public offering price of $11.50 per share. After deducting underwriter discounts and offering expenses, we received net proceeds from the offering of $37.3 million.

For the nine months ended September 30, 2016, we received proceeds of $2.2 million upon the exercise of stock options and pre-funded warrants which resulted in the issuance of 1,326,773 shares of common stock.

Warrants

In connection with an amendment of the Oxford/EWB Loan Agreement on May 18, 2016, we issued warrants to purchase an aggregate of 100,602 shares of our common stock to Oxford and EWB (the Warrants). We evaluated the terms of the Warrants and determined that the Warrants should be recorded as permanent equity. The aggregate fair value of the Warrants on the issue date was $758,000, which we recorded as a discount to our notes payable. We are amortizing the Warrants over the remaining term of the Oxford/EWB Loan Agreement using the effective interest method. The Warrants are exercisable through May 18, 2023 at an exercise price per share of $9.94 per share.

Note 10—Stock-Based Compensation

Stock-based compensation expense includes amortization of stock options granted to employees and non-employees and has been reported in our Condensed Consolidated Statements of Operations and Comprehensive Loss as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
	(In thousands)		(In thousands)	
Research and development	$ 1,156	$ 1,231	$ 4,530	$ 3,784
Selling, general and administrative	1,379	1,145	5,036	3,489
Total	$ 2,535	$ 2,376	$ 9,566	$ 7,273

In February 2016, in connection with our annual employee review process, we granted qualified employees options to purchase approximately 1.3 million shares of our common stock with an exercise price of $10.27.

The fair value of each option grant to employees and directors is estimated on the date of grant using the Black-Scholes option-pricing model. The following assumptions were applied to employee and director stock option grants during the periods ended:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Estimated weighted-average fair value	$ 7.42	$ 8.09	$ 6.94	$ 12.08
Weighted-average assumptions				
Expected volatility	73%	74%	74%	70%
Expected term, in years	6.0	6.0	5.7	5.9
Risk-free interest rate	1.25%	1.68%	1.35%	1.63%
Expected dividend yield	—%	—%	—%	—%

Stock option activity for all stock plans and related information is as follows:

	Options Outstanding	Weighted-Average Exercise Price per Share	Remaining Contractual Life (In years)	Aggregate Intrinsic Value (In thousands)
Balance at December 31, 2015	8,310,235	$ 7.97		
Granted	1,694,155	10.85		
Exercised	(577,523)	3.82		
Forfeited	(90,186)	13.99		
Balance at September 30, 2016	9,336,681	$ 8.69	6.26	$ 26,721
Vested and expected to vest at September 30, 2016	9,094,553	$ 8.61	6.20	$ 26,599
Exercisable at September 30, 2016	6,930,249	$ 7.69	5.41	$ 25,521

At September 30, 2016, excluding non-employee stock options, the total estimated compensation expense to be recognized in connection with our unvested options is $14.3 million, and 1,906,732 shares were available to grant.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the unaudited consolidated financial statements and notes thereto included elsewhere in this Quarterly Report on Form 10-Q.

Overview

We are a biopharmaceutical company committed to discovering, developing and commercializing both small-molecule and protein therapeutics for large-market as well as orphan indications targeting inflammation, coagulopathies and disorders of the central nervous system.

Our marketed drug product OMIDRIA® (phenylephrine and ketorolac injection) 1%/0.3% was broadly launched in the U.S. in April 2015 for use during cataract surgery or intraocular lens, or IOL, replacement. OMIDRIA is part of our proprietary PharmacoSurgery® platform, which is designed to improve clinical outcomes of patients undergoing ophthalmological, arthroscopic, urological and other surgical procedures. Our proprietary PharmacoSurgery platform is based on low-dose combinations of FDA-approved therapeutic agents delivered directly to the surgical site throughout the duration of the procedure to inhibit preemptively inflammation and other problems caused by surgical trauma and to provide clinical benefits both during and after surgery.

In our pipeline we have clinical-stage development programs focused on: complement-associated thrombotic microangiopathies; complement-mediated glomerulonephropathies; Huntington's disease and cognitive impairment; and addictive and compulsive disorders. In addition, we have a diverse group of preclinical programs and two additional platforms: one capable of unlocking new G protein-coupled receptor, or GPCR, drug targets and the other used to generate antibodies. For OMIDRIA and each of our product candidates and our programs, other than OMS103, we have retained control of all commercial rights.

Products, Product Candidates, Development Programs and Platforms

OMIDRIA. OMIDRIA is approved in the U.S. by the FDA for use during cataract surgery or IOL replacement to maintain pupil size by preventing intraoperative miosis (pupil constriction) and to reduce postoperative ocular pain, and is approved in all European Union, or EU, member states plus Iceland, Lichtenstein and Norway for use during cataract surgery and other IOL replacement procedures to maintain mydriasis (pupil dilation), to prevent miosis (pupil constriction) and to reduce postoperative eye pain. We broadly launched OMIDRIA in the U.S. in April 2015 primarily through wholesalers which, in turn, sell to ambulatory surgery centers, or ASCs, and hospitals. The Centers for Medicare and Medicaid Services, or CMS, has granted transitional pass-through reimbursement status for OMIDRIA, which we expect to run until January 1, 2018. Pass-through status allows for separate payment (*i.e.*, outside the bundled payment for the related procedure) under Medicare Part B for new drugs and other medical technologies that meet well-established criteria specified by federal regulations governing Medicare spending. In the event that pass-through reimbursement status is not extended or separate reimbursement is not obtained for OMIDRIA on or before January 1, 2018, the per unit price we receive for OMIDRIA may be adversely affected.

We have an exclusive supply and distribution agreement with ITROM Trading Drug Store, or ITROM, for the sale of OMIDRIA in the Kingdom of Saudi Arabia, the United Arab Emirates and certain other countries in the Middle East. Within the licensed territory, ITROM is responsible for obtaining marketing authorizations for OMIDRIA, on our behalf, and for promoting, marketing, selling and distributing product supplied by us. We expect ITROM will begin selling OMIDRIA later this year on a limited basis, assuming local submission of appropriate regulatory applications.

We have completed enrollment in an FDA-required post-marketing OMIDRIA pediatric clinical trial, which, if completed in compliance with FDA clinical trial regulations and pre-specified study design and timelines, will result in eligibility for an additional six months of marketing exclusivity for OMIDRIA. The trial enrolled patients 0-3 years of age undergoing cataract surgery. Consistent with FDA's request, over 70 patients were enrolled and treated. OMIDRIA is not yet approved for use in patients less than 18 years of age, and the trial is expected to provide clinical information on the use of OMIDRIA in the pediatric population.

OMS103. OMS103, part of our PharmacoSurgery platform, was developed for use during all arthroscopic procedures, including knee and shoulder arthroscopy, and completed Phase 3 trials in patients undergoing arthroscopic anterior cruciate ligament reconstruction and arthroscopic partial meniscectomy. In June 2015, we entered into an exclusive licensing agreement, or the OMS103 Agreement, with Fagron Compounding Services, LLC, d/b/a Fagron Sterile Services, and JCB Laboratories, LLC, or collectively Fagron, an FDA-registered human drug outsourcing facility, under which Fagron is obligated to produce under Good Manufacturing Practices, or GMP, and to commercialize OMS103 in the U.S. Fagron has not performed its performance diligence obligations under the OMS103 Agreement, including initiating sales, and we continue to evaluate our options regarding the OMS103 Agreement and our OMS103 program.

Product Candidates. We have the following clinical-stage programs in our pipeline:

- *MASP-2 - OMS721*. OMS721 is our lead human monoclonal antibody targeting mannan-binding lectin-associated serine protease-2, or MASP-2, the effector enzyme of the lectin pathway of the complement system. One group of such diseases is thrombotic microangiopathies, or TMAs, including atypical hemolytic uremic syndrome, or aHUS, thrombotic thrombocytopenic purpura, or TTP, and hematopoietic stem-cell transplant, or HSCT, -related TMA. Following a meeting with the FDA, we initiated a Phase 3 clinical program with one single-arm (*i.e.*, no control arm), open-label trial evaluating OMS721 in patients with newly diagnosed or ongoing aHUS, and enrollment in this trial is planned to open later this year. In July 2016, we announced that we received advice from the European Medicines Agency, or EMA, allowing us to use data from this single Phase 3 trial to support a marketing authorization application in the EU.

  We are also currently conducting two OMS721 Phase 2 clinical programs: one in patients with thrombotic microangiopathies, or TMAs (*i.e.*, HSCT-TMA and TTP); and a second Phase 2 clinical program in patients with complement-associated renal disorders, including immunoglobulin A, or IgA, nephropathy (also known as Berger's disease), membranous nephropathy, lupus nephritis and C3 glomerulopathy, in which patient dosing is underway. In October 2016, we announced positive interim data from a Phase 2 clinical trial of OMS721 for the treatment of kidney disorders, including IgA nephropathy and membranous nephropathy, and announced positive results in patients with HSCT-TMA from a Phase 2 clinical trial of OMS721 in TMAs. In our OMS721 program, we have received from the FDA orphan drug designation for the prevention (inhibition) of complement-mediated TMAs and fast track designation for the treatment of patients with aHUS. We have requested from the FDA fast track designation and orphan drug designation for OMS721 in IgA. We plan to pursue breakthrough therapy designation for OMS721 in IgA nephropathy and HSCT-TMA and accelerated approval for OMS721 in both of those indications as well as in aHUS.

- *PDE10 - OMS824 for Huntington's disease and Schizophrenia.* OMS824, our lead phosphodiesterase 10, or PDE10, inhibitor, is in a Phase 2 clinical program for the treatment of Huntington's disease, in which clinical trials are currently subject to dosing limitations, and a Phase 2 clinical program for schizophrenia, in which no clinical trials are currently active. The dosing limitations in our Phase 2 clinical trial in Huntington's may potentially be removed pending generation, submission and FDA review of additional information. We are conducting nonclinical studies to generate additional data for further discussion with the FDA regarding the dosing limitations and are currently preparing for a re-designed Phase 2 clinical trial in patients with Huntington's disease. As we announced in October 2014, clinical trials evaluating OMS824 in schizophrenia are suspended currently at the request of the FDA. Given that there was no active schizophrenia trial at the time of program suspension, the FDA will address the OMS824 schizophrenia program when we have a related trial protocol ready for initiation.

- *PPARγ - OMS405*. In our peroxisome proliferator-activated receptor gamma, or PPARγ, program, Phase 2 clinical trials have been conducted by our collaborators to evaluate a PPARγ agonist, alone or in combination with other agents, for treatment of addiction to opioids and to nicotine. In November 2016, we announced positive data from one of these trials evaluating a PPARγ agonist in heroin users. In October 2016, we also reported positive results (*i.e.*, decreased craving and protection of brain white matter) from a Phase 2 clinical trial evaluating the effects of a PPARγ agonist in patients with cocaine use disorder.

- *OMS201-Urology.* OMS201, our PharmacoSurgery product candidate for use during urological procedures, including uroendoscopic procedures, completed a Phase 1/Phase 2 clinical trial in 2010 and is not currently in active clinical trials.

Development Programs and Platforms. Our preclinical programs and platforms include:

- *PDE7 - OMS527.* In our PDE7 program, we are developing proprietary compounds to treat addiction and compulsive disorders as well as movement disorders.

- *Plasmin - OMS616*. In our Plasmin program, we are studying novel antifibrinolytic agents for the control of blood loss during surgery or resulting from trauma as well as for other hyperfibrinolytic states (*e.g.*, liver disease).

- *MASP-3 - OMS906*. In our mannan-binding lectin-associated serine protease-3, or MASP-3 program, we are developing MASP-3 inhibitors for the treatment of disorders related to the alternative pathway of the complement system. In August 2016, we announced positive results from our OMS906 program in a well-established animal model of arthritis as well as in a well-established animal model associated with paroxysmal nocturnal hemoglobinuria. We are finalizing selection of our lead and back-up molecules and are initiating the process for scale-up in our OMS906 program in preparation for clinical trials.

- *GPCR Platform and Programs*. We have developed a proprietary cellular redistribution assay, or CRA, which we use in a high-throughput manner to identify synthetic ligands, including antagonists, agonists and inverse agonists, that bind to and affect the function of orphan GPCRs. We are conducting *in vivo* preclinical efficacy studies and optimizing compounds for a number of targets including: GPR17, linked to myelin formation; GPR101, linked to appetite and eating disorders; GPR151, linked to schizophrenia and cognition; GPR161, which is associated with triple negative breast cancer; GPR183, linked to osteoporosis and to Epstein-Barr virus infections and related diseases; and GPR174, which appears to be involved in the modulation of regulatory T cells, or "T-regs," known to be important in autoimmune disease, such as multiple sclerosis, and in cancer and organ transplantation.

- *Antibody Platform.* Our proprietary *ex vivo* platform for the discovery of novel, high-affinity monoclonal antibodies, which was in-licensed from the University of Washington and then further developed by our scientists, utilizes a chicken B-cell lymphoma cell line. We have generated antibodies to several clinically significant targets, including highly potent antibodies against MASP-3, and our platform continues to add to our pipeline antibodies against additional important targets.

Financial Summary

We recognized net losses of $14.0 million and $19.9 million for the three months ended September 30, 2016 and 2015, respectively, and $47.1 million and $55.3 million for the nine months ended September 30, 2016 and 2015, respectively. As of September 30, 2016, our accumulated deficit was $450.3 million, total shareholders' deficit was $22.8 million and we had $47.4 million in cash, cash equivalents and short-term investments available for general corporate use. In addition, we had restricted cash and investments of $10.8 million that we were required to maintain in depository and investment accounts as of September 30, 2016 pursuant to (a) our Loan and Security Agreement, or the Oxford/EWB Loan Agreement, with Oxford Finance LLC, or Oxford, and East West Bank, or EWB, which required us to maintain a balance of cash and cash equivalents of $10.0 million, and (b) our lease related to the Omeros Building, and (c) our fleet vehicles used by our OMIDRIA sales force. In October 2016, we entered into a Term Loan Agreement, or the CRG Loan Agreement, with CRG Servicing LLC, or CRG, as administrative agent and collateral agent, the lenders named therein, or the Lenders, and nura, inc. as subsidiary guarantor. The CRG Loan Agreement requires us to maintain a minimum balance of cash and cash equivalents of $5.0 million at all times. In connection with the initial $80.0 million borrowing under the CRG Loan Agreement, we terminated the Oxford/EWB Loan Agreement and used approximately $75.7 million of the loan proceeds to repay all of our outstanding obligations thereunder.

Results of Operations

Revenue

Our revenue consists of U.S. product sales of OMIDRIA and revenue recognized in connection with third-party grant funding.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
	(In thousands)		(In thousands)	
Product sales, net	$ 11,289	$ 3,244	$ 28,539	$ 6,607
Small Business Innovative Research Grants (SBIR)	—	15	173	227
Total revenue	$ 11,289	$ 3,259	$ 28,712	$ 6,834

During the quarter ended September 30, 2016, OMIDRIA reported revenue increased $1.3 million, or 13%, from the prior quarter. The increase in OMIDRIA sales during the three and nine months ended September 30, 2016 compared to the same periods in 2015 was due to continued acceptance of and increased demand for OMIDRIA in the ophthalmic surgery community.

We expect OMIDRIA reported revenue will continue to expand as OMIDRIA gains additional market acceptance and existing customers continue to broaden their use of OMIDRIA.

Gross-to-Net Deductions

We record OMIDRIA product sales net of estimated chargebacks, rebates, distribution fees and product returns. These deductions are generally referred to as gross-to-net deductions. A summary of our gross-to-net related accruals for the nine months ended September 30, 2016 is as follows:

	Chargebacks and Rebates	Distribution Fees and Product Return Allowances	Total
	(In thousands)		
Balance as of December 31, 2015	$ 180	$ 277	$ 457
Provision related to current period sales	1,941	975	2,916
Payments made/credits granted	(1,568)	(675)	(2,243)
Balance as of September 30, 2016	$ 553	$ 577	$ 1,130

Chargebacks and Rebates. We have entered into a variety of agreements including a Pharmaceutical Pricing Agreement, a Federal Supply Schedule agreement, a 340B prime vendor agreement and a Medicaid Drug Rebate Agreement which allow eligible entities to receive discounts on their qualified purchases of OMIDRIA. We record a provision for estimated chargebacks and rebates related to these agreements at the time of sale and reduce the accrual when payments are made or credits are granted.

In October 2015, we launched the OMIDRIAssure Reimbursement Services Program to expand patient access to OMIDRIA. We record a provision for estimated OMIDRIAssure claims at the time of sale and reduce the accrual when payments are made.

We have seen future chargeback and rebate deductions as a percentage of gross OMIDRIA product sales increase compared to previous quarters, and we expect this trend to continue. This increase is based on our 340B prime vendor agreement, the increased use of OMIDRIAssure, increased volume of purchases eligible for government-mandated discounts such as 340B and other programs that we may implement.

Distribution Fees and Product Return Allowances. We pay our wholesalers a distribution fee for services they perform for us based on the dollar value of their purchases of OMIDRIA. We record a provision for these charges as a reduction to revenue at the time of sale to the wholesaler and make payments to our wholesalers based on contractual terms.

We allow for the return of product up to 12 months past its expiration date or for product that is damaged or not used by our customers. We record a provision for returns upon sale of OMIDRIA to our wholesaler. When a return or claim is received, we issue a credit memo to the wholesaler against its outstanding receivable to us or reimburse the customer.

We expect distribution fees and product return allowances to correlate generally with changes in product sales.

Research and Development Expenses

Our research and development expenses can be divided into three categories: direct external expenses, which include clinical research and development and preclinical research and development activities; internal, overhead and other expenses; and stock-based compensation expense. Direct external expenses consist primarily of expenses incurred pursuant to agreements with third-party manufacturing organizations, contract research organizations, or CROs, clinical trial sites, collaborators, licensors and consultants and lab supplies. Costs are reported in preclinical research and development until the program enters the clinic. Internal, overhead and other expenses consist of personnel costs, overhead costs such as rent, utilities and depreciation and other miscellaneous costs. We do not generally allocate our internal resources, employees and infrastructure to any individual research project because we deploy them across multiple clinical and preclinical projects that we are advancing in parallel.

The following table illustrates our expenses associated with these activities:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
	(In thousands)		(In thousands)	
Direct external expenses:				
Clinical research and development:				
OMS721	$ 4,920	$ 5,576	$ 13,967	$ 9,971
OMIDRIA (OMS302)	446	647	3,271	2,374
OMS824	62	266	389	1,317
Other clinical programs	321	11	1,215	29
Total clinical research and development	5,749	6,500	18,842	13,691
Preclinical research and development	685	281	1,383	1,110
Total direct external expenses	6,434	6,781	20,225	14,801
Internal, overhead and other expenses	4,902	5,252	13,402	14,897
Stock-based compensation expense	1,156	1,231	4,530	3,784
Total research and development expenses	$ 12,492	$ 13,264	$ 38,157	$ 33,482

The decrease in total clinical research and development expenses during the three months ended September 30, 2016 compared to the same period in 2015 is due primarily to lower clinical manufacturing and clinical trial costs for our OMS721 program, decreased clinical trial costs associated with the completion of enrollment in a post-marketing OMIDRIA pediatric trial and lower clinical trial and nonclinical costs in our OMS824 program. This decrease was partially offset by increases in preclinical research and development and other clinical programs.

The increase in total clinical research and development expenses during the nine months ended September 30, 2016 compared to the same period in 2015 is due primarily to increased costs for our OMS721 program in connection with clinical manufacturing, clinical trial costs and increased costs in OMS302 related to pediatric clinical trials. Incremental activities in our other clinical programs also contributed to the increase. This increase was partially offset by lower clinical research and development costs related to our OMS824 program due to reduced clinical trial and nonclinical costs.

In addition, stock-based compensation expenses increased during the nine months ended September 30, 2016 compared to the same period in 2015 primarily related to annual company-wide option grants approved in February 2016 with April 1, 2015 vesting commencement dates.

We anticipate that total research and development costs will increase during the remainder of this year due to planned clinical manufacturing and clinical study activities relating primarily to OMS721 and costs related to transferring OMS302 manufacturing to a new location

At this time, we are unable to estimate with any certainty the costs we will incur in the continued development of our product candidates due to the inherently unpredictable nature of our preclinical and clinical development activities and given the early stage of many of our preclinical development programs. Clinical development timelines, the probability of success and development costs can differ materially as new data become available and as expectations change. While we are focused currently on advancing our product development programs, our future research and development expenses will depend, in part, on the preclinical or clinical success of each product candidate as well as ongoing assessments of each program’s commercial potential. Our future research and development expenses will also be affected by the availability of adequate financial resources and the commercial success of OMIDRIA. In addition, we cannot forecast with any degree of certainty which product candidates, if any, may be subject to future collaborations, when such arrangements will be secured, if at all, and to what degree such arrangements would affect our development plans and capital requirements.

We are required to expend substantial resources in the development of our product candidates due to the lengthy process of completing clinical trials and seeking regulatory approval. Any failure or delay in completing clinical trials, or in obtaining regulatory approvals, could delay our generation of product revenue and increase our research and development expenses and, in turn, have a material adverse effect on our operations, financial condition and liquidity. Because of the factors above, we are not able to estimate with any certainty when or if we would recognize any net cash inflows from our research and development projects.

Selling, General and Administrative Expenses

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
	(In thousands)		(In thousands)	
Selling, general and administrative expenses, excluding stock-based compensation expense	$ 9,078	$ 7,903	$ 26,906	$ 22,437
Stock-based compensation expense	1,379	1,145	5,036	3,489
Total selling, general and administrative expenses	$ 10,457	$ 9,048	$ 31,942	$ 25,926

The increase in selling, general and administrative expenses during the three months ended September 30, 2016 compared to the same period in 2015 was primarily due to increased legal costs associated with the Par lawsuit, partially offset by a decrease in marketing costs. The increase during the nine months ended September 30, 2016 compared to the same period in 2015 was primarily due to increased legal costs associated with the Par lawsuit and increased commercial and administrative costs.

The increase in stock-based compensation expense during the nine months ended September 30, 2016 compared to the same period in the prior year was due to annual company-wide option grants approved in February 2016 with April 1, 2015 vesting commencement dates.

We anticipate selling, general and administrative costs will increase during the remainder of this year due to legal costs in connection with enforcing our patents and pursuing our patent infringement claims related to Par's effort to obtain FDA approval for a generic version of OMIDRIA, incremental sales and marketing programs and employee costs including stock-based compensation expense.

Interest Expense

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
	(In thousands)		(In thousands)	
Interest expense	$ 2,135	$ 871	$ 5,367	$ 2,765

The increase in interest expense during the three months ended September 30, 2016 compared to the same period in the prior year was due to incremental borrowings in December 2015 and May 2016. The increase in interest expense during the nine months ended September 30, 2016 compared to the same period in the prior year was due to the same incremental borrowings.

In connection with the termination of the Oxford/EWB Loan Agreement, we estimate we will incur a loss on extinguishment of debt of approximately $5.6 million in the fourth quarter of 2016 and, due primarily to the increased note payable balance outstanding on the note, our interest expense in the fourth quarter will be approximately $2.5 million. For additional information regarding the termination of the Oxford/EWB Loan Agreement, please refer to Note 7 to the notes to the condensed consolidated financial statements.

Other Income (Expense), Net

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
	(In thousands)		(In thousands)	
Other income (expense), net	$ 211	$ 251	$ 673	$ 693

Other income (expense), net principally includes sublease rental income and interest earned. The decrease during the three months ended September 30, 2016 compared to the same period in the prior year was primarily due to a sublease that expired in February 2016.

Financial Condition - Liquidity and Capital Resources

As of September 30, 2016, we had $47.4 million in cash, cash equivalents and short-term investments available for general corporate use that are held principally in interest-bearing instruments, including money-market accounts. In addition, we had restricted cash and investments of $10.8 million that were maintained in depository and investment accounts as of September 30, 2016 pursuant to (a) our Oxford/EWB Loan Agreement, which required us to maintain a minimum cash and cash equivalents balance of $10.0 million, and (b) our lease related to the Omeros Building, and (c) our fleet vehicles used by our OMIDRIA sales force. Cash in excess of our immediate requirements is invested in accordance with our established guidelines that are intended to preserve principal and maintain liquidity.

On October 26, 2016, we entered into the CRG Loan Agreement. We initially borrowed $80.0 million in November 2016 and may borrow an additional $45.0 million in two tranches of $25.0 million and $20.0 million contingent on achievement of certain conditions including either satisfying minimum OMIDRIA net revenues or minimum average market capitalization on or before June 30, 2017 and December 31, 2017, respectively. As security for its obligations under the CRG Loan Agreement, we granted to CRG, as collateral agent for the Lenders, a lien on substantially all of our assets including intellectual property.

The CRG Loan Agreement accrues interest at an annual rate of 12.25% (4.0% of which can be deferred at our option during the interest-only period by adding such amount to the aggregate principal amount, referred to as PIK Loans) and is interest only for a minimum of four years and, subject to the achievement of certain milestones, potentially through the maturity date. We currently expect to defer interest in the form of PIK Loans at least through the end of this year. If an OMIDRIA revenue milestone is satisfied during the 12-month period ending on December 31, 2019, the interest rate may be reduced to 11.50%, 3.5% of which may be paid in the form of PIK Loans. In addition, if either the OMIDRIA revenue milestone is satisfied during such period or a market capitalization milestone is achieved during the fourth quarter of 2020, the loan would convert to interest-only until the September 30, 2022 maturity, at which time all unpaid principal and accrued unpaid interest is due and payable. The CRG Loan Agreement requires us to maintain cash and cash equivalents of $5.0 million during the term of the agreement.

We may prepay all or a portion of the outstanding principal and accrued unpaid interest under the CRG Loan Agreement at any time upon prior notice to the Lenders subject to a prepayment fee during the first three years of the term and no prepayment fee thereafter. In certain circumstances, including a change of control and certain asset sales or licensing transactions, we are required to prepay all or a portion of the loan, including the applicable prepayment premium of on the amount of the outstanding principal to be prepaid. We are also required to pay the Lenders a final payment equal to 5.0% of the aggregate principal amount borrowed on repayment of the CRG Loan Agreement indebtedness in full.

The CRG Loan Agreement also requires us to achieve either (a) certain minimum net revenue amounts from OMIDRIA through the end of 2021, which are $35.0 million, $55.0 million and $65.0 million for the 2016, 2017 and 2018 calendar years, respectively, or (b) a minimum market capitalization threshold equal to the product of 6.4 multiplied by the aggregate principal amount of loans outstanding under the CRG Loan Agreement determined as of the fifth business day following announcement of earnings results for the applicable year. If we are unable to satisfy the minimum annual revenue requirement and the market capitalization threshold for any given year, we may avoid a related default by repaying the shortfall between actual revenues and the minimum revenue requirement for such year using proceeds generated by an equity or subordinated debt issuance.

We used $75.7 million of the initial loan proceeds to repay all of the amounts owed under the Oxford/EWB Loan Agreement in November 2016. After deducting the loan initiation costs and related fees, and considering the reduction of the restricted cash requirement associated with the previously outstanding Oxford/EWB Loan Agreement, we gained access to approximately $8.0 million in net additional cash available for operations upon funding.

Future Funding Requirements

To meet our projected funding requirements for the next 12 months, we expect to use cash on hand, future OMIDRIA revenues and additional funds we intend to raise through corporate partnerships, through the incurrence of additional debt including the CRG Loan Agreement, through asset sales, through the pursuit of collaborations and licensing arrangements related to certain of our products or programs or through public or private equity securities sales, including our At Market Issuance Sales Agreement, or the ATM Agreement, with JonesTrading Institutional Services LLC, or JonesTrading. These conditions raise a substantial doubt about our ability to continue as a going concern. If we are unable to raise additional capital when needed through one or more of the avenues previously listed, or upon acceptable terms, such failure would have a significant negative impact on our financial condition. Should it be necessary to manage our operating expenses, we would reduce our projected cash requirements through reduction of our expenses by delaying clinical trials, reducing selected research and development efforts, or implementing other restructuring activities.

Our independent registered public accounting firm included an explanatory paragraph expressing substantial doubt regarding our ability to continue as a going concern in their report on our consolidated financial statements for the year ended December 31, 2015. A “going concern” opinion means, in general, that our independent registered public accounting firm has

substantial doubt about our ability to continue our operations without additional infusions of capital from external sources. Our ability to continue as a going concern depends, in large part, on our ability to generate positive cash flow from operations and obtain additional financing, neither of which is certain. If we are unable to achieve these goals, our business would be jeopardized and we may not be able to continue operations.

Cash Flow Data

	Nine Months Ended September 30,	
	2016	2015
	(In thousands)	
Selected cash flow data		
Cash provided by (used in):		
Operating activities	$ (40,641)	$ (48,609)
Investing activities	(10,324)	(28,053)
Financing activities	59,897	76,909

Operating Activities. Net cash used in operating activities was $40.6 million for the nine months ended September 30, 2016. The cash used in operating activities was affected by our net loss of $47.1 million, a $3.9 million increase in accounts receivable and a $0.9 million increase in inventory, partially offset by non-cash stock-based compensation expense of $9.6 million and non-cash interest expense of $1.2 million. The increase in accounts receivable is directly related to increased OMIDRIA sales and the inventory increase relates to an accumulation of OMIDRIA inventory to ensure adequate commercial supply of OMIDRIA until such time as additional inventory is expected to become available from our new manufacturer beginning in 2017. The increase in stock-based compensation expense primarily relates to annual company-wide stock option grants approved in February 2016 with April 1, 2015 vesting commencement dates.

Net cash used in operating activities was $48.6 million for the nine months ended September 30, 2015. The cash used in operating activities was affected by a net loss of $55.3 million and a $2.1 million increase in accounts receivable, partially offset by stock-based compensation expense of $7.3 million. The increase in accounts receivable was related to increased sales of OMIDRIA.

Investing Activities. Cash flows from investing activities primarily reflect cash used to purchase short-term investments and proceeds from the sale of short-term investments, thus causing a shift between our cash and cash equivalents and short-term investment balances. Because we manage our cash usage with respect to our total cash, cash equivalents and short-term investments, we do not consider these fluctuations in cash flows to be important to the understanding of our liquidity and capital resources.

Net cash used by investing activities in the nine months ended September 30, 2016 was $10.3 million, a decrease of $17.7 million from 2015. The nine months ended September 30, 2016 was affected by the purchase of short-term investments of $58.1 million partially offset by $47.9 million in maturities of short-term investments compared to the same period in the prior year which we purchased short-term investments of $79.4 million and had $51.6 million of short-term investments mature which provided cash for operating activities.

Financing Activities. Net cash provided by financing activities in the nine months ended September 30, 2016 was $59.9 million, a decrease of $17.0 million compared to the same period in 2015. Net cash provided by financing activities for the nine months ended September 30, 2016 was from $38.0 million of net proceeds from the public offering issuance in August of 3.5 million shares of our common stock at an offering price of $11.50 per share and from the issuance of 64,565 shares of our common stock at an average stock price of $11.41 per share under the ATM Agreement. Additionally, net cash provided from financing activities resulted from the borrowings of the additional $20.0 million under the Oxford/EWB Loan Agreement, and $2.2 million from the exercise of options and pre-funded warrants. This compares to the same period in 2015 in which cash provided by financing activities was primarily due to $79.1 million of net proceeds received from the sale of 3.4 million shares of common stock and pre-funded warrants to purchase 749,250 shares of common stock in our public offering in February 2015 and $2.6 million from proceeds from the exercise of stock options and warrants. The nine months ended September 30, 2015 also included $4.7 million of payments on outstanding notes payable.

Contractual Obligations and Commitments

Our future minimum contractual commitments and obligations were reported in our Annual Report on Form 10-K for the year ended December 31, 2015 that was filed with the SEC on March 15, 2016. Other than the following, our future minimum contractual obligations and commitments have not changed materially from the amounts previously reported.

Notes Payable

As of September 30, 2016 and pursuant to the then-existing Oxford/EWB Loan Agreement, the outstanding principal balance was $70.0 million, the loan maturity fee was $5.0 million, and the prepayment fee was $700,000. There was no event of default under the Oxford/EWB Loan Agreement as of September 30, 2016.

On October 26, 2016, we entered into the CRG Loan Agreement and, upon the initial borrowing, retired the Oxford/EWB Loan Agreement. We granted the Lenders a lien on substantially all of our assets, including intellectual property. See Note 7 in our Notes to Condensed Consolidated Financial Statements for a description of our obligations under the CRG Loan Agreement.

Goods & Services

We have entered into an agreement with Hospira Worldwide, Inc., or Hospira, for the ongoing commercial supply of OMIDRIA and we are currently completing the manufacturing process transfer, process validation and approval of Hospira as a manufacturing site for OMIDRIA. We anticipate that Hospira will be able to provide OMIDRIA commercial product to us beginning in 2017. We have no firm purchase commitments outstanding related to commercial lots under this agreement as of September 30, 2016.

We may also be required, in connection with our existing in-licensing or asset acquisition agreements, to make certain royalty and milestone payments and we cannot, at this time, determine when or if the related milestones will be achieved or whether the events triggering the commencement of payment obligations will occur. See Note 9 to our Consolidated Financial Statements for the year ended December 31, 2015 included in our Annual Report on Form 10-K, as filed with the SEC on March 15, 2016, for a description of the agreements that include these royalty and milestone payment obligations.

Critical Accounting Policies and Significant Judgments and Estimates

The preparation of our condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States, or GAAP, requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances; however, actual results could differ from those estimates. An accounting policy is considered critical if it is important to a company's financial condition and results of operations and if it requires the exercise of significant judgment and the use of estimates on the part of management in its application. Although we believe that our judgments and estimates are appropriate, actual results may differ materially from our estimates.

We believe the judgments, estimates and assumptions associated with the following critical accounting policies have the greatest potential impact on our consolidated financial statements:

- Revenue recognition;
- Research and development expenses; and
- Stock-based compensation.

For a detailed discussion of these critical accounting policies and significant judgments and estimates, refer to "Critical Accounting Policies and Significant Judgments and Estimates" within "Item 7 - Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our Annual Report on Form 10-K for the year ended December 31, 2015 that was filed with the SEC on March 15, 2016. There have not been any material changes in our critical accounting policies and significant judgments and estimates as disclosed in our Annual Report Form 10-K for the year ended December 31, 2015.

Off-Balance Sheet Arrangements

We have not engaged in any off-balance sheet arrangements.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our exposure to market risk is primarily confined to our investment securities and notes payable. The primary objective of our investment activities is to preserve our capital to fund operations. We also seek to maximize income from our investments without assuming significant risk. To achieve our objectives, we maintain a portfolio of investments in high-credit-quality securities. As of September 30, 2016, we had cash, cash equivalents and short-term investments of $47.4 million. In accordance with our investment policy, we invest funds in highly liquid, investment-grade securities. These securities in our investment portfolio are not leveraged and are classified as available-for-sale. We currently do not hedge interest rate exposure. Because of the short-term maturities of our investments, we do not believe that an increase in market rates would have a material negative impact on the realized value of our investment portfolio. We actively monitor changes in interest rates and, with our current portfolio of short term investments, we are not exposed to potential loss due to changes in interest rates.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, 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 September 30, 2016. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on the evaluation of our disclosure controls and procedures as of September 30, 2016, our principal executive officer and principal financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) under the Exchange Act that occurred during the period covered by this report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

In July 2015, we received a Notice Letter from Par Pharmaceutical, Inc. and its subsidiary, Par Sterile Products, LLC, or collectively, Par, that Par filed an Abbreviated New Drug Application, or ANDA, containing a Paragraph IV Certification under the Hatch-Waxman Act and seeking approval from the FDA to market a generic version of OMIDRIA prior to the expiration of three Omeros patents, U.S. Patent Nos. 8,173,707, 8,586,633 and 9,066,856, which relate to OMIDRIA and that are listed in the FDA's Orange Book for OMIDRIA. These patents were granted following review by the U.S. Patent and Trademark Office, or USPTO, are presumed to be valid under governing law, and can only be invalidated in federal court with clear and convincing evidence. Following receipt of the Paragraph IV Notice Letter we filed a patent infringement lawsuit against Par in the U.S. District Court for the District of New Jersey on September 2, 2015 and a patent infringement lawsuit against Par in the U.S. District Court for the District of Delaware on September 3, 2015. The lawsuits were filed under the Hatch-Waxman Act alleging Par's infringement of U.S. Patent Nos. 8,173,707, 8,586,633 and 9,066,856. Based on our decision to pursue the action in federal court in Delaware, we voluntarily dismissed the complaint filed in the U.S. District Court for the District of New Jersey. The complaint that we filed in the U.S. District Court for the District of Delaware has been served on Par and Par has filed an answer asserting defenses and counterclaims for declaratory judgment of patent invalidity and non-infringement. In April 2016 and August 2016, we amended the complaint to also assert infringement of U.S. Patent Nos. 9,278,101 and 9,399,040, respectively, which issued in March 2016 and July 2016, respectively, and were listed in the Orange Book after Par's Paragraph IV Notice Letter. Par has filed answers to our amended complaints asserting defenses and counterclaims for declaratory judgment of patent invalidity and non-infringement. Par has stipulated to infringement of each of the currently asserted patents and the court entered a partial judgment that the filing of Par's ANDA constitutes an act of infringement of each of the currently asserted patents, subject to Par's continued invalidity defenses and any challenge to enforceability. We have reviewed the invalidity assertions in Par's Paragraph IV Notice Letter and defenses and counterclaims and believe they do not have merit, and we intend to defend our patents vigorously in the litigation against Par. Under the Hatch-Waxman Act, we were permitted to file suit within 45 days from receipt of Par's Notice Letter and thereby trigger a 30-month stay of the FDA's final approval of Par's ANDA while the lawsuit against Par is pending. Our lawsuit against Par triggered such a stay, which is expected to remain in effect until late January 2018.

ITEM 1A. RISK FACTORS

The risks and uncertainties described below may have a material adverse effect on our business, prospects, financial condition or operating results. In addition, we may be adversely affected by risks that we currently deem immaterial or by other risks that are not currently known to us. You should carefully consider these risks before making an investment decision. The trading price of our common stock could decline due to any of these risks and you may lose all or part of your investment. In assessing the risks described below, you should also refer to the other information contained in this Quarterly Report on Form 10-Q and in our Annual Report on Form 10-K for the year ended December 31, 2015.

Risks Related to Our Products, Programs and Operations

Our ability to achieve profitability is dependent on the commercial success of OMIDRIA. To the extent OMIDRIA is not successful, our business, financial condition and results of operations may be materially adversely affected and the price of our common stock may decline.

OMIDRIA is our only product that has been approved by the FDA for commercial sale in the U.S. For the three months ended September 30, 2016, we recorded net sales of OMIDRIA of $11.3 million. We have not generated revenue from sales of OMIDRIA to date that are sufficient to fund fully our operations and cannot provide assurance that we will generate sufficient revenue from OMIDRIA in the future to fund fully our operations. We will need to generate substantially more product revenue from OMIDRIA to achieve and sustain profitability. Our ability to generate significant revenue from OMIDRIA product sales depends on our ability to achieve increased market acceptance of, and to otherwise market and sell effectively, OMIDRIA, which may not occur for a number of reasons, including:

- a lack of acceptance by physicians, patients, government and private payers and other members of the healthcare community;
- our limited experience in marketing, selling and distributing OMIDRIA or any other product;
- our limited experience managing third-party commercial manufacturing of OMIDRIA or any other product as well as our limited experience managing and maintaining a commercial sales organization;

- pricing, reimbursement and coverage policies of government and private payers such as Medicare, Medicaid, the Department of Veterans Affairs, or VA, group purchasing organizations, insurance companies, health maintenance organizations and other plan administrators;
- the availability, relative price and efficacy of the product as compared to alternative treatment options or branded, compounded or generic competing products;
- an unknown safety risk;
- the failure to enter into and maintain acceptable partnering arrangements for marketing and distribution of OMIDRIA outside of the U.S.;
- changed or increased regulatory restrictions in the U.S., EU and other foreign territories; and
- a lack of adequate financial or other resources.

Our operating results are unpredictable and may fluctuate.

Our operating results are difficult to predict and will likely fluctuate from quarter to quarter and year to year. We believe that our quarterly and annual results of operations may be affected by a variety of factors, including:

- the level and timing of commercial sales of OMIDRIA as well as our product candidates, if and when approved or commercialized;
- the extent of coverage and reimbursement for OMIDRIA, including following the expiration of pass-through reimbursement effective January 1, 2018, and the amount of OMIDRIA chargebacks, rebates and product returns;
- the extent of any payments received from collaboration arrangements and development funding as well as the achievement of development and clinical milestones under collaboration and license agreements that we may enter into from time to time and that may vary significantly from quarter to quarter; and
- the timing, cost and level of investment in our research and development activities as well as expenditures we will or may incur to acquire or develop additional technologies, products and product candidates.

In addition, the number of procedures in which OMIDRIA or any of our product candidates, if commercialized, would be used may be significantly less than the total number of such procedures performed or total possible market size. These and other factors, including our limited history of product sales, may make it difficult for us to forecast and provide accurate guidance (including updates to prior guidance) related to our expected financial performance. If our operating results are below the expectations of securities analysts or investors, the trading price of our stock could decline.

We have incurred cumulative operating losses since inception. If we are unable to raise additional capital when needed, our commercial operations may be limited and we may be unable to complete the development and commercialization of our product candidates or to continue our other preclinical development programs.

Our operations have consumed substantial amounts of cash since our incorporation and, as of September 30, 2016, we had an accumulated deficit of approximately $450.3 million. We expect to continue to spend substantial amounts to:

- continue OMIDRIA sales and marketing;
- continue research and development in our programs;
- make principal and interest payments under the CRG Loan Agreement;
- initiate and conduct clinical trials for our programs and product candidates; and
- commercialize and launch product candidates for which we may receive regulatory approval.

We expect to continue to incur additional losses until such time as we generate significant revenue from the sale of OMIDRIA, other commercial products and/or significant partnering revenues. We are unable to predict the extent of any future losses and cannot provide assurance that we will generate sufficient revenue from OMIDRIA in the future to fund fully our operations. To date we have not generated revenue from sales of OMIDRIA that is sufficient to fund fully our operations. If we are unable to generate sufficient revenue from the sale of OMIDRIA, other commercialized products and/or partnering arrangements, we may never become and remain profitable and will be required to raise additional capital to continue to fund our operations. We cannot be certain that additional capital will be available to us on acceptable terms, if at all, when required. Adverse developments to our financial condition or business, as well as disruptions in the global equity and credit markets, may limit our ability to access capital. If we do not raise additional capital when needed through one or more funding avenues, such as corporate partnering or debt or equity financings, we may have to significantly delay, scale back or discontinue the development or commercialization of one or more of our product candidates or one or more of our preclinical programs or other research and development initiatives. In addition, we may be required to seek collaborators for one or more of our current or future products at an earlier stage than otherwise would be desirable or on terms that are less favorable than otherwise might

be available or to relinquish or license on unfavorable terms our rights to technologies or products that we otherwise would seek to develop or commercialize ourselves. We also may have insufficient funds or otherwise be unable to advance our preclinical programs, such as potential new drug targets developed from our GPCR program, to a point where they can generate revenue through partnerships, collaborations or other arrangements. Any of these actions could limit the amount of revenue we are able to generate and harm our business and prospects.

Our independent registered public accounting firm has indicated that our financial condition raises substantial doubt as to our ability to continue as a going concern.

Our financial statements have been prepared assuming that we will continue to operate as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. However, our independent registered public accounting firm has included in its audit opinion for the year ended December 31, 2015 a statement that there is substantial doubt as to our ability to continue as a going concern as a result of our recurring losses and financial condition on December 31, 2015. Our ability to continue as a going concern will require us to generate positive cash flow from operations, obtain additional financing, enter into strategic alliances and/or sell assets. The reaction of investors to the inclusion of a going concern statement by our auditors, our current lack of cash resources and our potential inability to continue as a going concern may materially adversely affect our share price and our ability to raise new capital, enter into strategic alliances and/or make our scheduled debt payments on a timely basis or at all. If we become unable to continue as a going concern, we may have to liquidate our assets and the values we receive for our assets in liquidation or dissolution could be significantly lower than the values reflected in our financial statements.

If OMIDRIA or any other product that we develop and commercialize does not receive adequate reimbursement from governments or private payers, or if we do not establish and maintain market-acceptable pricing for OMIDRIA or those commercialized products, our prospects for revenue and profitability could suffer.

Our future revenues and profitability will depend heavily on the pricing, availability and duration of adequate reimbursement for the use of products that we or our third-party business partners commercialize, including OMIDRIA, from government, private and other third-party payers, both in the U.S. and in other countries. OMIDRIA or any other product that we bring to market may not be considered cost-effective and/or the amount reimbursed for any product may be insufficient to allow us to sell the product profitably. Obtaining reimbursement for any product from each government or third-party payer can be a time-consuming and costly process that may require the build-out of a sufficient staff or the engagement of third parties and could require us to provide additional supporting scientific, clinical and cost-effectiveness data for the use of our approved products to each payer. We can provide no assurances at this time regarding the cost-effectiveness of OMIDRIA, OMS103 or any of our product candidates. Further, we can provide no assurance that the amounts, if any, reimbursed to surgical facilities for utilization of any of our surgery-related products, including OMIDRIA, any of our product candidates or OMS103, or to surgeons for the administration and delivery of these products or product candidates will be considered adequate to justify the use of these products or product candidates. In addition, obtaining acceptable coverage and reimbursement from one payer does not guarantee that we will obtain similar acceptable coverage or reimbursement from another payer.

There may be significant delays in obtaining reimbursement for newly approved products, and we may not be able to provide data sufficient to be granted reimbursement. Even when a payer determines that a product is eligible for reimbursement, coverage may be limited to the uses of a product that are either approved by the FDA (or, in other countries, the relevant country’s regulatory agency) and/or appear in a recognized drug compendium, and other conditions may apply. Moreover, eligibility for coverage does not mean that any product will be reimbursed at a rate that allows us to make a profit in all cases or at a rate that covers our costs, including research, development, manufacturing, sales and distribution. Increasingly, government and private third-party payers that reimburse for healthcare services and products are requiring that companies provide them with predetermined discounts from list prices and challenging the prices charged for medical products, which could adversely impact the pricing of our products. Pricing may also be adversely affected by changes in the terms, scope and/or complexity of government pricing requirements. Even if we achieve reimbursement for a product, the initial rate or method at which the product will be reimbursed could become unfavorable to us at the time reimbursement is initiated or in the future or may be of a limited duration. After the expiration of pass-through reimbursement status for OMIDRIA effective January 1, 2018, we may not be able to maintain or obtain adequate reimbursement for OMIDRIA. In the event that pass-through reimbursement status is not extended or separate reimbursement obtained for OMIDRIA after that date, we expect that OMIDRIA will be included as part of the packaged payment and as a result the per unit price we receive for OMIDRIA would be reduced.

In non-U.S. jurisdictions, we must obtain separate reimbursement approvals and comply with related foreign legal and regulatory requirements. In some countries, including those in the EU, our products may be subject to government price controls. Pricing negotiations with governmental authorities can take a considerable amount of time and expenditure of resources after the receipt of marketing approval for a product. We provide no assurances that the price of any product in one or

more of these countries or regions will allow us to make a profit or cover our costs, including research, development, manufacturing, sales and distribution, and as a result we may decide to delay, potentially indefinitely, initiating sales in the particular country or region.

If the reimbursement or pricing that we are able to obtain and maintain for any product that we develop and commercialize, including OMIDRIA, is inadequate in light of our development and other costs, is significantly delayed or subject to overly restrictive conditions, or is denied by one or more payers, there could be a material adverse effect on our business, financial condition, results of operations and growth prospects.

We are subject to extensive government regulation and the failure to comply with these regulations may have a material adverse effect on our operations and business.

Both before and after approval of any product, we and our suppliers, contract manufacturers and clinical investigators are subject to extensive regulation by governmental authorities in the U.S. and other countries, covering, among other things, testing, manufacturing, quality control, clinical trials, post-marketing studies, labeling, advertising, promotion, distribution, import and export, governmental pricing, price reporting and rebate requirements. Failure to comply with applicable requirements could result in one or more of the following actions: warning letters; unanticipated expenditures; delays in approval or refusal to approve a product candidate; product recall or seizure; interruption of manufacturing or clinical trials; operating or marketing restrictions; injunctions; criminal prosecution and civil or criminal penalties including fines and other monetary penalties; adverse publicity; and disruptions to our business. Further, government investigations into potential violations of these laws would require us to expend considerable resources and face adverse publicity and the potential disruption of our business even if we are ultimately found not to have committed a violation.

Obtaining FDA approval of our product candidates requires substantial time, effort and financial resources and may be subject to both expected and unforeseen delays, and there can be no assurance that any approval will be granted on any of our product candidates on a timely basis, if at all. Even if we discuss with, and obtain feedback from, the FDA regarding our proposed clinical trials and nonclinical studies before initiating those trials or studies, the FDA may decide that our resulting data are insufficient for approval of our product candidates and require additional preclinical, clinical or other studies or additional work related to chemistry, manufacturing and controls. In addition, we, the FDA or an independent Institutional Review Board or Ethics Committee may suspend or terminate human clinical trials at any time on various grounds, including a finding that the patients are or would be exposed to an unacceptable health risk or because of the way in which the investigators on which we rely carry out the trials. If we are required to conduct additional trials or to conduct other testing of our product candidates beyond that which we currently contemplate for regulatory approval, if we are unable to complete successfully our clinical trials or other testing, or if the results of these and other trials or tests fail to demonstrate efficacy or raise safety concerns, we may face substantial additional expenses, be delayed in obtaining marketing approval for our product candidates or may never obtain marketing approval.

We are also required to comply with extensive governmental regulatory requirements after a product has received marketing authorization. Governing regulatory authorities may require post-marketing studies that may negatively impact the commercial viability of a product. Once on the market, a product may become associated with previously undetected adverse effects and/or may develop manufacturing difficulties. We are required to comply with other post-marketing requirements including GMPs, advertising and promotion restrictions, reporting and recordkeeping obligations and other requirements. As a result of any of these or other problems, a product's regulatory approval could be withdrawn, which could harm our business and operating results. In addition, we must establish and maintain an effective healthcare compliance program in order to comply with U.S. and other laws applicable to marketed drug products and, in particular, laws (such as the Anti-Kickback Statute, the False Claims Act and the Sunshine Act) applicable when drug products are purchased or reimbursed by a federal healthcare program. U.S. laws such as the Foreign Corrupt Practices Act prohibit the offering or payment of bribes or inducements to foreign public officials, including potentially physicians or other medical professionals who are employees of public health care entities. In addition, many countries have their own laws similar to the healthcare compliance laws that exist in the U.S. Implementing an effective compliance program requires the expenditure of significant time and resources. If we are found to be in violation of any of these laws, we may be subject to significant penalties, including but not limited to civil or criminal penalties, damages and fines as well as exclusion from government healthcare programs.

Failure to obtain regulatory approval in foreign jurisdictions would prevent us from marketing our products internationally.

We intend to have OMIDRIA and our product candidates, if approved, marketed outside the U.S. In order to market our products in non-U.S. jurisdictions, we or our partners must obtain separate regulatory approvals and comply with numerous and varying regulatory requirements. The regulatory approval procedure varies among countries and can involve additional testing and data review. The requirements governing marketing authorization, the conduct of clinical trials, pricing and reimbursement

vary from country to country. Approval by the FDA or the EMA does not ensure approval by regulatory agencies in other jurisdictions, and approval by one foreign regulatory authority does not ensure approval by regulatory agencies in other foreign countries or by the FDA. The time required to obtain regulatory approval outside the U.S. and EU may differ from that required to obtain FDA or EMA approval. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval discussed in these "Risk Factors" and we may not obtain foreign regulatory approvals on a timely basis, or at all.

If OMIDRIA and/or our product candidates, if approved, are marketed outside of the United States, a variety of risks associated with international operations could materially adversely affect our business.

We may be subject to additional risks if OMIDRIA and/or our product candidates, if approved, are marketed outside the U.S., including:

- reduced protection for intellectual property rights;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenues, and other obligations incident to doing business in another country; and
- business interruptions resulting from geopolitical actions, including war and terrorism or natural disasters including earthquakes, typhoons, floods and fires.

We have no internal capacity to manufacture clinical or commercial supplies of OMIDRIA or our product candidates and intend to rely solely on third-party manufacturers. If the contract manufacturers that we rely on experience difficulties manufacturing OMIDRIA or our product candidates or fail FDA or other regulatory inspections, our clinical trials, regulatory submissions and ability to sell OMIDRIA or any other commercialized product and generate revenue may be significantly limited or delayed.

We rely and intend to continue to rely on third party manufacturers to produce commercial quantities of OMIDRIA and clinical drug supplies of our product candidates that are needed for clinical trials. We cannot provide any assurance that we will be able to enter into or maintain these types of arrangements on commercially reasonable terms, or at all. If we or the manufacturer were to terminate one of these arrangements early, or the manufacturer was unable to supply product quantities sufficient to meet our requirements, we would be required to transfer the manufacturing to an approved alternative facility and/or establish additional manufacturing and supply arrangements. We may also need to establish additional or replacement manufacturers, potentially with little or no notice, in the event that one of our manufacturers fails to comply with FDA and/or other pharmaceutical manufacturing regulatory requirements. Even if we are able to establish additional or replacement manufacturers, identifying these sources and entering into definitive supply agreements and obtaining regulatory approvals may require a substantial amount of time and cost and may create a shortage of the product. Such alternate supply arrangements may not be available on commercially reasonable terms, or at all. Additionally, if we are unable to engage multiple suppliers to manufacture our products, we may have inadequate supply to meet the demand of our product.

Our contract manufacturers may encounter difficulties with formulation and manufacturing processes that could result in delays in clinical trials and/or regulatory submissions or that could impact adversely the commercialization of our products or product candidates, as well as in the initiation of enforcement actions by the FDA and other regulatory authorities. These difficulties also could result in the recall or withdrawal of a product from the market or a failure to have adequate supplies to meet market demand. If the safety of OMIDRIA or any product candidate supplied by contract manufacturers is compromised due to one or more of those contract manufacturers' failure to adhere to applicable laws or for other reasons, we may not be able to maintain regulatory approval of OMIDRIA, to continue sales and marketing of OMIDRIA or to obtain and maintain regulatory approval for one or more of our product candidates, which would harm our business and prospects significantly.

In addition, any product candidate from our MASP-2, MASP-3 or Plasmin programs could be a biologic drug product, and we do not have the internal capability to produce biologics for use in clinical trials or on a commercial scale. There are only a limited number of manufacturers of biologic drug products and we cannot be certain that we can enter into supply agreements with a sufficient number of them on commercially reasonable terms, if at all. Any significant delays in the manufacture of clinical or commercial supplies could materially harm our business, financial condition, results of operations and prospects.

Manufacturing under our existing OMIDRIA manufacturing agreement with Patheon ceased at the end of 2015. Validation of the manufacturing process for OMIDRIA under our Hospira supply agreement has not been completed. We do not presently have an alternate manufacturing facility for OMIDRIA in operation and we do not expect that any OMIDRIA manufacturing facility will be approved for production before 2017 at the earliest. We anticipated this transition and increased production of OMIDRIA prior to the break in manufacturing, and believe that we will have sufficient supply to meet product

needs until OMIDRIA production is recommenced. However, we can provide no assurances if or when the Hospira manufacturing facility or any alternate manufacturing facility for OMIDRIA will be in production or whether we can meet market demand for OMIDRIA if demand is greater than we anticipate. Additionally, damage to or destruction of OMIDRIA inventory, including inventory warehoused at our third-party logistics provider, could also adversely affect our ability to meet market demand. We have obtained insurance coverage for the replacement cost of damaged or destroyed OMIDRIA inventory but such coverage would not compensate us for any resulting loss of sales revenue or a reduction in gross margin.

Ingredients, excipients and other materials necessary to manufacture OMIDRIA or our product candidates may not be available on commercially reasonable terms, or at all, which may adversely affect the development and commercialization of OMIDRIA or those product candidates.

We and our third-party manufacturers must obtain from third-party suppliers the active pharmaceutical ingredients, excipients, and/or other raw materials plus primary and secondary packaging materials necessary for our contract manufacturers to produce OMIDRIA and our product candidates for our clinical trials and, to the extent approved or commercialized, for commercial distribution. Although we have entered or intend to enter into agreements with third-party suppliers that will guarantee the availability and timely delivery of active pharmaceutical ingredients, excipients and materials for OMIDRIA and our product candidates, we have not yet entered into agreements for the supply of all such ingredients, excipients or materials, and we may be unable to secure all such supply agreements or guarantees on commercially reasonable terms, if at all. Even if we were able to secure such agreements or guarantees, our suppliers may be unable or choose not to provide us the ingredients, excipients or materials in a timely manner or in the quantities required. If we or our third-party manufacturers are unable to obtain the quantities of these ingredients, excipients or materials that are necessary for the manufacture of commercial supplies of OMIDRIA, our ability to generate revenue from the sale of OMIDRIA would be materially and adversely affected. Further, if we or our third-party manufacturers are unable to obtain active pharmaceutical ingredients, excipients and materials as necessary for our clinical trials or for the manufacture of commercial supplies of our product candidates, if approved, potential regulatory approval or commercialization would be delayed, which would materially and adversely affect our ability to generate revenue from the sale of our product candidates.

If our clinical trials are delayed, suspended or terminated, we may be unable to develop our product candidates on a timely basis, which would adversely affect our ability to obtain regulatory approvals, increase our development costs and delay or prevent commercialization of approved products.

We cannot predict whether we will encounter problems with any of our completed, ongoing or planned clinical trials that will cause regulatory agencies, Institutional Review Boards or Ethics Committees, or us to delay our clinical trials or suspend or delay the analysis of the data from those trials. Clinical trials can be delayed for a variety of reasons, including:

- discussions with the FDA, the EMA or other foreign authorities regarding the scope or design of our clinical trials;
- delays or the inability to obtain required approvals from Institutional Review Boards, Ethics Committees or other responsible entities at clinical sites selected for participation in our clinical trials;
- delays in enrolling patients into clinical trials for any reason including disease severity, trial protocol design, study eligibility criteria, patient population size (*e.g.*, for orphan diseases or for some pediatric indications), proximity and/or availability of clinical trial sites for prospective patients, availability of competing therapies and clinical trials, regional differences in diagnosis and treatment, perceived risks and benefits of the product or product candidate, physician patient referral practices or the ability to monitor patients adequately before and after treatment;
- lower than anticipated retention rates of patients in clinical trials;
- the need to repeat or conduct additional clinical trials as a result of inconclusive or negative results, failure to replicate positive early clinical data in subsequent clinical trials, failure to deliver an efficacious dose of a product candidate, poorly executed testing, a failure of a clinical site to adhere to the clinical protocol, an unacceptable study design or other problems;
- adverse findings in clinical or nonclinical studies related to the safety of our product candidates in humans;
- an insufficient supply of product candidate materials or other materials necessary to conduct our clinical trials;
- the need to qualify new suppliers of product candidate materials for FDA and foreign regulatory approval;
- an unfavorable inspection or review by the FDA or other regulatory authority of a clinical trial site or records of any clinical investigation;
- the occurrence of unacceptable drug-related side effects or adverse events experienced by participants in our clinical trials;
- the suspension by a regulatory agency of a trial put on a clinical hold; and

- the amendment of clinical trial protocols to reflect changes in regulatory requirements and guidance or other reasons as well as subsequent re-examination of amendments of clinical trial protocols by Institutional Review Boards or Ethics Committees.

In addition, a clinical trial or development program may be suspended or terminated by us, the FDA or other regulatory authorities, or Institutional Review Boards or Ethics Committees due to a number of factors, including:

- failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols;
- inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;
- the failure to remove a clinical hold in a timely manner (which we cannot predict with certainty), if at all;
- unforeseen safety issues or any determination that a trial presents unacceptable health risks;
- inability to deliver an efficacious dose of a product candidate; or
- lack of adequate funding to continue the clinical trial or development program, including the incurrence of unforeseen costs due to enrollment delays, requirements to conduct additional trials and studies and increased expenses associated with the services of our contract research organizations, or CROs, and other third parties.

If the results of our clinical trials are not available when we expect or if we encounter any delay in the analysis of data from our clinical trials, we may be unable to file for regulatory approval or conduct additional clinical trials on the schedule we currently anticipate. Many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of a product candidate. Any delays in completing our clinical trials could increase our development costs, could slow down our product development and regulatory submission process, could delay our receipt of product revenue and could make it difficult to raise additional capital. In addition, significant clinical trial delays also could allow our competitors to bring products to market before we do and impair our ability to commercialize our future products, potentially harming our business.

Because we have a number of product candidates and development programs, we may expend our limited resources to pursue a particular product candidate or indication and fail to capitalize on product candidates or indications for which there is a greater likelihood of obtaining regulatory approval and that may be more profitable, if approved.

We have limited resources and must focus on the product candidates and clinical and preclinical development programs that we believe are the most promising. As a result, we may forego or delay the pursuit of opportunities with other product candidates or other indications that later prove to have greater commercial potential and may not be able to progress development programs as rapidly as otherwise possible. Further, if we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product through collaboration, license or other royalty arrangements in cases in which it would have been advantageous for us to retain sole development and commercialization rights.

Our preclinical programs may not produce product candidates that are suitable for clinical trials, our product candidates may not successfully complete clinical development and/or our product candidates may not be suitable for successful commercialization or generation of revenue through partnerships.

We must complete successfully preclinical testing, which may include demonstrating efficacy and the lack of toxicity in established animal models, before commencing clinical trials for any product candidate. Many pharmaceutical and biological product candidates do not successfully complete preclinical testing. There can be no assurance that positive results from preclinical studies will be predictive of results obtained from subsequent preclinical studies or clinical trials. Even if preclinical testing is successfully completed, we cannot be certain that any product candidates that do advance into clinical trials will successfully demonstrate safety and efficacy in clinical trials. Even if we achieve positive results in early clinical trials, they may not be predictive of the results in later trials.

It is difficult and costly to protect our intellectual property and our proprietary technologies, and we may not be able to ensure their protection.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection for the use, formulation and structure of our products and product candidates, the methods used to manufacture them, the related therapeutic targets and associated methods of treatment as well as on successfully defending these patents against potential third-party challenges. Our ability to protect our products and product candidates from unauthorized making, using, selling, offering to sell or importing by third parties is dependent on the extent to which we have rights under valid and enforceable patents that cover these activities.

The patent positions of pharmaceutical, biotechnology and other life sciences companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. Changes in either the patent laws or in interpretations of patent laws in the U.S. and other countries may diminish the value of our intellectual property. Further, the determination that a patent application or patent claim meets all of the requirements for patentability is a subjective determination based on the application of law and jurisprudence. The ultimate determination by the USPTO or by a court or other trier of fact in the U.S., or corresponding foreign national patent offices or courts, on whether a claim meets all requirements of patentability cannot be assured. Although we have conducted searches for third-party publications, patents and other information that may affect the patentability of claims in our various patent applications and patents, we cannot be certain that all relevant information has been identified. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents or patent applications, in our licensed patents or patent applications or in third-party patents.

We cannot provide assurances that any of our patent applications will be found to be patentable, including over our own prior art patents, or will issue as patents. Neither can we make assurances as to the scope of any claims that may issue from our pending and future patent applications nor to the outcome of any proceedings by any potential third parties that could challenge the patentability, validity or enforceability of our patents and patent applications in the U.S. or foreign jurisdictions. Any such challenge, if successful, could limit patent protection for our products and product candidates and/or materially harm our business.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- we may not be able to generate sufficient data to support full patent applications that protect the entire breadth of developments in one or more of our programs, including our GPCR program;
- it is possible that one or more of our pending patent applications will not become an issued patent or, if issued, that the patent(s) will be sufficient to protect our technology, provide us with a basis for commercially viable products or provide us with any competitive advantages;
- if our pending applications issue as patents, they may be challenged by third parties as not infringed, invalid or unenforceable under U.S. or foreign laws; or
- if issued, the patents under which we hold rights may not be valid or enforceable.

In addition, to the extent that we are unable to obtain and maintain patent protection for one of our products or product candidates or in the event that such patent protection expires, it may no longer be cost-effective to extend our portfolio by pursuing additional development of a product or product candidate for follow-on indications.

We also may rely on trade secrets to protect our technologies or products, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators and other advisers may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third-party entity illegally obtained and is using any of our trade secrets is expensive and time-consuming, and the outcome is unpredictable. In addition, courts outside the U.S. are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights.

If we choose to go to court to stop someone else from using our inventions, that individual or company has the right to ask the court to rule that the underlying patents are invalid or should not be enforced against that third party. These lawsuits are expensive and would consume time and other resources even if we were successful in stopping the infringement of these patents. In addition, our lawsuit against such an entity could result in a finding that some or all of the claims of one or more of our relevant patents are invalid, unenforceable and/or not infringed, and could also result in a generic version of OMIDRIA being launched after the expiration of the mandatory three-year clinical data exclusivity for OMIDRIA. There is also the risk that, even if the validity of these patents is upheld, the court will refuse to stop the other party on the ground that such other party’s activities do not infringe our patents. An adverse outcome in such legal action could have a material negative effect on our financial condition, results of operations and/or stock price. See “Legal Proceedings” under Item 1 of Part II of this Quarterly Report on Form 10-Q for further discussion of our lawsuit against Par.

It may not be feasible to detect and undertake patent enforcement action to stop infringing activity by a number of individual entities, each on a small scale, such as compounding pharmacies. Further, our industry has produced a large number of patents and it is not always clear which patents cover various types of products or methods of use. A third party may claim that we or our contract manufacturers are using inventions covered by the third party's patent rights and may go to court to stop us from engaging in the alleged infringing activity, including making, using or selling our products and product candidates. These lawsuits are costly and could affect our results of operations and divert the attention of managerial and technical personnel. There is a risk that a court would decide that we, or our contract manufacturers, are infringing the third party's patents and would order us or our contractors to stop the activities covered by the patents. In addition, if we or our contract manufacturers are found to have violated a third party's patent, we or our contract manufacturers could be ordered to pay damages to the other party. We have agreed to or may agree to indemnify our contract manufacturers against certain patent infringement claims and thus may be responsible for any of their costs associated with such claims and actions. If we were sued for patent infringement, we would need to demonstrate that our products and product candidates or methods of use either do not infringe the patent claims of the relevant patent or that the patent claims are invalid, and we might be unable to do this. Proving invalidity, in particular, is difficult since it requires clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents.

Although we have conducted searches of third-party patents with respect to our programs, we have not obtained written freedom to operate opinions for our programs and may not have identified all relevant third-party patents. Consequently, we cannot be certain that third-party patents containing claims covering our products, product candidates, programs, technologies or methods do not exist, have not been filed, or could not be filed or issued.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the capital necessary to continue our operations.

We currently depend on a third party for the commercialization of OMS103 and we cannot guarantee that such commercialization will occur or be successful.

In June 2015 we entered into the OMS103 Agreement pursuant to which we granted Fagron an exclusive, royalty-free license to the OMS103 intellectual property, manufacturing information and clinical data to manufacture and commercialize OMS103 in the U.S. in exchange for potential future payments based on product revenue and achievement of commercial milestones. As a result of entering into the OMS103 Agreement, we discontinued our OMS103 clinical development program and are dependent on Fagron to commercialize OMS103 in the U.S. We cannot control whether Fagron will fulfill its obligations under the OMS103 Agreement or whether the commercialization of OMS103 will be successful. Fagron has not performed its diligence milestones in the OMS103 Agreement, including initiating sales of OMS103, and we are evaluating our options with respect to the OMS103 Agreement and the OMS103 program. If we elect to pursue arbitration with Fagron, and/or the OMS103 Agreement is terminated, we can provide no assurances that we will be able to enter into another licensing agreement or have sufficient resources to restart clinical development and conduct any clinical trials if desired. Any of the above risks, if realized, could adversely affect our results of operations.

Under Section 503B of the Federal Food, Drug, and Cosmetic Act, registered outsourcing facilities are required to manufacture under GMP and are subject to FDA inspections and audits. They also are not allowed to manufacture a product that is essentially a copy of one or more FDA-approved drugs. If a licensed registered outsourcing facility such as Fagron is prohibited from commercializing or from continuing commercial sales of OMS103 following initial commercialization because of violations of any FDA regulations or any other reason, our ability to generate revenue from royalty payments from the licensed registered outsourcing facility and achieve profitability will be adversely affected and the market price of our common stock could decline.

Our competitors may develop products that are less expensive, safer or more effective, or which may otherwise diminish or eliminate the commercial success of any products that we may commercialize.

We may not achieve commercial success if our competitors, many of whom have significantly more resources and experience than we, market products that are safer, more effective, less expensive or faster to reach the market than OMIDRIA or any future products that we may develop and commercialize. Our competitors also may market a product that proves to be unsafe or ineffective, which may affect the market for our competing product, or future product, regardless of the safety or efficacy of our product. The failure of OMIDRIA or any other future product that we may market to compete effectively with products marketed by our competitors would impair our ability to generate revenue, which would have a material adverse effect on our future business, our financial condition and our results of operations.

The loss of members of our management team could substantially disrupt our business operations.

Our success depends to a significant degree on the continued individual and collective contributions of our management team. The members of our management team are at-will employees, and we do not maintain any key-person life insurance policies other than on the life of Gregory A. Demopulos, M.D., our president, chief executive officer and chairman of the board of directors. Losing the services of any key member of our management team, whether from death or disability, retirement, competing offers or other causes, without having a readily available and appropriate replacement could delay the execution of our business strategy, cause us to lose a strategic partner, or otherwise materially affect our operations.

We rely on highly skilled personnel and, if we are unable to retain or motivate key personnel or hire qualified personnel, we may not be able to maintain our operations or grow effectively.

Our performance is largely dependent on the talents and efforts of highly skilled individuals. Our future success depends on our continuing ability to identify, hire, develop, motivate and retain highly skilled personnel for all areas of our organization. If we are unable to hire and train a sufficient number of qualified employees for any reason, we may not be able to implement our current initiatives or grow effectively. We have in the past maintained a rigorous, highly selective and time-consuming hiring process. We believe that our approach to hiring has significantly contributed to our success to date. If we do not succeed in attracting qualified personnel and retaining and motivating existing personnel, our existing operations may suffer and we may be unable to grow effectively.

We may encounter difficulties managing our growth, which could delay our business plans or adversely affect our results of operations.

To manage our anticipated future growth, we must continue to implement and improve our managerial, operational and financial systems and continue to recruit and train additional qualified personnel. Due to our limited financial resources, we may not be able to manage effectively the expansion of our operations or recruit and train additional qualified personnel. The physical expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our business plans or disrupt our operations. Additionally, our inability to manage growth effectively could cause our operating costs to grow even faster than we currently are anticipating.

Product liability claims may damage our reputation and, if insurance proves inadequate, these claims may harm our business.

We may be exposed to the risk of product liability claims that is inherent in the biopharmaceutical industry. A product liability claim may damage our reputation by raising questions about our product’s safety and efficacy and could limit our ability to sell one or more products by preventing or interfering with commercialization of our products and product candidates. In addition, product liability insurance for the biopharmaceutical industry is generally expensive to the extent it is available at all. There can be no assurance that we will be able to obtain or maintain such insurance on acceptable terms or that we will be able to secure and maintain increased coverage if the commercialization of OMIDRIA or our product candidates progresses, or that future claims against us will be covered by our product liability insurance. Further, our product liability insurance coverage may not reimburse us or may be insufficient to reimburse us for any or all expenses or losses we may suffer. A successful claim against us with respect to uninsured liabilities or in excess of insurance coverage could have a material adverse effect on our business, financial condition and results of operations.

We rely on third parties to conduct portions of our preclinical research and clinical trials. If these third parties do not perform as contractually required or otherwise expected, or if we fail to adequately supervise or monitor these parties, we may not be able to obtain regulatory approval for or commercialize our product candidates.

We rely on third parties, such as CROs, medical and research institutions and clinical investigators, to conduct a portion of our preclinical research and assist us in conducting our clinical trials. Nonetheless, we are responsible for confirming that our preclinical research and clinical trials are conducted in accordance with applicable regulations, the relevant trial protocol and within the context of approvals by an Institutional Review Board or Ethics Committee, and we may not always be successful in ensuring such compliance. Our reliance on these third parties does not relieve us of responsibility for ensuring compliance with FDA and other regulations and standards for conducting, monitoring, recording and reporting the results of preclinical research and clinical trials to assure that data and reported results are credible and accurate and that the trial participants are adequately protected. If these third parties do not successfully carry out their contractual duties or regulatory obligations or meet expected deadlines, if the third parties need to be replaced or if the quality or accuracy of the data they obtain is compromised due to their failure to adhere to our clinical protocols or regulatory requirements or for other reasons, our preclinical and clinical development processes may be extended, delayed, suspended or terminated, and we may not be able to commercialize or obtain regulatory approval for our product candidates.

We may need to maintain licenses for active ingredients from third parties to develop and commercialize some of our product candidates, which could increase our development costs and delay our ability to commercialize those product candidates.

Should we decide to use active pharmaceutical ingredients in any of our product candidates that are proprietary to one or more third parties, such as our PDE7 program (OMS527) or our plasmin program (OMS616), we would need to maintain licenses to those active ingredients from those third parties. If we are unable to continue to access rights to these active ingredients prior to conducting preclinical toxicology studies intended to support clinical trials, we may need to develop alternate product candidates from these programs by either accessing or developing alternate active ingredients, resulting in increased development costs and delays in commercialization of these product candidates. If we are unable to maintain continued access rights to the desired active ingredients on commercially reasonable terms or develop suitable alternate active ingredients, we may not be able to commercialize product candidates from these programs.

The terms of our debt facility place restrictions on our operating and financial flexibility and, if we raise additional capital through debt financing, the terms of any new debt could further restrict our ability to operate our business.

We have borrowed $80.0 million under the CRG Loan Agreement and pledged substantially all of our assets, including intellectual property, as collateral. The CRG Loan Agreement restricts our ability to, among other things, incur indebtedness, grant liens, dispose of assets, make investments, make acquisitions, enter into certain transactions with affiliates, pay cash dividends or make distributions, repurchase stock, license certain of our intellectual property on an exclusive basis and engage in significant business transactions such as a change of control. Any of these restrictions could significantly limit our operating and financial flexibility and ability to respond to changes in our business or competitive activities. In the event we do not achieve either of the minimum revenue amount or the minimum market capitalization threshold for a year, we can satisfy the requirement by raising additional funds through an equity or subordinated debt issuance and using the proceeds to pay down the loan balance by an amount equal to the difference between the minimum revenue amount for such year and the actual revenue amount for such year. We recorded net sales of OMIDRIA of $28.5 million for the nine months ended September 30, 2016, and we cannot provide assurance that we will generate sufficient revenue from OMIDRIA in the future to satisfy fully the net revenue covenants in 2017 and subsequent years during the term of the CRG Loan Agreement. We are also required to maintain $5.0 million in cash and cash equivalents during the term of the CRG Loan Agreement.

The failure to satisfy these or other obligations under the CRG Loan Agreement would constitute an event of default. An event of default under the CRG Loan Agreement also includes the occurrence of any material adverse effect upon our business, condition (financial or otherwise), operations, performance or property taken as a whole. If there is an event of default under the CRG Loan Agreement, the lenders may have the right to accelerate all of our repayment obligations under the CRG Loan Agreement and to take control of our pledged assets, which include substantially all of our assets including our intellectual property. Upon the acceleration of the loan, we will be required to repay the loan immediately or to attempt to reverse the declaration through negotiation or litigation. Further, if we are liquidated, the lenders' right to repayment would be senior to the rights of the holders of our common stock to receive any proceeds from the liquidation. Any declaration of an event of default could significantly harm our business and prospects and could cause our stock price to decline. If we raise any additional debt financing, the terms of such debt could further restrict our operating and financial flexibility.

Under the CRG Loan Agreement, we may borrow up to an additional $45.0 million if we are able to satisfy certain milestones relating to OMIDRIA revenues or an average market capitalization. If we are unable to satisfy the these milestones, we would not be able to borrow additional amounts under the CRG Loan Agreement, which may adversely affect our liquidity and require us to seek alternative sources of capital.

We use hazardous materials in our business and must comply with environmental laws and regulations, which can be expensive.

Our research operations produce hazardous waste products, which include chemicals and radioactive and biological materials. We are subject to a variety of federal, state and local regulations relating to the use, handling, storage and disposal of these materials. Although we believe that our safety procedures for handling and disposing of these materials comply with applicable legal regulations, the risk of accidental contamination or injury from these materials cannot be eliminated. We generally contract with third parties for the disposal of such substances and store our low-level radioactive waste at our facility until the materials are no longer considered radioactive. We may be required to incur further costs to comply with current or future environmental and safety regulations. In addition, although we carry insurance, in the event of accidental contamination or injury from these materials, we could be held liable for any damages that result and any such liability could exceed our insurance coverage and other resources.

Cyber-attacks or other failures in telecommunications or information technology systems could result in information theft, data corruption and significant disruption of our business operations.

We utilize information technology, or IT, systems and networks to process, transmit and store electronic information in connection with our business activities. As use of digital technologies has increased, cyber incidents, including deliberate attacks and attempts to gain unauthorized access to computer systems and networks, have increased in frequency and sophistication. These threats pose a risk to the security of our systems and networks, the confidentiality and the availability and integrity of our data. There can be no assurance that we will be successful in preventing cyber-attacks or successfully mitigating their effects. Similarly, there can be no assurance that our collaborators, CROs, third-party logistics providers, distributors and other contractors and consultants will be successful in protecting our clinical and other data that is stored on their systems. Any cyber-attack or destruction or loss of data could have a material adverse effect on our business and prospects. In addition, we may suffer reputational harm or face litigation or adverse regulatory action as a result of cyber-attacks or other data security breaches and may incur significant additional expense to implement further data protection measures.

Risks Related to Our Common Stock

Our stock price has been and may continue to be volatile, and the value of an investment in our common stock may decline.

During the 12-month period ended September 30, 2016, our stock traded as high as $16.80 per share and as low as $8.90 per share. The trading price of our common stock is likely to continue to be highly volatile and could be subject to wide fluctuations in response to numerous factors, many of which are beyond our control. In addition, the stock market has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of publicly traded companies. Broad market and industry factors may seriously affect the market price of companies' stock, including ours, regardless of actual operating performance. These fluctuations may be even more pronounced in the trading market for our stock. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company's securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management's attention and resources.

If we issue additional shares of our common stock or other securities that may be convertible into, or exercisable or exchangeable for, our common stock, our existing shareholders would experience further dilution.

To the extent that we raise additional funds in the future by issuing equity securities, including pursuant to our ATM Agreement with JonesTrading, our shareholders would experience dilution, which may be significant and could cause the market price of our common stock to decline significantly. In addition, approximately 9.4 million shares of common stock as of September 30, 2016 subject to outstanding options and warrants may become eligible for sale in the public market to the extent permitted by the provisions of various vesting agreements. Further, as of September 30, 2016 we also had approximately 1.9 million shares of common stock reserved for future issuance under our employee benefit plans that are not subject to outstanding options. If the holders of these outstanding options or warrants elect to exercise some or all of them, or if the shares subject to our employee benefit plans are issued and become eligible for sale in the public market, our shareholders would experience dilution and the market price of our common stock could decline.

Anti-takeover provisions in our charter documents and under Washington law could make an acquisition of us, which may be beneficial to our shareholders, difficult and prevent attempts by our shareholders to replace or remove our current management.

Provisions in our articles of incorporation and bylaws and under Washington law may delay or prevent an acquisition of us or a change in our management. These provisions include a classified board of directors, a prohibition on shareholder actions by less than unanimous written consent, restrictions on the ability of shareholders to fill board vacancies and the ability of our board of directors to issue preferred stock without shareholder approval. In addition, because we are incorporated in Washington, we are governed by the provisions of Chapter 23B.19 of the Washington Business Corporation Act, which, among other things, restricts the ability of shareholders owning 10% or more of our outstanding voting stock from merging or combining with us. Although we believe these provisions collectively provide for an opportunity to receive higher bids by requiring potential acquirers to negotiate with our board of directors, they would apply even if an offer may be considered beneficial by some shareholders. In addition, these provisions may frustrate or prevent any attempts by our shareholders to replace or remove our current management by making it difficult for shareholders to replace members of our board of directors, which is responsible for appointing the members of our management.

We have never declared or paid dividends on our capital stock, and we do not anticipate paying dividends in the foreseeable future.

Our business requires significant funding. We currently plan to invest all available funds and future earnings, if any, in the development and growth of our business. Additionally, under the CRG Loan Agreement, we have agreed not to pay any cash dividends. Therefore, we currently do not anticipate paying any cash dividends on our common stock in the foreseeable future. As a result, a rise in the market price of our common stock, which is uncertain and unpredictable, will be the sole source of potential gain for shareholders in the foreseeable future, and an investment in our common stock for dividend income should not be relied upon.

ITEM 6. EXHIBITS

Exhibit Number	Description
10.1††	Second Amendment to Pharmaceutical Manufacturing and Supply Agreement between Patheon Manufacturing Services (successor-in-interest to DSM Pharmaceuticals, Inc.) and Omeros Corporation dated August 24, 2016
10.2	Term Loan Agreement among Omeros Corporation, nura, inc., CRG Servicing LLC, as administrative agent, and certain lenders, dated October 26, 2016
10.3(1)	Form of Security Agreement among Omeros Corporation, nura, inc. and CRG Servicing LLC
12.1	Ratio of Earnings to Fixed Charges
31.1	Certification of Principal Executive Officer Pursuant to Rule 13-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Principal Financial Officer Pursuant to Rule 13-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Principal 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 Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

†† Portions of this exhibit are redacted in accordance with a request for confidential treatment.

(1) Incorporated by reference to Exhibit 10.2 of the registrant's Current Report on Form 8-K filed on October 27, 2016 (File No. 001-34475).

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.

OMEROS CORPORATION

Dated: November 9, 2016

/s/ Gregory A. Demopulos

Gregory A. Demopulos, M.D.

President, Chief Executive Officer and Chairman of the Board of Directors

Dated: November 9, 2016

/s/ Michael A. Jacobsen

Michael A. Jacobsen

Vice President, Finance, Chief Accounting Officer and Treasurer

Exhibit 10.1

CONFIDENTIAL TREATMENT REQUESTED under 17 C.F.R. § 200.80(b)(4) and 240.24b-2

Second Amendment to

Pharmaceutical Manufacturing and Supply Agreement

This is an Amendment (this "**Amendment**") to the Pharmaceutical Manufacturing and Supply Agreement dated **March 5, 2014**, as previously amended July 7, 2015 between DSM Pharmaceuticals, Inc. ("**DSM**") and Omeros Corporation ("**Omeros**") (the "**Master Agreement**"), and is entered into as of August 24, 2016 (the "**Amendment Effective Date**"). All initially capitalized terms in this Amendment shall have the same meaning as set forth in the Master Agreement unless otherwise defined herein.

Whereas, DSM's right and obligations under the Master Agreement were assigned to and assumed by Patheon Manufacturing Services LLC ("**Patheon**") as of May 31, 2014.

Whereas the Master Agreement provides for the manufacture of Omeros' Product OMS302, which has been approved by FDA as OMIDRIA® (phenylephrine and ketorolac injection) 1%/0.3%, pursuant to which Patheon has been providing fill and finish services for Product at Patheon's [†] facility in [†] ("**Patheon** [†] **Facility**") and labeling and packaging services for such Product at Patheon's [†] facility in [†] ("**Patheon** [†] **Facility**"), and Patheon ceased filling and finishing manufacturing at the Patheon [†] Facility as of December 31, 2015, which is the end of the Initial Term of the Master Agreement (the "**Initial Term Expiration Date**").

Whereas Omeros and Patheon are working towards entry into a Master Manufacturing Services Agreement for fill and finish manufacture of Product at the Patheon [†] Facility, and Omeros and Patheon wish to provide for the labeling and packaging at the Patheon [†] Facility after the Initial Term Expiration Date of Product that has been filled and finished at the Patheon [†] Facility on or before the Initial Term Expiration Date.

Therefore Omeros and Patheon agree that the Master Agreement shall be hereby amended as follows:

Section 11.1 of the Master Agreement shall be revised to read as follows:

> 11.1 Term. Unless sooner terminated pursuant to the terms hereof or otherwise extended by mutual written agreement of the Parties, the term of this Agreement shall commence on the Effective Date and shall continue in force and effect until December 31, 2016 (the "Initial Term"), provided, however, that the Parties agree that DSM and its successors-in-interest shall have no obligation under this Agreement after December 31, 2015 to provide manufacturing, processing, purifying, formulating, or finishing Manufacturing services for Product at DSM's [†] facility located in [†] or at any other facility, but shall be obligated until December 31, 2016 only to provide packaging, labeling, holding, handling, storing, preparing for shipment, inspecting and quality control and stability testing Manufacturing services at Patheon's [†] facility located in [†] for Product that was filled and finished prior to December 31, 2015 at DSM's [†] facility located in [†] .

All other terms of the Master Agreement shall remain unchanged and in full force and effect.

† DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT FILED SEPARATELY WITH THE COMMISSION

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment as of the Amendment Effective Date set forth above.

PATHEON MANUFACTURING SERVICES LLC

By: /s/ Christie James

Name: Christie James

Title: Director, Business Management

OMEROS CORPORATION

By: /s/ Marcia S. Kelbon

Name: Marcia S. Kelbon

Title: General Counsel & Secretary

† DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT FILED SEPARATELY WITH THE COMMISSION

Exhibit 10.2

EXECUTION VERSION

TERM LOAN AGREEMENT

dated as of

October 26, 2016

among

OMEROS CORPORATION,
as Borrower,

The Subsidiary Guarantors from Time to Time Party Hereto,

The Lenders from Time to Time Party Hereto,

and

CRG SERVICING LLC,
as Administrative Agent and Collateral Agent

U.S. $125,000,000

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SCHEDULES AND EXHIBITS

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Exhibit F - Form of Landlord Consent
Exhibit G - Form of Subordination Agreement
Exhibit H - Form of Intercreditor Agreement
Exhibit I - Form of Non-Disturbance Agreement

TERM LOAN AGREEMENT, dated as of October 26, 2016 (this "***Agreement***"), among OMEROS CORPORATION, a Washington corporation ("***Borrower***"), the Subsidiary Guarantors from time to time party hereto, the Lenders from time to time party hereto and CRG SERVICING LLC, a Delaware limited liability company ("***CRG Servicing***"), as administrative agent and collateral agent for the Lenders (in such capacities, together with its successors and assigns, "***Administrative Agent***").

WITNESSETH:

Borrower has requested the Lenders to make term loans to Borrower, and the Lenders are prepared to make such loans on and subject to the terms and conditions hereof. Accordingly, the parties agree as follows:

SECTION 1
DEFINITIONS

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

"***Accounting Change Notice***" has the meaning set forth in **Section 1.04(a)**.

"***Act***" has the meaning set forth in **Section 13.17**.

"***Acquisition***" means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of a take-over bid, tender offer, amalgamation, merger, purchase of assets, or similar transaction having the same effect as any of the foregoing, (a) acquires all or substantially all of the assets of any Person engaged in any business or any division, product or line of business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing body if the business affairs of such Person are managed by a board of directors or other governing body, or (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body.

"***Affected Lender***" has the meaning set forth in **Section 2.06(a)**.

"***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. For purposes of **Section 7.10(c)**, no Person shall be an "Affiliate" solely by reason of owning less than a majority of any class of voting securities of Borrower.

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

"***Anti-Corruption Laws***" means all laws, rules, and regulations of any jurisdiction applicable to any Obligor, its Subsidiaries or Affiliates from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"***Anti-Money Laundering Laws***" means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to any Obligor, its Subsidiaries or Affiliates related to terrorism financing or money laundering, including any applicable provision of the Act and The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

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

"***Asset Transaction Net Proceeds***" means the aggregate amount of the cash proceeds received by an Obligor or any Subsidiary from any Asset Transaction plus, with respect to any non-cash proceeds of an Asset Transaction, the fair market value of such non cash proceeds as reasonably determined by Borrower's board of directors in accordance with GAAP; *provided*, *however*, that Asset Transaction Net Proceeds shall be net of (A) amounts required to be applied to the repayment of any Indebtedness (or other obligations) secured by a Lien on an asset which is the subject of such Asset Transaction (other than any Indebtedness required to be paid hereunder) and, in the case of any Asset Transaction under **Section 9.09(h)**, amounts required to be paid pursuant to the Vulcan Agreement and the LSDF Agreement, (B) Taxes paid or reasonably estimated to be payable as a result thereof, (C) the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable as a result thereof (*provided* that, upon any termination of such reserves, all such amounts not paid out in connection therewith shall be deemed to be "Asset Transaction Net Proceeds" of such Asset Transaction) and (D) the amount of any short-term liabilities directly associated with such asset and retained by Borrower or any of its Subsidiaries.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an assignee of such Lender.

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

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

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

"***Borrower Facility***" means the premises located at 201 Elliott Avenue West, Seattle, Washington, which are leased by Borrower pursuant to the Borrower Lease.

"***Borrower Landlord***" means BMR-201 Elliott Avenue LLC.

"***Borrower Lease***" means the Lease Agreement dated January 27, 2012 by and between Borrower and Borrower Landlord and all amendments thereto.

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

"***Borrowing***" means a borrowing consisting of Loans made on the same day by the Lenders according to their respective Commitments (including without limitation a borrowing of

a PIK Loan).

"***Borrowing Date***" means the date of a Borrowing.

"***Borrowing Notice Date***" means, (a) in the case of the first Borrowing, a date that is at least two Business Days prior to the Borrowing Date of such Borrowing and, (b) in the case of a subsequent Borrowing (other than a PIK Loan), a date that is at least twenty calendar days prior to the Borrowing Date of such Borrowing.

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

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

"***Change of Control***" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert of capital stock representing more than 25% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Borrower, (b) during any period of twelve (12) consecutive calendar months, the occupation of a majority of the seats (other than vacant seats) on the board of directors of Borrower by Persons who were neither (i) nominated by the board of directors of Borrower, nor (ii) appointed by directors so nominated, or (c) the acquisition of direct or indirect Control of Borrower by any Person or group of Persons acting jointly or otherwise in concert; in each case whether as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise.

"***Claims***" means any claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions, informations (brought by a public prosecutor without grand jury indictment) or other similar processes, assessments or reassessments.

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

"***Collateral***" means any Property in which a Lien is purported to be granted under any of the Security Documents (or all such Property, as the context may require).

"***Commitment***" means, with respect to each Lender, the obligation of such Lender to make Loans to Borrower in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender's name on **Schedule 1** under the caption "Commitment", as such Schedule may be amended from time to time. The aggregate Commitments on the date hereof equals $125,000,000. For purposes of clarification, the amount of any PIK Loans shall not reduce the amount of the available Commitment.

"***Commitment Period***" means the period from and including the first date on which all of the conditions precedent set forth in **Sections 6.01** and **6.02** have been satisfied (or waived by the Lenders) and through and including March 21, 2018.

"***Commodity Account***" has the meaning set forth in the Security Agreement.

"***Compliance Certificate***" has the meaning given to such term in **Section 8.01(c)**.

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

"***Contracts***" means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied).

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

"***Controlled Foreign Corporation***" means a "controlled foreign corporation" as defined in Section 957(a) of the Code.

"***Copyright***" has the meaning set forth in the Security Agreement.

"***Cure Amount***" has the meaning set forth in **Section 10.03(a)**.

"***Cure Right***" has the meaning set forth in **Section 10.03(a)**.

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

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

"***Defaulting Lender***" means, subject to **Section 2.05**, any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified Borrower or any Lender that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, or (c) has, or has a direct or indirect parent company that has, (i) become the subject of an Insolvency Proceeding, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; *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.

"***Demopulos Indemnity Agreement***" means that certain agreement, dated June 17, 2016, pursuant to which Borrower agrees to indemnify Computershare on behalf of Peter Demopulos in connection with a lost stock certificate.

"***Deposit Account***" is defined in the Security Agreement.

"***Disclosure Letter***" means that certain Disclosure Letter relating to this Agrement of even date herewith and as amended from time to time to which certain of the Schedules referenced and identified herein are attached.

"***Disqualified Equity***" means Equity Interests of a Person subject to repurchase or redemption rights or obligations (excluding repurchases or redemptions at the sole option of such Person).

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

"***Effective Date***" shall mean October 26, 2016.

"***Eligible Transferee***" means a commercial bank, an insurance company, a finance company, a financial institution, any investment fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; *provided* that, for any entity becoming a Lender on or prior to the earlier of (x) the expiration of the Commitment Period and (y) the Borrowing Date for the third Borrowing, such entity (if not an Affiliate of Administrative Agent or a fund managed by CRG LP or its Affiliates) shall (a) have (i) a rating of BBB or higher from S&P Global Ratings and a rating of Baa2 or higher from Moody's Investors Service, Inc. at the date that it becomes a Lender or (ii) total assets in excess of $1,000,000,000 and (b) through its applicable lending office, be capable of lending to Borrower without the imposition of any withholding or similar taxes; *provided further* that, so long as no Event of Default has occurred and is continuing, an Eligible Transferee shall not include any Person that has been identified in writing by Borrower to the Lenders and that develops, manufactures, produces, markets or sells a product in direct competition with Borrower or any of its products or product candidates.

"***Environmental Law***" means any federal, state, provincial or local governmental law, rule, regulation, order, writ, judgment, injunction or decree relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of hazardous materials, and all local laws and regulations related to environmental matters and any specific agreements entered into with any competent authorities which include commitments related to environmental matters.

"***Equity Cure Right***" has the meaning set forth in **Section 10.03(a)**.

"***Equity Interest***" means, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that

confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, but excluding debt securities convertible or exchangeable into such equity.

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

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

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

"***ERISA Event***" means (a) a reportable event as defined in Section 4043 of ERISA with respect to a Title IV Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event; (b) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any Title IV Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following 30 days; (c) a withdrawal by any Obligor or any ERISA Affiliate thereof from a Title IV Plan or the termination of any Title IV Plan resulting in liability under Sections 4063 or 4064 of ERISA; (d) the withdrawal of any Obligor or any ERISA Affiliate thereof in a complete or partial withdrawal (within the meaning of Section 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Obligor or any ERISA Affiliate thereof of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Title IV Plan or Multiemployer Plan; (f) the imposition of liability on any Obligor or any ERISA Affiliate thereof pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (g) the failure by any Obligor or any ERISA Affiliate thereof to make any required contribution to a Plan, or the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Title IV Plan (whether or not waived in accordance with Section 412(c) of the Code) or the failure to make by its due date a required installment under Section 430 of the Code with respect to any Title IV Plan or the failure to make any required contribution to a Multiemployer Plan; (h) the determination that any Title IV Plan is considered an at-risk plan or a plan in endangered to critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (i) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan; (j) the imposition of any liability under Title I (other than the payment of benefits under the terms of a Benefit Plan) or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or any ERISA Affiliate thereof; (k) an application for a funding waiver under Section 303 of ERISA or an extension of any amortization period pursuant to Section 412 of the

Code with respect to any Title IV Plan; (l) the occurrence of a non-exempt prohibited transaction under Sections 406 or 407 of ERISA for which any Obligor or any Subsidiary thereof could reasonably be expected to be directly or indirectly liable; (m) a violation of the applicable requirements of Section 404 or 405 of ERISA or the exclusive benefit rule under Section 401(a) of the Code by any fiduciary or disqualified person for which any Obligor or any ERISA Affiliate thereof could reasonably be expected to be directly or indirectly liable; (n) the occurrence of an act or omission which could give rise to the imposition on any Obligor or any ERISA Affiliate thereof of material fines, penalties, taxes or related charges under Chapter 43 of the Code or under Sections 409, 502(c), (i) or (1) or 4071 of ERISA; (o) the assertion of a material claim (other than routine claims for benefits) against any Plan or the assets thereof, or against any Obligor or any Subsidiary thereof in connection with any such plan; (p) receipt from the IRS of a notice of the failure of any Qualified Plan to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Qualified Plan to fail to qualify for exemption from taxation under Section 501(a) of the Code; (q) the imposition of any lien (or the fulfillment of the conditions for the imposition of any lien) on any of the rights, properties or assets of any Obligor or any ERISA Affiliate thereof, in either case pursuant to Title I or IV, including Section 303(k) of ERISA or to Section 430(k) of the Code; or (r) the establishment or amendment by any Obligor or any Subsidiary thereof of any "welfare plan", as such term is defined in Section 3(1) of ERISA, that provides post-employment welfare benefits in a manner that would increase the liability of any Obligor (other than COBRA or similar post-employment benefits required by applicable Laws).

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

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

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

"***Exchange Rate***" means the rate at which any currency (the "***Pre-Exchange Currency***") may be exchanged into another currency (the "***Post-Exchange Currency***"), as set forth on such date on the relevant Reuters screen at or about 11:00 a.m. (Central time) on such date. In the event that such rate does not appear on the Reuters screen, the "Exchange Rate" with respect to exchanging such Pre-Exchange Currency into such Post-Exchange Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by Borrower and Administrative Agent or, in the absence of such agreement, such Exchange Rate shall instead be determined by Administrative Agent by any reasonable method as they deem applicable to determine such rate, and such determination shall be conclusive absent manifest error.

"***Excluded Foreign Subsidiary***" means any Foreign Subsidiary that is (i) a Controlled Foreign Corporation or (ii) a Foreign Subsidiary owned by a Subsidiary described in clause

"***Excluded Taxes***" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (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 applicable lending office located in, the jurisdiction imposing such Tax, or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes that are imposed on amounts payable to a Lender to the extent that the obligation to withhold amounts existed on the date that such Lender became a "Lender" under this Agreement (other than pursuant to an assignment request by Borrower under Section 5.03(g)), except in each case to the extent such Lender is a direct or indirect assignee of any other Lender that was entitled, at the time the assignment of such other Lender became effective, to receive additional amounts under **Section 5.03**, (c) any U.S. federal withholding Taxes imposed in connection with FATCA, and (d) Taxes attributable to such Recipient's failure to comply with **Section 5.03(e)**.

"***Expense Cap***" has the meaning set forth in the Fee Letter.

"***Fagron License***" means that certain License Agreement effective as of June 9, 2015, as amended, supplemented or otherwise modified from time to time, by and among Borrower, JCB Laboratories, LLC and Fagron Compounding Services, LLC dba Fagron Sterile Services.

"***Fagron Replacement License***" means any exclusive license related to OMS103 granted to one or more third party compounding entities to replace or supplement the Fagron License; *provided* that (i) such license shall not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise transfer any Intellectual Property of Borrower (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction), (ii) such license shall be substantially similar in scope of licensed rights to those of the Fagron License, (iii) such license agreement shall not be terminable by the other party thereto in the event of a change of control of the Borrower, (iv) shall be assignable by the Borrower in connection with a sale of all or substantially all of its assets and all or substantially all of the assets subject to the license and (v) Borrower shall promptly deliver to Administrative Agent a copy of the final executed transaction documents in connection with any such license promptly upon consummation thereof, which (for the avoidance of doubt) shall be deemed Information of Borrower for purposes of **Section 13.16**).

"***FATCA***" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not more onerous to comply with), any regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"***Federal Funds Effective Rate***" means, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for the day of such transactions received by Administrative Agent from three federal funds brokers of recognized standing selected by it.

"***Fee Letter***" means that fee letter agreement dated as of the date hereof between Borrower and Administrative Agent.

"***First-Tier Foreign Subsidiary***" means an Excluded Foreign Subsidiary that is a direct Subsidiary of an Obligor.

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

"***Foreign Subsidiary***" means a Subsidiary of Borrower that is not a U.S. Person.

"***GAAP***" means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. Subject to **Section 1.02**, all references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the financial statements described in **Section 7.04(a)**.

"***Governmental Approval***" means any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"***Governmental Authority***" means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any State, territory, county, city or other political subdivision of the United States.

"***Guarantee***" of or by any Person (the "***guarantor***") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "***primary obligor***") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; *provided* that the term Guarantee shall not include (1) the Demopulos Indemnity Agreement or (2) endorsements for collection or deposit in the ordinary course of business. 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.

"***Guarantee Assumption Agreement***" means a Guarantee Assumption Agreement substantially in the form of **Exhibit A** by an entity that, pursuant to **Section 8.12(a)**, is required to become a "Subsidiary Guarantor" hereunder.

"***Guaranteed Obligations***" has the meaning set forth in **Section 14.01**.

"***Hazardous Material***" means any substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (a) asbestos, polychlorinated biphenyls and petroleum (including crude oil or any fraction thereof) and (b) any material classified or regulated as "hazardous" or "toxic" or words of like import pursuant to an Environmental Law.

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

"***Indebtedness***" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or obligations of such Person with respect to deposits or advances of any kind by third parties, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness or obligations of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) obligations under any Hedging Agreement currency swaps, forwards, futures or derivatives transactions and (k) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

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

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

"***Information***" has the meaning set forth in **Section 13.16**.

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

"***Intellectual Property***" means all Patents, Trademarks, Copyrights, and Technical Information, whether registered or not, domestic and foreign. Intellectual Property shall include all:

(a) applications or registrations relating to such Intellectual Property;

(b) rights and privileges arising under applicable Laws with respect to such Intellectual Property;

(c) rights to sue for past, present or future infringements of such Intellectual Property; and

(d) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

"***Interest-Only Period***" means the period from and including the first Borrowing Date and through and including the seventeenth (17th) Payment Date following the first Borrowing Date; *provided* that, if Borrower achieves (a) the Revenue Milestone or (b) an Average Market Capitalization of at least $1,000,000,000 during the fourth calendar quarter of 2020, the Interest-Only Period shall be extended through and including the twenty third (23rd) Payment Date following the first Borrowing Date.

"***Interest Period***" means, with respect to each Borrowing, (a) initially, the period commencing on and including the Borrowing Date thereof and ending on and excluding the next Payment Date, and, (b) thereafter, each period beginning on and including the last day of the immediately preceding Interest Period and ending on and excluding the next succeeding Payment Date.

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

"***Investment***" means, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of

credit having a term not exceeding 180 days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (d) the entering into of any Hedging Agreement.

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

"***Knowledge***" means, with respect to any Person, the actual knowledge of any Responsible Officer of such Person and, in the case of Borrower, so long as he or she is employed by Borrower or its Subsidiaries, the actual knowledge of Gregory Demopulos and Michael Jacobsen, so long as such Person is an officer of Borrower.

"***Landlord Consent***" means a Landlord Consent substantially in the form of **Exhibit F**.

"***Laws***" means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"***Lender***" means each Person listed as a "Lender" on a signature page hereto, together with its successors, and each assignee of a Lender pursuant to **Section 13.05(b)**.

"***Lien***" means any mortgage, lien, pledge, charge or other security interest, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) or other encumbrance of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest.

"***Liquidity***" means the balance of unencumbered (other than Liens securing the Obligations and Liens permitted pursuant to **Section 9.02(c)** and **Section 9.02(j)**; *provided* that, with respect to cash subject to a Lien in connection with Permitted Priority Debt, there is no default under the documentation governing the Permitted Priority Debt) cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines), in each case, to the extent held in an account over which the Secured Parties have a perfected security interest, subject to **Section 8.15(b)**.

"***Loan***" means (a) each loan advanced by a Lender pursuant to **Section 2.01** and (b) each PIK Loan deemed to have been advanced by a Lender pursuant to **Section 3.02(d)**. For purposes of clarification, any calculation of the aggregate outstanding principal amount of Loans on any date of determination shall include both the aggregate principal amount of loans advanced pursuant to **Section 2.01** and not yet repaid, and all PIK Loans deemed to have been advanced and not yet repaid, on or prior to such date of determination.

"***Loan Documents***" means, collectively, this Agreement, the Fee Letter, the Security Documents, the Perfection Certificate, any subordination agreement or any intercreditor

agreement entered into by Administrative Agent (on behalf of the Lenders) with any other creditors of Obligors or any agent acting on behalf of such creditors, and any other present or future document, instrument, agreement or certificate executed by Obligors and delivered to Administrative Agent or any Secured Party in connection with or pursuant to this Agreement or any of the other Loan Documents, all as amended, restated, supplemented or otherwise modified.

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

"***LSDF Agreement***" means that certain grant award agreement, dated as of October 21, 2010, between Life Sciences Discovery Fund Authority, a granting agency in the state of Washington, and Borrower.

"***Majority Lenders***" means, at any time, Lenders having at such time in excess of 50% of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect, ignoring, in such calculation, the Commitments of and outstanding Loans owing to any Defaulting Lender.

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

"***Market Cap Threshold***" means, as of any date of determination, the product of (a) 6.4 and (b) the aggregate outstanding principal amount of Loans outstanding (excluding any PIK Loans) under this Agreement on such date of determination.

"***Market Capitalization***" means, as of any date of determination, the product of (a) the number of shares of Borrower's common stock outstanding as of such date of determination and (b) the closing price of Borrower's common stock (as quoted on Bloomberg L.P.'s page located at http://www.bloomberg.com/quote/OMER:US or any successor page thereto of Bloomberg L.P. or if such page is not available, any other commercially available source providing quotations of such closing price as designated by Administrative Agent from time to time) on such date of determination. "Average Market Capitalization" for any period shall be calculated as the arithmetic mean of the Market Capitalization for each trading day during such period.

"***Material Adverse Change***" and "***Material Adverse Effect***" mean a material adverse change in or effect on (a) the business, condition (financial or otherwise), operations, performance or Property of Borrower and its Subsidiaries taken as a whole, (b) the ability of any Obligor to perform its obligations under the Loan Documents or (c) the legality, validity, binding effect or enforceability of the Loan Documents or the rights and remedies of Administrative Agent or any Lender under any of the Loan Documents; *provided*, *however*, that a Material Adverse Change or Material Adverse Effect shall not be deemed to occur solely because of the expiration of the pass-through reimbursement status for the Product on December 31, 2017; *provided* that the deterioration of Borrower's overall financial condition (whether or not as a consequence of such expiration), taken as a whole, could give rise to a Material Adverse Change or Material Adverse Effect.

"***Material Agreements***" means (a) the agreements which are listed in **Schedule 7.14** to the Disclosure Letter (as updated by Borrower from time to time in accordance with **Section 7.20** to list all such agreements that meet the description set forth in clause (b) and (c) of this definition), (b) material inbound and outbound license agreements and (c) all other agreements held by the Obligors from time to time, the absence or termination of any of which would reasonably be expected to result in a Material Adverse Effect; *provided*, *however*, that "Material Agreements" exclude all: (i) licenses implied by the sale of a product; (ii) paid-up licenses for commonly available software programs under which an Obligor is the licensee; and (iii) the Fagron License. "Material Agreement" means any one such agreement.

"***Material Indebtedness***" means, at any time, any Indebtedness of any Obligor, the outstanding principal amount of which, individually or in the aggregate, exceeds $1,000,000 (or the Equivalent Amount in other currencies).

"***Material Intellectual Property***" means, the Obligor Intellectual Property described in **Schedule 7.05(c)** to the Disclosure Letter and any other Obligor Intellectual Property after the date hereof the loss of which could reasonably be expected to have a Material Adverse Effect.

"***Maturity Date***" means the earlier to occur of (a) the Stated Maturity Date, and (b) the date on which the Loans are accelerated pursuant to **Section 11.02**.

"***Maximum Rate***" has the meaning set forth in **Section 13.18**.

"***Minimum Required Revenue***" has the meaning set forth in **Section 10.02(a)**.

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

"***Non-Consenting Lender***" has the meaning set forth in **Section 2.06(a)**.

"***Notice of Borrowing***" has the meaning set forth in **Section 2.02**.

"***Notice of Intent to Cure***" has the meaning set forth in **Section 10.03(a)**.

"***Obligations***" means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Lender, any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (a) if such Obligor is Borrower, all Loans, (b) all interest accruing under the Loan Documents, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed

in any such proceeding, and (c) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

"***Obligor Intellectual Property***" means Intellectual Property owned by or licensed to any of the Obligors.

"***Obligors***" means, collectively, Borrower and the Subsidiary Guarantors and their respective successors and permitted assigns.

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

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

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

"***Oxford Agreement***" means that certain Loan and Security Agreement, dated as of December 30, 2015, among Oxford Finance LLC, a Delaware limited liability company, as collateral agent, the lenders from time to time party thereto, East West Bank, a California state-chartered bank, and Borrower, and any amendments thereto.

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

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

"***Patents***" has the meaning set forth in the Security Agreement.

"***Payment Date***" means each March 31, June 30, September 30, December 31 and the Maturity Date, commencing on the first such date to occur following the first Borrowing Date; *provided* that, if any such date shall occur on a day that is not a Business Day, the applicable Payment Date shall be the next preceding Business Day.

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

"***Perfection Certificate***" means that certain Perfection Certificate dated as of the date

hereof delivered by Borrower to Administrative Agent.

"***Permitted Acquisition***" means any acquisition by Borrower or any of its wholly-owned Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; *provided* that:

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

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable Laws and in conformity with all applicable Governmental Approvals;

(c) in the case of the acquisition of all of the Equity Interests of such Person, all of the Equity Interests (except for any such securities in the nature of directors' qualifying shares required pursuant to applicable Law) acquired, or otherwise issued by such Person or any newly formed Subsidiary of Borrower in connection with such acquisition, shall be owned 100% by an Obligor or any other Subsidiary, and each Obligor and Subsidiary shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary, each of the actions set forth in **Section 8.12**, if applicable;

(d) Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in **Section 10.01** and **Section 10.02** on a *pro forma* basis after giving effect to such acquisition; and

(e) such Person (in the case of an acquisition of Equity Interests) or assets (in the case of an acquisition of assets or a division) (i) shall be engaged or used, as the case may be, in the same, similar, related or complementary business or lines of business, or businesses ancillary thereto, in which Borrower and/or its Subsidiaries are engaged or (ii) shall have a similar, related or complementary customer base as Borrower and/or its Subsidiaries.

"***Permitted Cash Equivalent Investments***" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State or (if it has at least an A-1 rating from S&P Global Ratings or a successor thereto or at least a P-1 rating from Moody's Investors Service, Inc. or a successor thereto) municipality thereof having maturities of not more than two (2) years from the date of acquisition and (b) commercial paper maturing no more than one (1) year after its creation and having at least an A-1 rating from S&P Global Ratings or a successor thereto or at least a P-1 rating from Moody's Investors Service, Inc. or a successor thereto; (c) any certificate of deposit (or time deposit represented by a certificate of deposit), overnight bank deposit or banker's acceptance maturing not more than one year after such time, or any overnight federal funds transaction that is issued or sold by a commercial banking institution that (i) is a member of the Federal Reserve System, rated at least A by S&P Global Ratings or a successor thereto or A2 by Moody's Investors Service, Inc. by a successor thereto and (ii) has a combined capital and surplus and undivided profits of not less than $500,000,000; (d) money market accounts or mutual funds which invest substantially all

assets in assets described in clauses (a) through (c) above; and (e) other short-term liquid investments approved in writing by Administrative Agent.

"***Permitted Commercialization Arrangement***" means such commercialization, research and development, co-marketing and other collaborative arrangements, including joint ventures, where such arrangements provide for exclusive licenses to Patents, Trademarks, Copyrights or other Intellectual Property rights and assets of Borrower with Persons (including a Permitted Commercialization Arrangement Vehicle) with a primary line of business in the development, commercialization or manufacture of medical, biologics or pharmaceutical products or devices; *provided that* such licenses (a) must be bona fide arms'-length transfers of the right to use such Intellectual Property that do not have the economic substance of a sale and Borrower retains legal ownership of such Intellectual Property and (b) shall constitute Material Agreements.

"***Permitted Commercialization Arrangement Vehicle***" means an entity, which may be a joint venture enterprise, engaged in the business of a Permitted Commercialization Arrangement and in which Borrower or its Subsidiaries have substantial representation in the governing body of such entity.

"***Permitted Cure Debt***" means Indebtedness incurred in connection with the exercise of the Subordinated Debt Cure Right and (a) that is governed by documentation containing representations, warranties, covenants and events of default no more burdensome or restrictive than those contained in the Loan Documents unless such terms are also offered to Lenders hereunder, (b) that has a maturity date later than the Maturity Date, (c) in respect of which no cash payments of principal or interest are required prior to the Maturity Date, and (d) in respect of which the holders have agreed in favor of Borrower, Administrative Agent and Lenders (i) that prior to the date on which the Commitments have expired or been terminated and all Obligations (other than inchoate indemnification obligations) have been paid in full indefeasibly in cash, such holders will not exercise any remedies available to them in respect of such Indebtedness, (ii) that such Indebtedness is unsecured, and (iii) to terms of subordination in substantially the form attached hereto as **Exhibit G** or otherwise satisfactory to the Majority Lenders.

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

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

"***Permitted Priority Debt***" means Indebtedness of Borrower under one working capital revolving credit facility in an amount not to exceed at any time 80% of the face amount at such time of Borrower's eligible accounts receivable outstanding; *provided* that (a) such Indebtedness, if secured, is secured solely by Borrower's cash (other than proceeds of any protective advances made by Administrative Agent or any of the Lenders after the date hereof, proceeds from the Collateral that does not secure such Permitted Priority Debt and the proceeds from the exercise of any Cure Right), accounts receivable, inventory and cash proceeds thereof held in a segregated account but otherwise is not secured by any property (including, without limitation, any Intellectual Property or proceeds thereof), and (b) the holders or lenders thereof have executed and delivered to Administrative Agent an intercreditor agreement in substantially the form of **Exhibit H** and with such changes (if any) as are reasonably satisfactory to the Majority Lenders.

"***Permitted Priority Liens***" means (a) Liens permitted under **Section 9.02(c), (d), (e), (f), (g), (j)** and **(k)**, and (b) Liens permitted under **Section 9.02(b)**; *provided* that such Liens are also of the type described in **Section 9.02(c), (d), (e), (f), (g), (j)** and **(k)**.

"***Permitted Refinancing***" means, with respect to any Indebtedness, any extensions, renewals and replacements of such Indebtedness; *provided* that such extension, renewal or replacement (a) shall not increase the outstanding principal amount of such Indebtedness except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such extension, renewal and replacement, (b) contains terms relating to outstanding principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole no less favorable in any material respect to Borrower and its Subsidiaries or the Secured Parties than the terms of any agreement or instrument governing such existing Indebtedness, (c) shall have an applicable interest rate which does not exceed the rate of interest of the Indebtedness being replaced, and (d) shall not contain any new requirement to grant any lien or security or to give any guarantee that was not an existing requirement of such Indebtedness.

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

"***PIK Loan***" has the meaning set forth in **Section 3.02(d)**.

"***PIK Period***" means the period beginning on the first Borrowing Date through and including the earlier to occur of (a) the sixteenth (16th) Payment Date after the first Borrowing Date (or if Borrower has achieved the Revenue Milestone, the twenty third (23rd) Payment Date after the first Borrowing Date) and (b) the date on which any Default or Event of Default shall have occurred (*provided* that if such Default or Event of Default shall have been cured or waived, the PIK Period shall resume until the earlier to occur of the next Default or Event of Default and the sixteenth (16th) Payment Date (or if Borrower has achieved the Revenue Milestone, the twenty third (23rd) Payment Date) after the first Borrowing Date.

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

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

"***Product***" means OMIDRIA®(phenylephrine and ketorolac injection) 1%/0.3%, and each of its successors.

"***Property***" of any Person means any property or assets, or interest therein, of such Person.

"***Proportionate Share***" means, with respect to any Lender, the percentage obtained by dividing (a) the sum of the Commitment (or, if the Commitments are terminated, the outstanding

principal amount of the Loans) of such Lender then in effect by (b) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

"***Public Filings***" means Borrower's annual report on Form 10-K for the most recent fiscal year then ended, its quarterly report on Form 10-Q for the most recent quarter then ended and its current reports on Form 8-K, in each case filed with the SEC.

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

"***Real Property Security Documents***" means the Landlord Consent and any mortgage or deed of trust or any other real property security document executed or required hereunder to be executed by any Obligor and granting a security interest in real Property owned or leased (as tenant) by any Obligor in favor of the Secured Parties.

"***Recipient***" means Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any Obligation.

"***Redemption Date***" has the meaning set forth in **Section 3.03(a)**.

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

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

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

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

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

"***Regulatory Approvals***" means any registrations, licenses, authorizations, permits or approvals issued by any Governmental Authority and applications or submissions related to any of the foregoing.

"***Related Person***" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"***Requirement of Law***" means, as to any Person, any statute, law, treaty, rule or regulation or determination, order, injunction or judgment of an arbitrator or a court or other

Governmental Authority, in each case applicable to or binding upon such Person or any of its Properties or Revenues.

"***Research Partner***" has the meaning set forth in **Section 9.01(w)**.

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

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of capital stock of Borrower or any of its Subsidiaries or any payment made to retire, or to require the surrender of, any option, warrant or other right to acquire any such shares of capital stock of Borrower or any of its Subsidiaries.

"***Restrictive Agreement***" has the meaning set forth in **Section 7.15**.

"***Revenue***" means revenue properly recognized under GAAP, consistently applied, less all rebates, discounts and other price allowances. For the avoidance of doubt, Revenue of the Obligors shall exclude any Revenue of any Subsidiary that is not a Guarantor.

"***Revenue Milestone***" means the Obligors achieve Revenue from the sale of the Product of at least $100,000,000 during the consecutive twelve (12) month period ending on December 31, 2019; *provided* that (a) Borrower shall have delivered to Administrative Agent a notice certifying satisfaction of the Revenue Milestone no later than the earlier of (i) 75 days thereafter and (ii) the date on which Borrower announces its earnings publicly, (b) Borrower shall have delivered all information reasonably required by Administrative Agent with respect thereto and (c) Administrative Agent shall have been reasonably satisfied with the results of a review of the Revenue Milestone by examining such information, the Obligors' books and records and any other information reasonably related thereto.

"***Sanctioned Jurisdiction***" means any country or territory to the extent that such country or territory is the subject of any Sanction.

"***Sanctioned Person***" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Jurisdiction or (c) any Person owned or Controlled by any such Person or Persons described in clauses (a) and (b).

"***Sanctions***" means any international economic sanction administered or enforced by the United State Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority.

"***SEC***" means the U.S. Securities and Exchange Commission.

"***Secured Parties***" means the Lenders, Administrative Agent, each other Indemnified Party and any other holder of any Obligation.

"***Security Agreement***" means the Security Agreement, dated as of the date hereof, among the Obligors and Administrative Agent, granting a security interest in the Obligors' personal Property in favor of the Secured Parties.

"***Security Agreement Disclosure Letter***" means that certain Disclosure Letter relating to the Security Agreement of even date herewith and as amended from time to time to which certain of the Annexes referenced and identified herein are attached.

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

"***Securities Account***" has the meaning set forth in the Security Agreement.

"***Short-Form IP Security Agreements***" means short-form copyright, patent or trademark (as the case may be) security agreements entered into by one or more Obligors in favor of the Secured Parties, each in form and substance reasonably satisfactory to the Majority Lenders (and as amended, modified or replaced from time to time).

"***Solvent***" means, with respect to any Person at any time, that (a) the present fair saleable value of the Property of such Person is greater than the total amount of liabilities (including contingent liabilities) of such Person, (b) the present fair saleable value of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured and (c) such Person has not incurred and does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature.

"***Specified Financial Covenants***" has the meaning set forth in **Section 10.03(a)**.

"***Stated Maturity Date***" means the twenty-fourth (24^{th}) Payment Date following the first Borrowing Date.

"***Subordinated Debt Cure Right***" has the meaning set forth in **Section 10.03(a)**.

"***Subsidiary***" means, with respect to any Person (the "***parent***") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless the context requires

otherwise, "Subsidiary" refers to a Subsidiary of Borrower.

"***Subsidiary Guarantors***" means each of the Subsidiaries of Borrower identified under the caption "SUBSIDIARY GUARANTORS" on the signature pages hereto and each Subsidiary of Borrower that becomes, or is required to become, a "Subsidiary Guarantor" after the date hereof pursuant to **Section 8.12(a) or (b)**.

"***Substitute Lender***" has the meaning set forth in **Section 2.06(a)**.

"***Tax Affiliate***" means (a) Borrower and its Subsidiaries, (b) each other Obligor and (c) any Affiliate of an Obligor with which such Obligor files or is eligible to file consolidated, combined or unitary Tax returns.

"***Tax Returns***" has the meaning set forth in **Section 7.08**.

"***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.

"***Technical Information***" means all trade secrets and other proprietary or confidential information, public information, non-proprietary know-how, any information of a scientific, technical, or business nature in any form or medium, standards and specifications, conceptions, ideas, innovations, discoveries, Invention disclosures, all documented research, developmental, demonstration or engineering work and all other information, data, plans, specifications, reports, summaries, experimental data, manuals, models, samples, know-how, technical information, systems, methodologies, computer programs, information technology and any other information.

"***Title IV Plan***" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by any Obligor or any ERISA Affiliate thereof or to which any Obligor or any ERISA Affiliate thereof has ever made, or was obligated to make, contributions, and (ii) that is or was subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA.

"***Trademarks***" is defined in the Security Agreement.

"***Transactions***" means the execution, delivery and performance by each Obligor of this Agreement and the other Loan Documents to which such Obligor is intended to be a party and the Borrowings (and the use of the proceeds of the Loans).

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

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

"***UCC***" means the Uniform Commercial Code as in effect from time to time.

"***Vulcan Agreement***" means that certain Platform Development Funding Agreement,

dated as of October 21, 2010, among Borrower, Vulcan Inc. and Vulcan Venture Capital II LLC, as assignee of Cougar Investment Holdings LLC.

"***Vulcan Lien Subordination Agreement***" means that certain Lien Subordination Agreement, dated as of December 30, 2015, among Oxford Finance LLC, Vulcan Inc., Vulcan Capital Venture Capital II LLC and Borrower.

"***Vulcan Obligations***" means the obligations of Borrower to make payments in respect of the Assigned Interest as defined in and pursuant to the Vulcan Agreement.

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

"***Withholding Agent***" means any Obligor and Administrative Agent.

1.02 Accounting Terms and Principles. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP; *provided* that, for purposes of determining compliance with any covenant or the existence of any Default or Event of Default hereunder, in determining whether a lease is required to be accounted for as a capital lease or an operating lease, such determination shall be based on GAAP as in effect on the date of this Agreement. All components of financial calculations made to determine compliance with this Agreement, including **Section 10**, shall be adjusted to include or exclude, as the case may be, from and after the consummation thereof, without duplication, such components of such calculations attributable to any Acquisition, or disposition, consummated after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by Borrower based on assumptions expressed therein and that were reasonable based on the information available to Borrower at the time of preparation of the Compliance Certificate setting forth such calculations.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, (a) the terms defined in this Agreement include the plural as well as the singular and vice versa; (b) words importing gender include all genders; (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement, the Disclosure Letter or the Security Agreement Disclosure Letter, as applicable; (d) any reference to "this Agreement" refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision; (e) references to days, months and years refer to calendar days, months and years, respectively; (f) all references herein to "include" or "including" shall be deemed to be followed by the words "without limitation"; (g) the word "from" when used in connection with a period of time means "from and including" and the word "until" means "to but not including"; and (h) accounting terms not specifically defined herein shall be construed in accordance with GAAP (except for the term "property," which shall be interpreted as broadly as possible, including, in any case, cash, securities, other assets, rights under contractual obligations and permits and any right or interest in any property, except where otherwise noted). Unless otherwise expressly

provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all permitted subsequent amendments, restatements, extensions, supplements and other modifications thereto.

1.04 Changes to GAAP. If, after the date hereof, any change occurs in GAAP or in the application thereof and such change would cause any amount required to be determined for the purposes of the covenants to be maintained or calculated pursuant to **Section 8**, **9** or **10** to be materially different than the amount that would be determined prior to such change, then:

(a) Borrower will provide a detailed notice of such change (an "***Accounting Change Notice***") to Administrative Agent with the delivery of the next Compliance Certificate;

(b) either Borrower or the Majority Lenders may indicate within 90 days following the date of the Accounting Change Notice that they wish to revise the method of calculating such financial covenants or amend any such amount, in which case the parties will in good faith attempt to agree upon a revised method for calculating the financial covenants;

(c) until Borrower and the Majority Lenders have reached agreement on such revisions, (i) such financial covenants or amounts will be determined without giving effect to such change and (ii) all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP;

(d) if no party elects to revise the method of calculating the financial covenants or amounts, then the financial covenants or amounts will not be revised and will be determined in accordance with GAAP without giving effect to such change; and

(e) any Event of Default arising as a result of such change which is cured by operation of this **Section 1.04** shall be deemed to be of no effect *ab initio*.

SECTION 2
THE COMMITMENT

2.01 Commitments. Each Lender agrees severally, on and subject to the terms and conditions of this Agreement (including **Section 6**), to make up to three term loans (*provided* that PIK Loans shall be deemed not to constitute "term loans" for purposes of this **Section 2.01**) to Borrower, each on a Business Day during the Commitment Period in Dollars in an aggregate principal amount for such Lender not to exceed such Lender's unfunded Commitment; *provided*, *however*, that no Lender shall be obligated to make a Loan in excess of such Lender's Proportionate Share of the applicable amount of borrowing set forth in **Section 6.02(b)**, **Section 6.03(c)** or **Section 6.04(c)**, as applicable. Amounts of Loans repaid may not be reborrowed.

2.02 Borrowing Procedures. Subject to the terms and conditions of this Agreement (including **Section 6**), each Borrowing (other than a Borrowing of PIK Loans) shall be made on written notice in the form of **Exhibit B** given by Borrower to Administrative Agent not later than 11:00 a.m. (Central time) on the Borrowing Notice Date (a "***Notice of Borrowing***").

2.03 Fees. Borrower shall pay to Administrative Agent and/or the Lenders, as applicable, such fees as described in the Fee Letter.

2.04 Use of Proceeds. Borrower shall use the proceeds of the Loans to repay outstanding Indebtedness, for general working capital purposes and general corporate purposes and to pay fees, costs and expenses incurred in connection with the Transactions; *provided* that the Lenders shall have no responsibility as to the use of any proceeds of Loans.

2.05 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 **Section 13.04**.

(ii) **Reallocation of Payments**. Any payment of principal, interest, fees or other amounts received by the Lenders for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 11** or otherwise), shall be applied at such time or times as follows: first, as Borrower may request (so long as no 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; second, if so determined by the Majority Lenders and Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; third, 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; fourth, so long as no Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (A) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans were made at a time when the conditions set forth in **Section 6** 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. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this **Section 2.05(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure**. If Borrower and the Majority Lenders agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as necessary to cause the Loans to be held on a *pro rata* basis by the Lenders in accordance with their Proportionate Share, whereupon that Lender

will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of 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.

2.06 Substitution of Lenders.

(a) **Substitution Right**. If any Lender (an "***Affected Lender***"), (i) becomes a Defaulting Lender or (ii) does not consent to any amendment, waiver or consent to any Loan Document for which the consent of the Majority Lenders is obtained but that requires the consent of other Lenders (a "***Non-Consenting Lender***"), then (x) Borrower may elect to pay in full such Affected Lender with respect to all Obligations due to such Affected Lender (which, for the avoidance of doubt, in the case of a Lender being replaced due to being a Defaulting Lender, shall not include any Prepayment Premium due) or (y) either Borrower or Administrative Agent shall identify any willing Lender or Affiliate of any Lender or Eligible Transferee (in each case, a "***Substitute Lender***") to substitute for such Affected Lender; *provided* that any substitution of a Non-Consenting Lender shall occur only with the written consent of Administrative Agent and Borrower, which consent may not be unreasonably withheld.

(b) **Procedure**. To substitute such Affected Lender or pay in full all Obligations owed to such Affected Lender, Borrower shall deliver a notice to such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery by Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender (which for the avoidance of doubt, shall not include any Prepayment Premium) and (ii) in the case of a substitution, an Assignment and Assumption executed by the Substitute Lender, which shall thereunder, among other things, agree to be bound by the terms of the Loan Documents; *provided*, *however*, that, if the Affected Lender does not execute such Assignment and Assumption within ten (10) Business Days of delivery of the notice required hereunder, such Affected Lender shall be deemed to have executed such Assignment and Assumption.

(c) **Effectiveness**. Upon satisfaction of the conditions set forth in **Sections 2.06(a)** and **(b)**, Administrative Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full of an Affected Lender, such Affected Lender's Commitments shall be terminated and (ii) in the case of any substitution of an Affected Lender, (A) such Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents, except that the Affected Lender shall retain such rights under the Loan Documents that expressly provide that they survive the repayment of the Obligations and the termination of the Commitments, (B) such Affected Lender shall no longer constitute a "Lender" hereunder and such Substitute Lender shall become a "Lender" hereunder and (C) such Affected Lender shall execute and deliver an Assignment and Assumption to evidence such substitution; *provided*, *however*, that the failure of any Affected Lender to execute any such Assignment and Assumption shall not render such sale and purchase (or the corresponding assignment) invalid.

2.07 Permitted Commercialization Arrangements. Lenders each understand and agree that Borrower and its Subsidiaries will enter into Permitted Commercialization Arrangements that will, in the reasonable opinion of Borrower's board of directors, support the business and operations of the Company and permit Borrower to repay the Obligations as such Obligations become due hereunder. Subject to Section 4.04(d) of the Security Agreement, the Administrative Agent further agrees to cooperate reasonably with Borrower in entering into, implementing and amending such Permitted Commercialization Arrangements, which cooperation will include entering into Non-Disturbance Agreements substantially in the form attached as **Exhibit I** hereto or other similar agreements with modifications requested by the other parties thereto that shall not be unreasonably refused (viewed with respect to Administrative Agent's rights to protect its rights, collateral and priority under the Loan Documents) by Administrative Agent.

SECTION 3
PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayment.

(a) **Repayment**. During the Interest-Only Period, no scheduled payments of principal of the Loans shall be due. Borrower agrees to repay to the Lenders the outstanding principal amount of the Loans, on each Payment Date occurring after the Interest-Only Period, in equal installments; *provided* that, if Borrower achieves the Revenue Milestone or an Average Market Capitalization of at least $1,000,000,000 during the fourth calendar quarter of 2020, repayment of the outstanding principal amount of the Loans shall be due in a single payment on the Stated Maturity Date. The amounts of such installments shall be calculated by dividing (i) the sum of the aggregate principal amount of the Loans outstanding on the first day following the end of the Interest-Only Period, by (ii) the number of Payment Dates remaining prior to and including the Stated Maturity Date.

(b) **Application**. Any optional or mandatory prepayment of the Loans shall be applied to the installments thereof under **Section 3.01(a)** in the inverse order of maturity. To the extent not previously paid, the principal amount of the Loans, together with all other outstanding Obligations, shall be due and payable on the Maturity Date.

3.02 Interest.

(a) **Interest Generally**. Subject to **Section 3.02(d)**, Borrower agrees to pay to the Lenders interest on the unpaid principal amount of the Loans, for the period from the applicable Borrowing Date until paid in full, at a rate *per annum* equal to 12.25%; *provided* that, upon achievement of the Revenue Milestone and so long as no Default or Event of Default has occurred and is continuing, commencing with the first month thereafter, Borrower agrees to pay such interest at a rate *per annum* equal to 11.50%.

(b) **Default Interest**. Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the interest payable pursuant to **Section 3.02(a)** shall increase automatically by 4.00% *per annum* (such aggregate increased rate, the "***Default Rate***"). Notwithstanding any other provision herein (including **Section 3.02(d)**), if interest is required to

be paid at the Default Rate, it shall be paid entirely in cash. If any Obligation other than the unpaid principal amount of the Loans is not paid when due under the applicable Loan Document, the amount thereof shall accrue interest at a rate equal to 4.00% *per annum* (without duplication of interest payable at the Default Rate).

(c) **Interest Payment Dates**. Subject to **Section 3.02(d)**, accrued interest on the Loans shall be payable in arrears on each Payment Date with respect to the most recently completed Interest Period in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid); *provided* that interest payable at the Default Rate shall be payable from time to time on demand.

(d) **Paid In-Kind Interest**. Notwithstanding **Section 3.01(a)**, at any time during the PIK Period, Borrower may elect to pay the interest on the outstanding principal amount of the Loans payable pursuant to **Section 3.01** as follows: (i) if Borrower has not achieved the Revenue Milestone, (1) only 8.25% of the 12.25% *per annum* interest in cash and (2) 4.00% of the 12.25% *per annum* interest as compounded interest, added to the aggregate principal amount of the Loans and (ii) if Borrower has achieved the Revenue Milestone, (1) only 8.00% of the 11.50% *per annum* interest in cash and (2) 3.50% of the 11.50% per annum interest as compounded interest, added to the aggregate principal amount of the Loans (in each case, the amount of any such compounded interest in this Section 3.02(d) being a "***PIK Loan***"). The principal amount of each PIK Loan shall accrue interest in accordance with the provisions of this Agreement applicable to the Loans.

3.03 Prepayments.

(a) **Optional Prepayments**. Upon not less than three (3) Business Days' prior written notice to Administrative Agent (or such shorter period as may be agreed to in Administrative Agent's sole discretion), Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans on any Business Day (a "***Redemption Date***") for an amount equal to the aggregate principal amount of the Loans being prepaid plus the Prepayment Premium, if any, plus any accrued but unpaid interest and any fees then due and owing (such aggregate amount, the "***Redemption Price***"). The applicable "***Prepayment Premium***" shall be an amount calculated pursuant to **Section 3.03(a)(i)**.

(i) If the Redemption Date occurs:

(A) on or prior to the fourth (4^{th}) Payment Date, the Prepayment Premium shall be an amount equal to 8.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(B) after the fourth (4^{th}) Payment Date, and on or prior to the eighth (8^{th}) Payment Date, the Prepayment Premium shall be an amount equal to 6.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date;

(C) after the eighth (8^{th}) Payment Date, and on or prior to the twelfth (12^{th}) Payment Date, the Prepayment Premium shall be an amount equal to 4.00% of the aggregate outstanding principal amount of the Loans being prepaid on such Redemption Date; and

(D) after the twelfth (12^{th}) Payment Date, there shall be no Prepayment Premium owing on any such Redemption Date.

(ii) For purposes of this Section 3.03(a), the number of Payment Dates shall be deemed to be the number of Payment Dates that shall have occurred following the first Borrowing Date.

(iii) No partial prepayment shall be made under this **Section 3.03(a)** in connection with any event described in **Section 3.03(b)**.

The Prepayment Premium in this **Section 3.03(a)** shall be in addition to any payments required pursuant to the Fee Letter.

(b) **Mandatory Prepayments.**

(i) **Asset Transactions**. In the event of any Asset Transaction or series of Asset Transactions (other than any Asset Transaction permitted under **Section 9.09(a)**, **(b)**, **(c)**, **(d)**, **(h)**, **(i)**, **(j)** or **(m)** or any Permitted Commercialization Arrangements, excluding in each case any such transaction or arrangement consisting of or including an exclusive license of the Intellectual Property in a field of use or scope covering the Product within the United States), yielding Asset Transaction Net Proceeds in excess of $1,000,000 in the aggregate (or, in the case of Asset Transactions permitted under **Section 9.09(h)**, yielding Asset Transaction Net Proceeds in excess of $5,000,000 individually or $20,000,000 in the aggregate for all such Asset Transactions), Borrower shall provide five (5) days' prior written notice of the closing of such Asset Transaction to Administrative Agent and, if within such notice period Majority Lenders or Administrative Agent advise Borrower that the Majority Lenders require a prepayment pursuant to this **Section 3.03(b)(i)**, Borrower shall: (x) if the assets sold, transferred, leased or licensed represent all or substantially all of the assets of the Obligors, prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Asset Transaction in accordance with **Section 3.03(a)**, and (y) in the case of all other Asset Transactions not described in the foregoing **clause (x)**, prepay the Loans in an amount equal to the amount of the Asset Transaction Net Proceeds of such Asset Transaction credited in the following order:

(A) first, in reduction of Borrower's obligation to pay any unpaid interest and any fees then due and owing (including any fees payable pursuant to the Fee Letter);

(B) second, in reduction of Borrower's obligation to pay any Claims or Losses referred to in **Section 13.03** then due and owing;

(C) third, in reduction of Borrower's obligation to pay any amounts due and owing on account of the unpaid principal amount of the Loans;

(D) fourth, in reduction of any other Obligation then due and owing; and

(E) fifth, to Borrower or such other Persons as may lawfully be entitled to or directed by Borrower to receive the remainder.

(ii) **Change of Control**. In the event of a Change of Control, Borrower shall immediately provide notice of such Change of Control to Administrative Agent and, if within 10 days of receipt of such notice Majority Lenders or Administrative Agent advise Borrower that the Majority Lenders require a prepayment pursuant to this **Section 3.03(b)(ii)**, Borrower shall prepay the outstanding Loans in an amount equal to the Redemption Price applicable on the date of such Change of Control in accordance with **Section 3.03(a)** and any fees payable pursuant to the Fee Letter.

SECTION 4
PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally**. Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made in Dollars, in immediately available funds, without deduction, set off or counterclaim, to an account to be designated by Administrative Agent by notice to Borrower, not later than 4:00 p.m. (Central time) on the date that is five (5) Business Days prior to the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) **Application of Payments**. Each Obligor shall, at the time of making each payment under this Agreement or any other Loan Document, specify to Administrative Agent the amounts payable by such Obligor hereunder to which such payment is to be applied (and in the event that Obligors fail to so specify, or if an Event of Default has occurred and is continuing, the Lenders may apply such payment in the manner they determine to be appropriate).

(c) **Non-Business Days**. If the due date of any payment under this Agreement (other than of principal of or interest on the Loans) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of 360 days and actual days elapsed during the period for which payable.

4.03 Notices. Each notice of optional prepayment shall be effective only if received by Administrative Agent not later than 4:00 p.m. (Central time) on the date three (3) Business Days prior to the date of prepayment (or such shorter period as may be agreed to in Administrative Agent's sole discretion). Each notice of optional prepayment shall specify the amount to be prepaid and the date of prepayment.

4.04 Set-Off.

(a) **Set-Off Generally**. Upon the occurrence and during the continuance of any Event of Default, each of Administrative Agent, each Lender and each of their Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by Administrative Agent, any Lender

and any of their Affiliates to or for the credit or the account of any Obligor against any and all of the Obligations, whether or not such Person shall have made any demand and although such obligations may be unmatured. Administrative Agent and each Lender agree promptly to notify Borrower after any such set-off and application, *provided* that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Administrative Agent, each Lender and each of their Affiliates under this **Section 4.04** are in addition to other rights and remedies (including other rights of set-off) that such Persons may have.

(b) **Exercise of Rights Not Required**. Nothing contained herein shall require Administrative Agent, any Lender or any of their respective Affiliates to exercise any such right or shall affect the right of such Person to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of any Obligor.

4.05 Pro Rata Treatment.

(a) Unless Administrative Agent shall have been notified in writing by any Lender prior to the proposed date of any Borrowing that such Lender will not make the amount that would constitute its share of such Borrowing available to Administrative Agent, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such date in accordance with **Section 2**, and Administrative Agent may, in reliance upon such assumption, make available to Borrower a corresponding amount. If such amount is not in fact made available to Administrative Agent by the required time on the applicable Borrowing Date therefor, such Lender and Borrower severally agree to pay to Administrative Agent forthwith, on demand, such corresponding amount with interest thereon, for each day from and including the date on which such amount is made available to Borrower but excluding the date of payment to Administrative Agent, at (i) in the case of a payment to be made by such Lender, a rate equal to the greater of (A) the Federal Funds Effective Rate and (B) a rate reasonably determined by Administrative Agent in accordance with banking industry rules on interbank compensation. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(b) Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender, 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 Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank

compensation. Nothing herein shall be deemed to limit the rights of Administrative Agent or any Lender against any Obligor.

(c) If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the principal of or interest on any Loan made by it or other obligations hereunder, as applicable (other than pursuant to a provision hereof providing for non-pro rata treatment), in excess of its Proportionate Share, of such payment on account of the Loans, such Lender shall (i) notify Administrative Agent of the receipt of such payment, and (ii) within five (5) Business Days of such receipt purchase (for cash at face value) from the other Lenders, as applicable (directly or through Administrative Agent), without recourse, such participations in the Loans made by them or make such other adjustments as shall be equitable, as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders in accordance with their respective Proportionate Shares, as applicable; *provided*, *however*, that (A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest and (B) the provisions of this paragraph shall not be construed to apply to (x) any payment made by 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 (y) any payment obtained by a Lender as consideration for the assignment or sale of a participation in any of its Loans to any assignee or participant, other than to Borrower or any of its Affiliates (as to which the provisions of this paragraph shall apply). Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this **Section 4.05(c)** may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. No documentation other than notices and the like referred to in this **Section 4.05(c)** shall be required to implement the terms of this **Section 4.05(c)**. Administrative Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this **Section 4.05(c)** and shall in each case notify the Lenders following any such purchase. Borrower consents on behalf of itself and each other Obligor 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 each Obligor rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Obligor in the amount of such participation.

SECTION 5
YIELD PROTECTION, ETC.

5.01 Additional Costs.

(a) **Change in Requirements of Law Generally**. If, on or after the date hereof, the adoption of any Requirement of Law, or any change in any Requirement of Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve

System), special deposit, contribution, insurance assessment or similar requirement, in each case that becomes effective after the date hereof, against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or shall impose on a Lender (or its lending office) any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, by an amount deemed by such Lender to be material (other than (i) Indemnified Taxes, (ii) Taxes described in **clauses (b)** through **(d)** of the definition of "Excluded Taxes" and (iii) Connection Income Taxes), then Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements**. If a Lender shall have determined that, on or after the date hereof, the adoption of any Requirement of Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof, has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender's obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender**. Each Lender (directly or through Administrative Agent) will promptly notify Borrower in writing of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this **Section 5.01**, and such notice must describe the event and provide a computation of the additional amount claimed, all in reasonable detail. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of the Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Requirements of Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

(e) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to

demand such compensation; *provided*, *however*, that no Obligor shall be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender notifies Obligor of the adoption of or change in any Requirement of Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the adoption of or change in any Requirement of Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Borrower in writing thereof following which (a) the Lender's Commitment shall be suspended until such time as such Lender may again make and maintain the Loans hereunder and (b) if such Requirement of Law shall so mandate, the Loans shall be prepaid by Borrower on or before such date as shall be mandated by such Requirement of Law; *provided*, *however*, that, notwithstanding anything contained herein to the contrary, no Prepayment Premium shall be owing on the date of such prepayment solely as a result of a prepayment pursuant to this **Section 5.02**.

5.03 Taxes.

(a) **Payments Free of Taxes**. Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the Applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by Borrower**. The Obligors shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of each Lender, timely reimburse it for, Other Taxes.

(c) **Evidence of Payments**. As soon as practicable after any payment of Taxes by any Obligor to a Governmental Authority pursuant to this **Section 5**, such Obligor shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment.

(d) **Indemnification**. The Obligors shall jointly and severally reimburse and indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided* that Borrower shall not be required to indemnify a Recipient pursuant to this **Section 5.03(d)** to the extent that such Recipient fails to notify Borrower of its intent to make a claim for indemnification under this Section within 180 days after a claim is asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender shall be conclusive absent manifest error.

(e) **Status of Lenders**.

(i) Any Lender that is entitled to an exemption from, or reduction of withholding Tax with respect to payments made under any Loan Document shall timely deliver to Borrower (directly or through Administrative Agent) such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding; *provided* that, other than in the case of U.S. federal withholding Taxes, such Lender has received written notice from Borrower advising it of the availability of such exemption or reduction and containing all applicable documentation. In addition, any Lender shall timely deliver (directly or through Administrative Agent) such other documentation prescribed by applicable law as reasonably requested by Borrower or Administrative Agent as will enable Borrower or 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 5.03(e)(ii)(A)**, **(B) or (D)**) 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 Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to Borrower (directly or through 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 Borrower), executed originals of IRS Form W-9 (or successor form) certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (directly or through Administrative Agent and 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 Borrower), 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 originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or successor form), establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or successor form), 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 originals of IRS Form W-8ECI (or successor form);

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit C-1** to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the applicable 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 originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable (or successor form); or

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

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower (directly or through Administrative Agent and 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 Borrower), executed originals 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 Borrower 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 Borrower (directly or through Administrative Agent) at the time or times prescribed by law as reasonably requested by Borrower or Administrative Agent any necessary forms and information reasonably

requested by Borrower or Administrative Agent to establish that such Lender is not subject to withholding tax under FATCA.

(iii) Each Lender agrees that if any form or certification it previously delivered becomes inaccurate in any respect or if Borrower notifies such Lender that any form or certification such Lender previously made available has expired or become obsolete in any respect, such Lender shall update such form or certification or promptly notify Borrower in writing of its legal inability to do so.

(f) **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 5** (including by the payment of additional amounts pursuant to this **Section 5**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(f)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(f)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This **Section 5.03(f)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) **Mitigation Obligations**. If Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or this **Section 5.03**, then such Lender shall (at the request of Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

SECTION 6
CONDITIONS PRECEDENT

6.01 Conditions to Effectiveness.

(a) **Documentary Deliveries**. The Lenders shall have received the following documents on the Effective Date, each of which shall be in form and substance reasonably satisfactory to the Lenders:

(i) **Agreement**. This Agreement duly executed and delivered by Borrower and each of the other parties hereto.

(ii) **Fee Letter**. The Fee Letter, duly executed and delivered by Borrower and Administrative Agent.

(iii) **Perfection Certificate**. The Perfection Certificate, duly executed and delivered by Borrower.

(iv) **Disclosure Letter**. The Disclosure Letter, duly executed and delivered by Borrower.

(b) **No Default; Representations and Warranties**. Both immediately prior to the execution of this Agreement on the Effective Date and after giving effect thereto:

(i) no Default shall have occurred and be continuing;

(ii) the representations and warranties in **Section 7** shall be true on and as of the Effective Date in all material respects (unless qualified by materiality or Material Adverse Effect, in which case they shall be true and correct in all respects); and

(iii) no Material Adverse Effect has occurred or is reasonably likely to occur.

6.02 Conditions to the First Borrowing. The obligation of each Lender to make a Loan as part of the first Borrowing shall not become effective until the following conditions precedent shall have been satisfied or waived in writing by the Majority Lenders:

(a) **Borrowing Date**. Such Borrowing shall be made within ten (10) Business Days after the Effective Date.

(b) **Amount of First Borrowing**. The amount of such Borrowing shall equal $80,000,000.

(c) **No Law Restraining Transactions**. No applicable law or regulation shall restrain, prevent or, in the reasonable judgment of the Lenders, impose materially adverse conditions upon the Transactions.

(d) **Lien Searches**. Lenders shall be satisfied with Lien searches regarding Borrower and its Subsidiaries prior to the Effective Date.

(e) **Documentary Deliveries**. The Lenders shall have received the following documents, each of which shall be in form and substance reasonably satisfactory to the Lenders:

(i) **Security Documents**.

(A) The Security Agreement, duly executed and delivered by each of the Obligors.

(B) Each of the Short-Form IP Security Agreements in respect of Intellectual Property owned by any Obligor in the United States, duly executed and delivered by the applicable Obligor.

(C) Original share certificates or other documents or evidence of title with regard to all Equity Interests owned by the Obligors (to the extent that such Equity Interests are certificated), together with share transfer documents, undated and executed in blank.

(D) The Security Agreement Disclosure Letter, duly executed and delivered by Borrower.

(E) Evidence of filing of UCC-1 financing statements against each Obligor in its jurisdiction of formation or incorporation, as the case may be.

(F) Without limitation, all other documents and instruments reasonably required to perfect the Secured Parties' Lien on, and security interest in, the Collateral required to be delivered on or prior to such Borrowing Date shall have been duly executed and delivered and be in proper form for filing, and shall create in favor of the Secured Parties, a perfected Lien on, and security interest in, the Collateral, subject to no Liens other than Permitted Liens.

(ii) **Approvals**. Certified copies of all material licenses, consents, authorizations and approvals of, and notices to and filings and registrations with, any Governmental Authority (including all foreign exchange approvals), and of all third-party consents and approvals, necessary in connection with the making and performance by the Obligors of the Loan Documents and the Transactions.

(iii) **Corporate Documents**. Certified copies of the constitutive documents of each Obligor (if publicly available in such Obligor's jurisdiction of formation) and of resolutions of the board of directors (or shareholders, if applicable) of each Obligor authorizing the making and performance by it of the Loan Documents to which it is a party.

(iv) **Incumbency Certificate**. A certificate of each Obligor as to the authority, incumbency and specimen signatures of the persons who have executed the Loan Documents and any other documents in connection herewith on behalf of the Obligors.

(v) **Officer's Certificate**. A certificate, dated such Borrowing Date and signed by the Chief Executive Officer, the President, a Vice President or a financial officer of Borrower, confirming compliance with the conditions set forth in **Section 6.05**.

(vi) **Opinions of Counsel**. A favorable opinion, dated such Borrowing Date, of counsel to each Obligor (other than nura, Inc.) in form acceptable to the Lenders and their counsel, responsive to the requests set forth in **Exhibit E**.

(vii) **Payoff Letter**. A duly executed and delivered payoff letter from Oxford Finance LLC, in form and substance reasonably satisfactory to Administrative Agent.

(viii) **Insurance**. Certificates of insurance evidencing the existence of all insurance required to be maintained by Borrower pursuant to **Section 8.05** and the designation of the Lenders as the lender's loss payees or additional named insured, as the case may be, thereunder.

6.03 Conditions to Second Borrowing. The obligation of each Lender to make a Loan as part of one second Borrowing is subject to the following conditions precedent, which shall have been satisfied or waived in writing by the Majority Lenders:

(a) **First Borrowing**. The first Borrowing shall have occurred.

(b) **Borrowing Date**. Such Borrowing shall occur on or prior to September 19, 2017.

(c) **Amount of Borrowing**. The amount of such Borrowing shall be in an amount not to exceed $25,000,000, as set forth in the Notice of Borrowing.

(d) **Borrowing Milestone**. The Obligors shall have achieved (i) Revenue from the sale of the Product of at least $18,000,000 during any consecutive three (3) month period after the date hereof or (ii) an Average Market Capitalization of at least $700,000,000 for any consecutive three (3) month period after the date hereof; *provided*, *however*, in each case, that the applicable consecutive three (3) month period ends on or prior to June 30, 2017.

(e) **Notice of Milestone Achievement and Review**. Borrower shall have delivered to Administrative Agent a notice certifying satisfaction of the condition set forth in **Section 6.03(d)** no later than 30 days thereafter, and the Lenders shall have been reasonably satisfied with the results of their review of the Obligors' Revenue by examining Borrower's books and records or Borrower's Market Capitalization calculations, as applicable.

(f) **Notice of Borrowing**. A Notice of Borrowing shall have been received no later than 60 calendar days after satisfaction of the condition set forth in **Section 6.03(d)**.

(g) **Financing Fee.** Except in the case of any PIK Loan, Administrative Agent shall have received, for the account of each Lender, the fees payable pursuant to the Fee Letter.

6.04 Conditions to Third Borrowing. The obligation of each Lender to make a Loan as part of one third Borrowing is subject to the following conditions precedent, which shall have been satisfied or waived in writing by the Majority Lenders:

(a) **Prior Borrowings**. The first Borrowing shall have occurred.

(b) **Borrowing Date**. Such Borrowing shall occur on or prior to March 21, 2018.

(c) **Amount of Borrowing**. The amount of such Borrowing shall be in an amount not to exceed $20,000,000, as set forth in the Notice of Borrowing.

(d) **Borrowing Milestone**. The Obligors shall have achieved (i) Revenue from the sale of the Product of at least $25,000,000 during any consecutive three (3) month period after the date hereof or (ii) an Average Market Capitalization of at least $1,000,000,000 for any

consecutive three (3) month period after the date hereof; *provided*, *however*, in each case, that the applicable consecutive three (3) month period ends on or prior to December 31, 2017.

(e) **Notice of Milestone Achievement and Review**. Borrower shall have delivered to Administrative Agent a notice certifying satisfaction of the condition set forth in **Section 6.04(d)** no later than 30 days thereafter, and the Lenders shall have been reasonably satisfied with the results of their review of the Obligors' Revenue by examining Borrower's books and records or Borrower's Market Capitalization calculations, as applicable.

(f) **Notice of Borrowing.** A Notice of Borrowing shall have been received no later than 60 calendar days after satisfaction of the condition set forth in **Section 6.04(d)**.

(g) **Financing Fee.** Except in the case of any PIK Loan, Administrative Agent shall have received, for the account of each Lender, the fees payable pursuant to the Fee Letter.

6.05 Conditions to Each Borrowing. The obligation of each Lender to make a Loan as part of any Borrowing (including the first Borrowing) is also subject to satisfaction of the following further conditions precedent on the applicable Borrowing Date, which shall have been satisfied or waived in writing by the Lenders:

(a) **Commitment Period**. Except in the case of any PIK Loan, such Borrowing Date shall occur during the Commitment Period.

(b) **No Default; Representations and Warranties**. Both immediately prior to the making of such Loan and after giving effect thereto and to the intended use thereof:

(i) no Default shall have occurred and be continuing or would result from such proposed Loan or the application of the proceeds thereof;

(ii) the representations and warranties in **Section 7** shall be true on and as of the Borrowing Date in all material respects (unless qualified by materiality or Material Adverse Effect, in which case they shall be true and correct in all respects), and immediately after giving effect to the application of the proceeds of the Borrowing, with the same force and effect as if made on and as of such date (except that the representation regarding representations and warranties that refer to a specific earlier date shall be that they were true on such earlier date); and

(iii) no Material Adverse Effect has occurred or is reasonably likely to occur after giving effect to such proposed Borrowing.

(c) **Notice of Borrowing**. Except in the case of any PIK Loan, Administrative Agent shall have received a Notice of Borrowing as and when required pursuant to **Section 2.02**.

Each Borrowing shall constitute a certification by Borrower to the effect that the conditions set forth in this **Section 6.05** have been fulfilled as of the applicable Borrowing Date.

SECTION 7
REPRESENTATIONS AND WARRANTIES

Each Obligor represents and warrants to Administrative Agent and the Lenders that:

7.01 Power and Authority. Each of Borrower and its Subsidiaries (a) is duly organized and validly existing under the laws of its jurisdiction of organization, (b) has all requisite corporate or other equivalent power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted except to the extent that failure to have the same could not reasonably be expected to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary except where failure so to qualify could (either individually or in the aggregate) not reasonably be expected to have a Material Adverse Effect, and (d) has full power, authority and legal right to make and perform each of the Loan Documents to which it is a party and, in the case of Borrower, to borrow the Loans hereunder.

7.02 Authorization; Enforceability. The Transactions are within each Obligor's corporate or equivalent powers and have been duly authorized by all necessary corporate or equivalent and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor, enforceable against each Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party on the part of any Obligor, except for (i) such as have been obtained or made and are in full force and effect and (ii) material filings and recordings in respect of the Liens created pursuant to the Security Documents, (b) will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of Borrower and its Subsidiaries other than any such violations that, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (c) will not violate any order of any Governmental Authority other than any such violations that, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (d) will not violate or result in a default under any agreement or instrument governing any Indebtedness of Borrower or its Subsidiaries or any other material agreement or instrument binding upon Borrower and its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (e) will not result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of Borrower and its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements**. Borrower has heretofore furnished to the Lenders, as of the Closing Date and the first Borrowing Date, its unaudited consolidated financial statements for the quarter ended June 30, 2016 and its annual audited consolidated financial statements for the year ended December 31, 2015, and as of any other date, certain financial statements as provided for in **Section 8.01**. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements previously-delivered statements of the type described in **Section 8.01(b)**. Neither Borrower nor any of its Subsidiaries has any material contingent liabilities not disclosed in the aforementioned financial statements.

(b) **No Material Adverse Change**. Since December 31, 2015, there has been no Material Adverse Change.

7.05 Properties.

(a) **Property Generally**. Each Obligor has good and marketable fee simple title to, or valid leasehold interests in, all its real and tangible personal Property material to its business, subject only to Permitted Liens and except as would not reasonably be expected to interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property**. The Obligors represent and warrant to the Lenders as follows, as of the date hereof, each Borrowing Notice Date and each Borrowing Date:

(i) **Schedule 7.05(b)(i)** to the Disclosure Letter (as amended from time to time by Borrower in accordance with **Section 7.20**) contains:

(A) a complete and accurate list of all applied for or granted Patents owned by or exclusively licensed to any Obligor, including the jurisdiction and patent number;

(B) a complete and accurate list of all applied for or registered Trademarks owned by or licensed to any Obligor, including the jurisdiction, trademark application or registration number and the application or registration date; and

(C) a complete and accurate list of all applied for or registered Copyrights owned by or licensed to any Obligor;

(ii) Each Obligor is (x) the sole or, to the extent each other owner is also an Obligor, joint owner of all right, title and interest in and to, subject to any licenses granted under a Material Agreement or as permitted under **Section 9.09** of this Agreement, and/or (y) holds exclusive license rights in and to and has the right to use the Obligor Intellectual Property with no breaks in chain of title with good and marketable title, free and clear of any Liens or Claims of any kind whatsoever other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)(ii)** to the Disclosure Letter:

(A) other than with respect to the Material Agreements, or as permitted by **Section 9.09**, the Obligors have not transferred ownership of Material Intellectual Property, in whole or in part, to any other Person who is not an Obligor;

(B) other than (i) the Material Agreements, (ii) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements or material transfer agreements, or (iii) as would have been or is permitted by **Section 9.09**, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Permitted Liens), Claims, or other written agreements or arrangements relating to the Obligors' Material Intellectual Property, including any development, submission, services, research, license or support agreements, which bind, obligate or otherwise restrict the Obligors;

(C) the use of any of the material Obligor Intellectual Property in the manner used by the Obligor in the conduct of its business as of the date hereof, to any Obligor's Knowledge, does not breach, violate, infringe or interfere with or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person that is material to Obligor's business;

(D) except as set forth in the Public Filings prior to the Effective Date, there are no pending or, to any Obligor's Knowledge, threatened Claims against the Obligors asserted by any other Person relating to the material Obligor Intellectual Property, including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property; no Obligor has received any written notice from any Person that any Obligor business, the use of the material Obligor Intellectual Property, or the manufacture, use or sale of any product or the performance of any service by any Obligor infringes upon, violates or constitutes a misappropriation of, or may infringe upon, violate or constitute a misappropriation of, or otherwise interfere with, any other Intellectual Property of any other Person;

(E) except as set forth in the Public Filings prior to the Effective Date, no Obligor has any Knowledge that the Obligor Intellectual Property is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of the Obligors. Without limiting the foregoing, except as set forth in the Public Filings prior to the Effective Date, no Obligor has put any other Person on notice of actual or potential infringement, violation or misappropriation of any of the Obligor Intellectual Property; no Obligor has initiated the enforcement of any Claim with respect to any of the Obligor Intellectual Property;

(F) all relevant current and former employees and contractors of each Obligor have executed written confidentiality and invention assignment Contracts with such Obligor that irrevocably assign to such Obligor or its designee all of their rights to any Inventions relating to any of Obligor's business;

(G) to the Knowledge of the Obligors, the Obligor Intellectual Property is all the Intellectual Property materially necessary for the operation of Obligors' business as it is currently conducted or as currently contemplated to be conducted, except for licenses to non-target specific third party Intellectual Property related to the engineering, expression and purification of biologics that may need to be licensed and are generally available for license, as is

standard in the industry for the manufacture of biologics, in connection with Borrower's biologics programs;

(H) each Obligor has taken reasonable precautions to protect the secrecy, confidentiality and value of its Obligor Intellectual Property consisting of trade secrets and confidential information;

(I) each Obligor has delivered or provided access to Administrative Agent accurate and complete copies of all Material Agreements relating to the Obligor Intellectual Property;

(J) except as set forth in the Public Filings prior to the Effective Date, there are no pending or, to the Knowledge of any of the Obligors, threatened in writing Claims against the Obligors asserted by any other Person relating to the Material Agreements, including any Claims of breach or default under such Material Agreements;

(iii) With respect to the Obligor Intellectual Property owned by any Obligor consisting of Patents, except as set forth in **Schedule 7.05(b)(ii)** to the Disclosure Letter, and without limiting the representations and warranties in **Section 7.05(b)(ii)**:

(A) except as set forth in the Public Filings prior to the Effective Date, each of the issued claims in such Patents, to Obligors' Knowledge, is valid and enforceable;

(B) the inventors claimed in such Patents have executed written Contracts with an Obligor or its predecessor-in-interest that properly and irrevocably assigns to an Obligor or predecessor-in-interest all of their rights to any of the Inventions claimed in such Patents to the extent permitted by applicable law;

(C) except as set forth in the Public Filings prior to the Effective Date, none of the Patents, or the Inventions claimed in them, have been dedicated to the public except as a result of intentional decisions made by the applicable Obligor;

(D) to any Obligor's Knowledge, except as set forth in the Public Filings prior to the Effective Date, all prior art material to such Patents was adequately disclosed to or considered by the respective patent offices during prosecution of such Patents to the extent required by applicable law or regulation;

(E) subsequent to the issuance of such Patents, neither any Obligor nor their predecessors in interest, have filed any disclaimer or filed any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(F) no allowable or allowed subject matter of such Patents, to any Obligor's Knowledge, is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or patents of any third party and have not been the subject of any interference, re-examination or opposition proceedings, nor are the Obligors aware of any basis for any such interference, re-examination or opposition proceedings;

(G) no such Patents, to any Obligor's Knowledge, have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable Patent Office recorded with respect to any Patents and as set forth in the Public Filings, no Obligor has received any notice asserting that such Patents are invalid, unpatentable or unenforceable; if any of such Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) no Obligor has received an opinion, whether preliminary in nature or qualified in any manner, which concludes that a challenge to the validity or enforceability of any of such Patents is more likely than not to succeed;

(I) except as set forth in the Public Filings prior to the Effective Date, no Obligor has any Knowledge that any Obligor or any prior owner of such Patents or their respective agents or representatives have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any such Patents; and

(J) all maintenance fees, annuities, and the like due or payable on the Patents have been timely paid or the failure to so pay was the result of an intentional decision by the applicable Obligor or would not reasonably be expected to result in a Material Adverse Change.

(c) **Material Intellectual Property**. **Schedule 7.05(c)** to the Disclosure Letter (as amended from time to time by Borrower in accordance with **Section 7.20**) contains an accurate list of the Obligor Intellectual Property the loss of which would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect with an indication as to whether the applicable Obligor owns or has an exclusive or non-exclusive license to such Obligor Intellectual Property.

7.06 No Actions or Proceedings.

(a) **Litigation**. There is no litigation, investigation or proceeding pending or, to any Obligor's Knowledge, threatened with respect to Borrower and its Subsidiaries by or before any Governmental Authority or arbitrator (i) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, except as specified in **Schedule 7.06** to the Disclosure Letter or disclosed in the Public Filings prior to the Effective Date or (ii) that involves this Agreement or the Transactions.

(b) **Environmental Matters**. The operations and Property of Borrower and its Subsidiaries comply with all applicable Environmental Laws, except to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect.

(c) **Labor Matters**. Borrower and its Subsidiaries have not engaged in unfair labor practices that would reasonably be expected to have a Material Adverse Effect and there are no

labor actions or disputes involving the employees of Borrower or its Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

7.07 Compliance with Laws and Agreements. Each of the Obligors is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

7.08 Taxes. Except as set forth on **Schedule 7.08** to the Disclosure Letter, all federal and material state, local and foreign income and franchise and other material Tax returns, reports and statements (collectively, the "***Tax Returns***") required to be filed by any Tax Affiliate have been timely filed with the appropriate Governmental Authorities, all such Tax Returns are true and correct in all material respects, and all Taxes reflected therein or otherwise due and payable have been timely paid (except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP). No Tax Return is under audit or examination by any Governmental Authority and no notice of any material audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in full and complete compliance with the Tax, social security and unemployment withholding provisions of applicable Laws and such withholdings have been timely paid to the respective Governmental Authorities. No Tax Affiliate has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

7.09 Full Disclosure. Obligors have disclosed to Administrative Agent and the Lenders all Material Agreements to which any Obligor is a party, and all other matters to any Obligor's Knowledge, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Obligor to Administrative Agent or any Lender in connection with the negotiation of this Agreement and the other Loan Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided* that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projected financial information is not to be viewed as facts, and that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material).

7.10 Regulation.

(a) **Investment Company Act**. Neither Borrower nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

(b) **Margin Stock**. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, U or X.

(c) **OFAC; Sanctions, Etc**. Neither Borrower nor any of its Subsidiaries nor, to the knowledge of any Obligor, any director or officer or Affiliate of Borrower or any Subsidiary (i) is currently the subject of any Sanctions or is a Sanctioned Person, (ii) is located (or has its assets located), organized or residing in any Sanctioned Jurisdiction, (iii) is or has been (within the previous five (5) years) engaged in any impermissible transaction with any Person who is now or was then, as applicable, the subject of Sanctions or who is now or was then, as applicable, located, organized or residing in any Sanctioned Jurisdiction, (iv) directly derives revenues from investments in, or transactions with, Sanctioned Persons, (v) has taken any action, directly or indirectly, that would result in a violation of any Anti-Corruption Laws, or (vi) has violated any Anti-Money Laundering Laws. No Loan, nor the proceeds from any Loan, has been or will be used, directly or, to the knowledge of Borrower, indirectly, to lend, contributed or provide to, or has been or will be otherwise made available to fund, any impermissible activity or business of any Person located, organized or residing in any Sanctioned Jurisdiction or who is the subject of any Sanctions or otherwise in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws. Each of Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to promote compliance by Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Related Persons with the Anti-Corruption Laws.

7.11 Solvency. Each Obligor is and, immediately after giving effect to the Borrowing and the use of proceeds thereof will be, Solvent.

7.12 Subsidiaries. Set forth on **Schedule 7.12** to the Disclosure Letter is a complete and correct list of all Subsidiaries as of the date hereof. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12** to the Disclosure Letter, and the percentage ownership by Borrower of each such Subsidiary is as shown in said **Schedule 7.12** to the Disclosure Letter.

7.13 Indebtedness and Liens. Set forth on **Schedule 7.13(a)** to the Disclosure Letter is a complete and correct list of all Indebtedness of each Obligor the outstanding principal amount thereof as of the date hereof exceeds $500,000. **Schedule 7.13(b)** to the Disclosure Letter is a complete and correct list of all Liens affirmatively granted by Borrower and other Obligors with respect to their respective Property (other than non-exclusive licenses) and outstanding as of the date hereof.

7.14 Material Agreements. Set forth on **Schedule 7.14** to the Disclosure Letter (as amended from time to time by Borrower in accordance with **Section 7.20**) is a complete and correct list of (i) each Material Agreement and (ii) each agreement creating or evidencing any Material Indebtedness. No Obligor is in default under any such Material Agreement or agreement creating or evidencing any Material Indebtedness. Except as otherwise disclosed on **Schedule 7.14** to the Disclosure Letter, all material vendor purchase agreements and provider contracts of

the Obligors are in full force and effect without material modification from the form in which the same were disclosed to Administrative Agent and the Lenders, except for such modifications as would not reasonably be expected to be adverse to the interests of the Lenders.

7.15 Restrictive Agreements. None of the Obligors is subject to any indenture, agreement, instrument or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets (other than (x) customary provisions in contracts (including without limitation leases and in-bound licenses of Intellectual Property) restricting the assignment thereof, (y) restrictions or conditions imposed by any agreement governing secured Permitted Indebtedness permitted under **Section 9.01(h)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness, or (z) as such may apply to the interest of any Obligor in a Permitted Commercialization Arrangement Vehicle), or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to Borrower or any other Subsidiary or to Guarantee Indebtedness of Borrower or any other Subsidiary (each, a "***Restrictive Agreement***"), except (i) those listed on **Schedule 7.15** to the Disclosure Letter or otherwise permitted under **Section 9.11**, (ii) restrictions and conditions imposed by law or by this Agreement, (iii) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or assets pending such sale, *provided* that such restrictions and conditions apply only to the Subsidiary or assets that are to be sold and such sale is permitted hereunder; (iv) any stockholder agreement, charter, by laws or other organizational documents of Borrower or any Subsidiary as in effect on the date hereof; and (v) limitations associated with Permitted Liens.

7.16 Real Property.

(a) **Generally**. Neither Borrower nor any of its Subsidiaries owns or leases (as tenant thereof) any real property, except as described on **Schedule 7.16** to the Disclosure Letter (as amended from time to time by Borrower in accordance with **Section 7.20**).

(b) **Borrower Lease**. (i) Borrower has delivered a true, accurate and complete copy of the Borrower Lease to Administrative Agent.

(ii) The Borrower Lease is in full force and effect and no material default has occurred under the Borrower Lease and, to the Knowledge of Borrower, there is no existing condition which, but for the passage of time or the giving of notice, could reasonably be expected to result in a material default under the terms of the Borrower Lease.

(iii) Borrower is the tenant under the Borrower Lease and has not transferred, sold, assigned, conveyed, disposed of, mortgaged, pledged, hypothecated, or encumbered any of its interest in, the Borrower Lease.

7.17 Pension Matters. **Schedule 7.17** to the Disclosure Letter sets forth, as of the date hereof, a complete and correct list of, and that separately identifies, (a) all Title IV Plans, (b) all Multiemployer Plans and (c) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law so qualifies. Except for those that could not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of

ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the Knowledge of any Obligor or Subsidiary thereof, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Obligor or Subsidiary thereof incurs or otherwise has or could have an obligation or any liability or Claim and (z) no ERISA Event is reasonably expected to occur. Borrower and each of its ERISA Affiliates has met all applicable requirements under the ERISA Funding Rules with respect to each Title IV Plan, and no waiver of the minimum funding standards under the ERISA Funding Rules has been applied for or obtained. As of the most recent valuation date for any Title IV Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%, and neither Borrower nor any of its ERISA Affiliates knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage to fall below 60% as of the most recent valuation date. As of the date hereof, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

7.18 Collateral; Security Interest. Each Security Document is effective to create in favor of the Secured Parties a legal, valid and enforceable security interest in the Collateral subject thereto and each such security interest is perfected to the extent required by (and has the priority required by) the applicable Security Document. The Security Documents collectively are effective to create in favor of the Secured Parties a legal, valid and enforceable security interest in the Collateral, which security interests are first-priority (subject only to Permitted Priority Liens).

7.19 Regulatory Approvals. Borrower and its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all material Regulatory Approvals, material licenses, material permits and similar material governmental authorizations of a Governmental Authority necessary or required for Borrower and its Subsidiaries to conduct their operations and business in the manner currently conducted.

7.20 Update of Schedules. Each of **Schedules 7.05(b)(i)**, **7.05(b)(ii)**, **7.05(c)**, **7.08**, **7.14** and **7.16** to the Disclosure Letter may be updated by Borrower from time to time in order to ensure the continued accuracy of such Schedule as of any upcoming date on which representations and warranties are made incorporating the information contained on such Schedule. Such update may be accomplished by Borrower providing to Administrative Agent, in writing (including by electronic means), a revised version of such Schedule in accordance with the provisions of **Section 13.02**. Each such updated Schedule shall be effective immediately upon the receipt thereof by the Lenders.

SECTION 8
AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees with Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnity obligations) have been paid in full indefeasibly in cash:

8.01 Financial Statements and Other Information. Borrower will furnish to Administrative Agent:

(a) as soon as available and in any event within five (5) Business Days following the date Borrower files or is required to file (or would be required to file if it were subject to the reporting requirements under the Exchange Act) a Quarterly Report on Form 10-Q with the SEC, the consolidated balance sheets of the Obligors as of the end of such quarter, and the related consolidated statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such quarter, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with a certificate of a Responsible Officer of Borrower stating that such financial statements fairly present in all material respects the financial condition of Borrower and its Subsidiaries as at such date and the results of operations of Borrower and its Subsidiaries for the period ended on such date and have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes; *provided* that, so long as Borrower is subject to the public reporting requirements of the Exchange Act, Borrower's filing of a Quarterly Report on Form 10-Q with the SEC shall be deemed to satisfy the requirements of this **Section 8.01(a)** on the date on which such report is first available via the SEC's EDGAR system or a successor system related thereto;

(b) as soon as available and in any event within five (5) Business Days following the date Borrower files or is required to file (or would be required to file if it were subject to the reporting requirements under the Exchange Act) its Annual Report on Form 10-K with the SEC, the consolidated balance sheets of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such fiscal year, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of Ernst & Young LLP (or (i) another "Big Four" public accounting firm or BDO USA, LLP or (ii) another firm of independent certified public accountants of recognized national standing acceptable to the Lenders), which report and opinion shall be prepared in accordance with generally accepted auditing standards; *provided* that, so long as Borrower is subject to the public reporting requirements of the Exchange Act, Borrower's filing of an Annual Report on Form 10-K with the SEC shall be deemed to satisfy the requirements of this **Section 8.01(b)** on the date on which such report is first available via the SEC's EDGAR system or a successor system related thereto;

(c) together with the financial statements required pursuant to **Sections 8.01(a)** and **(b)**, a compliance certificate of a Responsible Officer as of the end of the applicable accounting period (which delivery may, unless a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) in the form of **Exhibit D** (a "***Compliance Certificate***") including any written communications from auditors regarding any material issues (including, but not limited to, failures to comply with internal controls and allegations of fraud);

(d) as soon as available, but in any event within 90 days after the end of each fiscal year beginning with the fiscal year ending December 31, 2016, a consolidated financial forecast

for Borrower and its Subsidiaries for the following fiscal year, including forecasted consolidated balance sheets, consolidated statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such fiscal year;

(e) promptly, and in any event within five Business Days after receipt thereof by an Obligor thereof, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which an Obligor may become subject from time to time concerning any investigation or possible investigation or similar inquiries by such agency regarding financial or other operational results of such Obligor;

(f) promptly following Administrative Agent's request at any time, the information regarding insurance maintained by Borrower and its Subsidiaries as required under **Section 8.05**;

(g) promptly following Administrative Agent's request at any time, proof of Borrower's compliance with **Section 10.01**; and

(h) within five (5) Business Days of delivery, copies of all statements, reports and notices (including board kits or other similar distribution) made available to holders of Borrower's Equity Interests in their capacity as such or holders of Permitted Cure Debt; *provided* that (1) any such material may be redacted by Borrower to exclude information relating to the Lenders (including Borrower's strategy regarding the Loans) and to exclude information if Borrower determines, based on the advice of counsel, that such exclusion is reasonably necessary to preserve attorney-client privilege and (2) information required to be delivered pursuant to this **Section 8.01(g)** that is included in a report or other document filed or furnished by Borrower with the SEC shall be deemed to satisfy the requirements of this **Section 8.01(g)** on the date on which such information is first available via the SEC's EDGAR system or a successor system related thereto so long as such information is so filed or furnished concurrently with such information being made available to holders of Borrower's Equity Interests or holders of Permitted Cure Debt.

8.02 Notices of Material Events. Borrower will furnish to Administrative Agent written notice of the following, except as otherwise set forth below, promptly after a Responsible Officer first learns of the existence of:

(a) the occurrence of any Default;

(b) notice of the occurrence of any event with respect to an Obligor's tangible property or assets resulting in a Loss to the extent not covered by insurance aggregating $500,000 (or the Equivalent Amount in other currencies) or more;

(c) (A) any proposed acquisition of stock, assets or property by any Obligor that would reasonably be expected to result in a material environmental liability under Environmental Laws, and (B)(1) spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material required to be reported by Borrower or any of its Subsidiaries to any Governmental Authority under applicable Environmental Laws, and (2) all material actions, suits, claims, notices of violation, hearings, investigations or proceedings pending or, to any Obligor's Knowledge, threatened in writing against Borrower or any of its Subsidiaries or with

respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties, relating to Environmental Laws or Hazardous Material;

(d) the assertion of any environmental matter by any Person against, or with respect to the activities of, Borrower or any of its Subsidiaries and any alleged material violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations which could reasonably be expected to involve damages in excess of $500,000 other than any environmental matter or alleged violation that, if adversely determined, could not reasonably be expected (either individually or in the aggregate) to have a Material Adverse Effect;

(e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;

(f) (i) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, a copy of such notice and (ii) promptly, and in any event within ten days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto;

(g) (i) the termination of any Material Agreement other than upon its schedule termination date as set forth in the applicable Material Agreement; (ii) the receipt by Borrower or any of its Subsidiaries of a written notice from a counterparty asserting a default or breach by Borrower or any of its subsidiaries under any Material Agreement where such alleged default or breach, if accurate, would permit such counterparty to terminate such Material Agreement; (iii) the entering into of any new Material Agreement by an Obligor; or (iv) any material amendment to a Material Agreement in any manner adverse to Lenders; *provided* that (1) notices required for this subsection (g) may be delivered with Borrower's quarterly Compliance Certificate unless any of the foregoing events would reasonably be expected to have a Material Adverse Effect and (2) for so long as Borrower is subject to the public reporting requirements of the Exchange Act, items (i), (iii) and (iv) shall be deemed to be furnished in writing pursuant to this clause (g) on the date on which such information is first available via the SEC's EDGAR system or any successor thereto (*provided*, *however*, that, if Borrower redacts any part of such agreement or other document that it files with the SEC, then Borrower shall, prior to or concurrently with filing such agreement or document with the SEC, deliver to Administrative Agent a completely unredacted version of such agreement or document);

(h) the reports and notices as required by the Security Documents;

(i) concurrently with the delivery of each Compliance Certificate, notice of any material change in accounting policies or financial reporting practices by the Obligors;

(j) promptly after the occurrence thereof, notice of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor

disruption against or involving an Obligor, in each case which would reasonably be expected to have a Material Adverse Effect;

(k) a material licensing agreement or arrangement entered into by Borrower or any Subsidiary in connection with any infringement or alleged infringement of the Intellectual Property of another Person;

(l) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect;

(m) promptly after receipt thereof, notices on any developments on the pass-through reimbursement status (or any successor payment methodology thereto) on Product;

(n) concurrently with the delivery of each Compliance Certificate, the creation or other acquisition of any Intellectual Property by Borrower or any Subsidiary after the date hereof and during such prior fiscal year which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent Governmental Authority in Canada, the European Union, Norway, Switzerland and Japan;

(o) any change to any Obligor's ownership of Deposit Accounts, Securities Accounts and Commodity Accounts, by delivering to Administrative Agent an updated **Annex 7** to the Security Agreement Disclosure Letter setting forth a complete and correct list of all such accounts as of the date of such change; or

(p) such other information respecting the operations, properties, business or condition (financial or otherwise) of the Obligors (including with respect to the Collateral) as Administrative Agent may from time to time reasonably request.

Each notice delivered under this **Section 8.02** (except for noticed deemed delivered under **Section 8.02(g)(2)**) shall be accompanied by a statement of a financial officer or other executive officer of Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

8.03 Existence; Conduct of Business. Such Obligor will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and, for all Obligors other than Borrower except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, the rights, licenses, permits, privileges and franchises material to the conduct of its business; *provided* that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations. Such Obligor will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all material Taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all material lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of Borrower or any Subsidiary, except to the extent such Taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately

reserved against in accordance with GAAP; and (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien, except to the extent such claims are being contested in good faith by appropriate procedures and are adequately reserved against in accordance with GAAP.

8.05 Insurance. Such Obligor will, and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Upon the request of Administrative Agent or the Majority Lenders, such Obligor shall furnish Administrative Agent from time to time with full information as to the insurance carried by it and, if so requested, copies of all such insurance policies. Such Obligor also shall furnish to Administrative Agent from time to time upon the request of Administrative Agent or the Majority Lenders a certificate from such Obligor's insurance broker or other insurance specialist stating that all policies relating to insurance on the Collateral are in full force and effect. Such Obligor shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be cancelled without at least 10 days' prior written notice to such Obligor and Administrative Agent, other than any annual renewal or replacement of expiring insurance policies on terms that are not materially adverse to such Obligor relative to the expiring policies.

8.06 Books and Records; Inspection Rights. Such Obligor will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made sufficient for the preparation of financial statements in accordance with GAAP. Such Obligor will, and will cause each of its Subsidiaries to, permit any representatives designated by Administrative Agent, upon reasonable prior notice and, in the case of representatives who are not employees of Administrative Agent or its Affiliates conditioned upon such representative(s) having first entered into a confidentiality agreement with Borrower in form reasonably acceptable to Borrower, to visit and inspect its properties, to examine and make extracts from its books and records (excluding records subject to attorney-client privilege or subject to binding confidentiality agreements with third parties), and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and during normal business hours (but not more often than once a year unless an Event of Default has occurred and is continuing) as Administrative Agent may request. The Obligors shall pay all documented out-of-pocket costs of all such inspections.

8.07 Compliance with Laws and Other Obligations. Such Obligor will, and will cause each of its Subsidiaries to, (i) comply in all material respects with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including Environmental Laws) and (ii) comply in all material respects with all terms of Indebtedness and all other Material Agreements, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

8.08 Maintenance of Properties, Etc.

(a) Such Obligor shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its properties necessary in the proper conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

(b) Without limiting the generality of **Section 8.08(a)**, each Obligor shall comply with each of the following covenants with respect to the Borrower Lease:

(i) Borrower shall diligently perform and timely observe all of the material terms, covenants and conditions of the Borrower Lease on the part of Borrower to be performed and observed prior to the expiration of any applicable grace period therein provided (unless being contested in good faith) and do everything commercially reasonable to preserve and to keep unimpaired and in full force and effect the Borrower Lease during its term.

(ii) Borrower shall promptly notify Administrative Agent of the giving of any written notice by Borrower Landlord to Borrower of any default by Borrower thereunder, and promptly deliver to Administrative Agent a true copy of each such notice. If Borrower shall be in default under the Borrower Lease, Administrative Agent and the Lenders shall have the right (but not the obligation) to cause the default or defaults under the Borrower Lease to be remedied and otherwise exercise any and all rights of Borrower under the Borrower Lease, as may be necessary to prevent or cure any default. Any amounts paid by Administrative Agent or any Lender pursuant to this **Section 8.08(b)** shall be payable on demand by Obligors, shall accrue interest at the Default Rate if not paid on demand, and shall constitute "Obligations."

(iii) Borrower shall use commercially reasonable efforts to enforce, in a commercially reasonable manner and as determined in its reasonable judgment, each material covenant or obligation of Borrower Landlord in the Borrower Lease in accordance with its terms. Subject to the terms and requirements of the Borrower Lease, within ten (10) days after receipt of written request by Administrative Agent or Lenders, Borrower shall use reasonable efforts to obtain from Borrower Landlord under the Borrower Lease and furnish to Administrative Agent an estoppel certificate from Borrower Landlord stating the date through which rent has been paid and whether or not, to Borrower Landlord's knowledge, there are any defaults thereunder and specifying the nature of such claimed defaults, if any, and such other matters as Administrative Agent or Lenders may reasonably request or in the form required pursuant to the terms of the Borrower Lease. Borrower shall furnish to Administrative Agent all information that Administrative Agent or Lenders may reasonably request from time to time in the possession of Borrower (or reasonably available to Borrower) concerning the Borrower Lease and Borrower's compliance with the Borrower Lease.

(iv) Promptly upon a Responsible Officer of Borrower obtaining Knowledge that Borrower Landlord has failed to perform the material terms and provisions under the Borrower Lease and promptly upon a Responsible Officer of Borrower obtaining Knowledge of a rejection or disaffirmance or purported rejection or disaffirmance of the Borrower Lease pursuant to any state or federal bankruptcy law, shall notify Administrative Agent thereof. Borrower shall promptly notify Administrative Agent of any request that any party to the

Borrower Lease makes for arbitration or other dispute resolution procedure pursuant to the Borrower Lease and of the institution of any such arbitration or dispute resolution. Borrower shall promptly deliver to Administrative Agent a copy of the determination of each such arbitration or dispute resolution mechanism.

(v) Borrower shall promptly, after any Responsible Officer obtaining Knowledge of such filing notify Administrative Agent orally of any filing by or against Borrower Landlord under the Borrower Lease of a petition under the Bankruptcy Code or other applicable law. Borrower shall thereafter promptly give written notice of such filing to Administrative Agent, setting forth any information known to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought in such filing. Borrower shall promptly deliver to Administrative Agent any and all notices, summonses, pleadings, applications and other documents received by Borrower from Borrower Landlord or the applicable court in connection with any such petition and any proceedings relating to such petition.

8.09 Licenses. Such Obligor shall, and shall cause each of its Subsidiaries to, obtain and maintain all material licenses, authorizations, consents, filings, exemptions, registrations and other Governmental Approvals necessary in connection with the execution, delivery and performance of the Loan Documents, the consummation of the Transactions or the operation and conduct of its business and ownership of its properties, except where failure to do so could not reasonably be expected to have a Material Adverse Effect.

8.10 Action under Environmental Laws. Such Obligor shall, and shall cause each of its Subsidiaries to, upon becoming aware of the presence of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties that in each case is reasonably likely to cause a Material Adverse Effect, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, and restore their respective businesses, operations or properties to a condition in compliance with applicable Environmental Laws.

8.11 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.04**. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **Subsidiary Guarantors**. Such Obligor will take such action, and will cause each of its Subsidiaries to take such action, from time to time as shall be necessary to ensure that all Subsidiaries (other than any Excluded Foreign Subsidiary not required to be a Subsidiary Guarantor under **Section 8.12(b)(i)**) are "Subsidiary Guarantors" hereunder. Without limiting the generality of the foregoing, in the event that Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary (other than any Excluded Foreign Subsidiary that is not required to be a Subsidiary Guarantor under of **Section 8.12(b)(i)**), such Obligor and its Subsidiaries will

within thirty (30) days of such formation or concurrently with such acquisition (or such longer period as may be agreed by Administrative Agent in its sole discretion):

(i) cause such new Subsidiary to become a "Subsidiary Guarantor" hereunder, and a "Grantor" under the Security Agreement, pursuant to a Guarantee Assumption Agreement;

(ii) take such action or cause such Subsidiary to take such action (including delivering such shares of stock together with undated transfer powers executed in blank) as shall be necessary to create and perfect valid and enforceable first priority (subject to Permitted Priority Liens) Liens on substantially all of the personal property of such new Subsidiary (other than Excluded Assets) as collateral security for the obligations of such new Subsidiary hereunder;

(iii) to the extent that the parent of such Subsidiary is not a party to the Security Agreement or has not otherwise pledged Equity Interests in its Subsidiaries in accordance with the terms of the Security Agreement and this Agreement, cause the parent of such Subsidiary to execute and deliver a pledge agreement in favor of the Secured Parties in respect of all outstanding issued shares of such Subsidiary; and

(iv) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to **Sections 6.01** and **6.02** or as Administrative Agent or the Majority Lenders shall have reasonably requested;

provided that no Obligor may transfer any assets, property or cash to such newly formed or acquired Subsidiary until all actions required by this **Section 8.12(a)** have been taken with react to such newly formed or acquired Subsidiary.

(b) **Excluded Foreign Subsidiaries**.

(i) Subject to **Section 8.12(c)**, in the event that, at any time, Excluded Foreign Subsidiaries have, in the aggregate, (x) total Revenues constituting 5% or more of the total Revenues of Borrower and its Subsidiaries on a consolidated basis, or (y) total assets constituting 5% or more of the total assets of Borrower and its Subsidiaries on a consolidated basis, promptly (and, in any event, within 30 days after such time) Obligors shall cause one or more of such Excluded Foreign Subsidiaries to become Subsidiary Guarantors in the manner set forth in **Section 8.12(a)**, such that, after such Subsidiaries become Subsidiary Guarantors, the non-guarantor Excluded Foreign Subsidiaries in the aggregate shall cease to have Revenues or assets, as applicable, that meet the thresholds set forth in **clauses (x)** and **(y)** above; *provided* that no Excluded Foreign Subsidiary shall be required to become a Subsidiary Guarantor if doing so would result in material adverse tax consequences for Borrower and its Subsidiaries, taken as a whole.

(ii) Subject to **Section 8.12(c)**, with respect to each First-Tier Foreign Subsidiary that is not a Subsidiary Guarantor, such Obligor shall grant a security interest and Lien in 65% of each class of voting Equity Interest and 100% of all other Equity Interests in such First-Tier Foreign Subsidiaries in favor of the Secured Parties as Collateral for the Obligations.

Without limiting the generality of the foregoing, in the event that any Obligor shall form or acquire any new Subsidiary that is a First-Tier Foreign Subsidiary, such Obligor will promptly and in any event within thirty (30) days of the formation or acquisition of such Subsidiary (or such longer time as consented to by Administrative Agent in writing) grant a security interest and Lien in 65% of each class of voting Equity Interests and 100% of all other Equity Interests of such Subsidiary in favor of the Secured Parties as Collateral for the Obligations (*provided* that, in the case of a First-Tier Foreign Subsidiary that is a Subsidiary Guarantor, such Obligor shall grant a security interest and Lien in 100% of the Equity Interests of such Subsidiary in favor of the Secured Parties as Collateral for the Obligations), including entering into any necessary local law security documents and delivery of certificated securities issued by such First-Tier Foreign Subsidiary.

(c) **Further Assurances**. Such Obligor will, and will cause each of its Subsidiaries to, take such action from time to time as shall reasonably be requested by Administrative Agent or the Majority Lenders to effectuate the purposes and objectives of this Agreement.

Without limiting the generality of the foregoing, each Obligor will, and will cause each Person that is required to be a Subsidiary Guarantor to, take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments) as shall be reasonably requested by Administrative Agent or the Majority Lenders to create, in favor of the Secured Parties, perfected security interests and Liens in substantially all of the property of such Obligor as collateral security for the Obligations; *provided* that (i) any such security interest or Lien shall be subject to the relevant requirements of the Security Documents, (ii) no actions in any jurisdiction outside the United States shall be required in order to create any security interests in immaterial assets, including immaterial Intellectual Property; (iii) no filings in respect of any security interest or Lien shall be required in any jurisdiction that imposes recording fees based on the aggregate principal amount of Indebtedness secured (except where the Lenders are willing to bear all such filing costs in excess of the amounts specified in the proviso below); (iv) no actions in any jurisdiction outside the United States shall be required where the cost of obtaining or perfecting a security interest in such assets exceeds the practical benefit to the Lenders afforded thereby, as reasonably determined by Administrative Agent (in consultation with the Obligors); *provided further* that any such foreign guarantees and foreign security will be limited or not required if (or to the extent) (A) it is limited by applicable corporate benefit, maintenance of capital, "thin capitalization" rules and financial assistance restrictions or (B) if the same would violate the fiduciary duties of a Subsidiary's directors or contravene any legal prohibition or regulatory condition or it is generally accepted (taking into account market practice in respect of the giving of guarantees and security for financial obligations in the relevant jurisdiction) that it would result in a material risk of personal or criminal liability on the part of any officer or director of a Subsidiary; *provided* that, notwithstanding any provision under this Agreement or other Loan Document to the contrary, Borrower and its Subsidiaries shall not be responsible for legal and filing costs, fees, expenses and other amounts in excess of $25,000 in respect of actions required under this Section 8.12 or Section 8.15(b) for each foreign jurisdiction, or $100,000 in the aggregate for all foreign jurisdictions.

8.13 Termination of Non-Permitted Liens. In the event that any Responsible Officer of

Borrower or any of its Subsidiaries shall have Knowledge or be notified by Administrative Agent or any Lender of the existence of any outstanding Lien against any Property of Borrower or any of its Subsidiaries, which Lien is not a Permitted Lien, each Obligor shall use its best efforts to promptly terminate or cause the termination of such Lien.

8.14 Intellectual Property. In the event that the Obligors acquire Obligor Intellectual Property during the term of this Agreement, then the provisions of this Agreement shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any party, in each case from and after the date of such acquisition (except that any representations or warranties of any Obligor shall apply to any such Obligor Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein).

8.15 Post-Closing Items.

(a) Within sixty (60) days after the Effective Date, or such other date as Administrative Agent may in its sole discretion permit, Borrower shall cause Borrower Landlord to execute and deliver a Landlord Consent to Administrative Agent.

(b) Within thirty (30) days after the Effective Date, or such other date as Administrative Agent may in its sole discretion permit, Borrower shall deliver to Administrative Agent duly executed control agreements in favor of Administrative Agent for all Deposit Accounts, Securities Accounts and Commodities Accounts owned by Obligors in the United States (other than Excluded Accounts, as defined in the Security Agreement); *provided*, *however*, that Borrower shall not be required to obtain control agreements for its Deposit Accounts at East West Bank as long as such accounts contain less than $250,000 in the aggregate and are closed within sixty (60) days after the Effective Date.

(c) Within sixty (60) days after the Effective Date, or such other date as Administrative Agent may in its sole discretion permit, Borrower shall deliver to Administrative Agent such foreign filings as the Lenders may require with respect to foreign Material Intellectual Property and evidence of filing thereof.

(d) Within thirty (30) days after the Effective Date, or such other date as Administrative Agent may in its sole discretion permit, Borrower shall enter into a subordination agreement in form and substance reasonably acceptable to Administrative Agent and the Majority Lenders with Vulcan Inc. and Cougar Investment Holdings, LLC (which form shall be no less favorable to Administrative Agent and the Lenders than the Vulcan Lien Subordination Agreement is to Oxford Finance LLC).

(e) Within sixty (60) days after the Effective Date, or such other date as Administrative Agent may in its sole discretion permit, Borrower shall deliver to Administrative Agent duly executed and delivered copies of such acknowledgement letters as are reasonably requested by Administrative Agent with respect to Liens existing as of the date of the Agreement.

SECTION 9
NEGATIVE COVENANTS

Each Obligor covenants and agrees with Administrative Agent and the Lenders that, until the Commitments have expired or been terminated and all Obligations (other than inchoate indemnity obligations) have been paid in full indefeasibly in cash:

9.01 Indebtedness. Such Obligor will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) the Obligations;

(b) Indebtedness existing on the date hereof (other than Indebtedness incurred pursuant to the Oxford Agreement) and set forth in **Part II** of **Schedule 7.13(a)** to the Disclosure Letter and Permitted Refinancings thereof;

(c) Permitted Priority Debt;

(d) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of Borrower's or such Subsidiary's business, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

(e) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by any Obligor in the ordinary course of business;

(f) Indebtedness of any Obligor to any other Obligor;

(g) Guarantees by any Obligor of Indebtedness permitted under this **Section 9.01**;

(h) Guarantees by any Subsidiary that is not a Subsidiary Guarantor of Indebtedness of any other Subsidiary that is not a Subsidiary Guarantor;

(i) normal course of business equipment financing consisting of purchase money obligations and Capital Lease Obligations; *provided* that (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) the aggregate outstanding principal amount of such Indebtedness does not exceed $2,500,000 (or the Equivalent Amount in other currencies) at any time;

(j) Permitted Cure Debt and any Permitted Refinancings thereof;

(k) Indebtedness of any Subsidiary not a Subsidiary Guarantor to any other Subsidiary not a Subsidiary Guarantor;

(l) Unsecured Indebtedness in connection with corporate credit cards in an aggregate principal amount not exceed the greater of (x) $600,000 and (y) 0.5% of the prior fiscal year's operating expenses, in each case at any time outstanding;

(m) Indebtedness in respect of any agreement providing for treasury, depositary, cash management services, including in connection with any automated clearing house transfers of funds or any similar transactions, securities settlements, foreign exchange contracts, assumed settlement, netting services, overdraft protections and other cash management, intercompany cash pooling and similar arrangements, in each case in the ordinary course of business;

(n) Indebtedness with respect to letters of credit outstanding and secured solely by cash and/or Permitted Cash Equivalent Investments; *provided* that the outstanding principal amount of such Indebtedness shall not exceed $5,000,000 at any time outstanding;

(o) obligations under bona fide time-based licenses of Borrower or any Subsidiary in the ordinary course of business;

(p) advance or deposits from customers or vendors received in the ordinary course of business and held with a deposit bank insured by the Federal Deposit Insurance Corporation;

(q) (i) Indebtedness in an outstanding principal amount of up to $5,000,000 incurred, assumed or otherwise acquired in connection with a Permitted Acquisition (which may be Indebtedness existing prior to the Permitted Acquisition secured by the assets acquired as described in **Section 9.02(k)(ii)**); *provided* that, unless such Indebtedness was previously existing and not incurred in connection with such Permitted Acquisition, such Indebtedness is unsecured and subordinated to the Obligations pursuant to a subordination agreement in substantially the form of **Exhibit G** or otherwise satisfactory to the Majority Lenders and (ii) Permitted Refinancings thereof;

(r) Indebtedness (other than for borrowed money) that may be deemed to exist pursuant to any guarantees, warranty or contractual service obligations, performance, surety, statutory, appeal, bid, prepayment guarantee, payment (other than payment of Indebtedness) or completion of performance guarantees or similar obligations incurred in the ordinary course of business;

(s) Indebtedness consisting of (i) the bona fide financing of insurance premiums or self-insurance obligations (which must be commercially reasonable and consistent with insurance practices generally) or (ii) take-or-pay obligations contained in supply or similar agreements, in each case, in the ordinary course of business;

(t) other unsecured Indebtedness in an aggregate principal amount not to exceed $300,000 at any time outstanding;

(u) (i) workers' compensation claims, payment obligations in connection with health disability or other types of social security benefits, unemployment or other insurance obligations, reclamation and statutory obligations or (ii) Indebtedness related to employee benefit plans, including, without limitation, annual employee bonuses, accrued wage increases and 401(k) plan matching obligations, in each case incurred in the ordinary course of Borrower’s or its Subsidiary’s business;

(v) Hedging Agreements entered into in the ordinary course of Borrower’s financial planning solely to hedge currency risks (and not for speculative purposes) in an aggregate

notional amount for all such Hedging Agreements not in excess of $2,000,000 (or the Equivalent Amount in other currencies);

(w) contingent return obligations consistent with market practice in respect of unspent advances to Borrower by a third-party entity (each such entity, a "***Research Partner***") whereby such funds are used to pay costs and expenses for the research performed and expenses incurred by Borrower in compliance with agreements between Borrower and such Research Partner;

(x) from the Closing Date until the date of the first Borrowing, Indebtedness incurred under the Oxford Agreement; and

(y) Indebtedness approved in advance in writing by the Majority Lenders.

9.02 Liens. Such Obligor will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or Revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of Borrower or any of its Subsidiaries existing on the date hereof and set forth in **Part II** of **Schedule 7.13(b)** to the Disclosure Letter; *provided* that (i) no such Lien shall extend to any other property or asset of Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) Liens described in the definition of "Permitted Priority Debt";

(d) Liens securing Indebtedness permitted under **Section 9.01(i)**; *provided* that such Liens are restricted solely to the collateral described in **Section 9.01(i)**;

(e) Liens imposed by law which were incurred in the ordinary course of business, including (but not limited to) carriers', warehousemen's and mechanics' liens, liens relating to leasehold improvements and other similar liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the Property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Property subject to such liens and for which adequate reserves have been made if required in accordance with GAAP;

(f) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other similar social security legislation;

(g) Liens securing Taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(h) servitudes, easements, rights of way, restrictions and other similar encumbrances on real Property imposed by applicable Laws and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors;

(i) with respect to any real Property, (A) (i) such defects or encroachments as might be revealed by an up-to-date survey of such real Property; (ii) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real Property pursuant to applicable Laws; and (iii) rights of expropriation, access or user or any similar right conferred or reserved by or in applicable Laws, which, in the aggregate for (i), (ii) and (iii), are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any of the Obligors and (B) leases or subleases granted in the ordinary course of business;

(j) Bankers liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business;

(k) (i) Liens securing Indebtedness permitted in reliance on **Section 9.01(q)**, *provided* that the Indebtedness secured by such Liens was incurred prior to, and not in contemplation of, such Permitted Acquisition and that such Liens extend solely to the assets acquired in such Permitted Acquisition; and (ii) Liens on property acquired in and existing at the time of a Permitted Acquisition, *provided* that such Liens do not attach to any other property of any other Obligor or Subsidiary; and *provided further* that such Liens are of the type otherwise permitted under this **Section 9.02**;

(l) Non-exclusive licenses or sublicenses, leases or subleases of property (other than real Property or Intellectual Property) granted in the ordinary course of Borrower's business, if the leases, subleases, licenses and sublicenses do not prohibit an Obligor from granting Control Agent or any Lender a security interest in such property;

(m) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under **Section 11.01(k)**;

(n) cash collateral arrangements made (i) with respect to letters of credit permitted by **Section 9.01(n)** but not exceeding the amount of the Indebtedness permitted by **Section 9.01(n)**;

(o) Liens consisting of Asset Transactions permitted under **Section 9.09**;

(p) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon;

(q) from the Closing Date until the date of the first Borrowing, Liens securing Indebtedness under the Oxford Agreement; and

(r) Liens the creation of which did not involve Borrower's or its Subsidiaries' consensual participation or involvement encumbering assets not to exceed $50,000 in the aggregate in any fiscal year;

provided that no Lien otherwise permitted under any of the foregoing **Sections 9.02(c)** through **(j)**, **(m)**, **(n)**, **(p)** and **(r)** shall apply to any Material Intellectual Property.

9.03 Fundamental Changes and Acquisitions. Such Obligor will not, and will not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or (iii) make any Acquisition or otherwise acquire any business or substantially all the property from, or capital stock of, or be a party to any acquisition of, any Person, except:

(a) Investments permitted under **Section 9.05(e)**;

(b) the merger, amalgamation or consolidation of any Subsidiary Guarantor with or into any other Obligor; *provided* that, in the case of a merger, amalgamation or consolidation with or into Borrower, Borrower shall be the surviving entity;

(c) the sale, lease, transfer or other disposition by any Subsidiary Guarantor of any or all of its property (upon voluntary liquidation or otherwise) to any other Obligor; and

(d) the sale, transfer or other disposition of the capital stock of any Subsidiary Guarantor to any other Obligor;

(e) Permitted Acquisitions for total consideration in an aggregate amount for all such Permitted Acquisitions not exceeding 20% of the Market Capitalization (measured, with respect to any particular Permitted Acquisition, as of the trading day immediately preceding the execution of the definitive documentation relating to such Permitted Acquisition);

(f) the merger, amalgamation or consolidation of a wholly owned Subsidiary in a transaction in which the surviving entity is a wholly owned Subsidiary and no Person other than Borrower or a wholly owned Subsidiary receives any consideration (*provided* that if any party to such transaction is an Obligor, the surviving entity of such transaction shall be an Obligor);

(g) any Subsidiary that is not an Obligor may liquidate or dissolve if Borrower determines in good faith that such liquidation or dissolution is in the best interests of Borrower;

(h) any Asset Transaction permitted by **Section 9.09** (other than **Section 9.09(f)**); and

(i) Borrower and its Subsidiaries may enter into Permitted Commercialization Arrangements.

9.04 Lines of Business. Such Obligor will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than the business engaged in on the date hereof by Borrower or any Subsidiary or a business reasonably related thereto or reasonable extensions thereof.

9.05 Investments. Such Obligor will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

(a) Investments outstanding on the date hereof and identified in **Schedule 9.05** to the Disclosure Letter;

(b) operating deposit accounts with banks;

(c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services or licensing transactions in the ordinary course of business;

(d) Permitted Cash Equivalent Investments;

(e) Investments by any Obligor in Borrower's wholly-owned Subsidiary Guarantors (for greater certainty, Borrower shall not be permitted to have any direct or indirect Subsidiaries that are not wholly-owned Subsidiaries);

(f) Hedging Agreements entered into in the ordinary course of Borrower's financial planning solely to hedge currency risks (and not for speculative purposes) and in an aggregate notional amount for all such Hedging Agreements not in excess of $2,000,000 (or the Equivalent Amount in other currencies);

(g) Investments consisting of security deposits with utilities, landlords, vendors and other like Persons made in the ordinary course of business;

(h) employee loans, travel advances and guarantees in accordance with Borrower's usual and customary practices with respect thereto (if permitted by applicable law) which in the aggregate shall not exceed $250,000 outstanding at any time (or the Equivalent Amount in other currencies);

(i) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients;

(j) Investments (excluding non-exclusive license of Intellectual Property and license of Intellectual Property that are exclusive to jurisdictions outside the United States only) as part of a Permitted Commercialization Arrangement, provided that the value of the cash and tangible property components of such Investment (valued at cost) shall not at any time exceed $2,500,000 in the aggregate at any time outstanding for all such Permitted Commercialization Arrangements taken together;

(k) Investments acquired as a result of a Permitted Acquisition to the extent that such Investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence prior to the date of such Permitted Acquisition, in an aggregate amount not to exceed $1,000,000 at any time outstanding (or such higher threshold as consented to by Administrative Agent, such consent not to be unreasonably withheld);

(l) Investments permitted by Borrower's investment policy as in effect as of the date of this Agreement, with such changes thereto as shall be approved by Borrower's board of directors with the written consent of the Majority Lenders; and

(m) Investments permitted under **Section 9.03**.

9.06 Restricted Payments. Such Obligor will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) Borrower may declare and pay dividends with respect to its capital stock payable solely in additional shares of its common stock (other than Disqualified Equity);

(b) any Subsidiary Guarantor may declare and pay dividends to any other Obligor;

(c) Borrower may purchase, redeem, retire, or otherwise acquire shares of its capital stock or other Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its capital stock or other Equity Interests;

(d) for payments pursuant to employee stock plans, which payments must not exceed $100,000 in any fiscal year;

(e) Borrower may make cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options, or other securities convertible into or exchangeable for Equity Interests of Borrower;

(f) Borrower may make repurchases of capital stock of Borrower deemed to occur upon the exercise of options, warrants or other rights to acquire capital stock of Borrower solely to the extent that shares of such capital stock represent a portion of the exercise price of such options, warrants or such rights;

(g) Borrower may honor conversion or exercise requests in respect of any convertible or exercisable securities of Borrower pursuant to the terms of such securities or in exchange therefor to the extent such convertible or exercisable securities are converted into, exchanged for or exercised for Equity Interests of Borrower (other than Disqualified Equity);

(h) Borrower may make Restricted Payments in connection with the retention of Equity Interests in payment of withholding taxes in connection with equity-based compensation plans;

(i) Borrower may distribute rights pursuant to a shareholder rights plan or redeem such rights for no or nominal consideration not to exceed $0.001 per right, provided that such redemption is in accordance with the terms of such plan;

(j) Borrower or any Subsidiary may make payments or distributions to dissenting stockholders pursuant to applicable law in connection with any Permitted Acquisition; *provided* that such amounts when taken together with the aggregate consideration paid or payable for all Permitted Acquisitions shall not exceed the amounts permitted by **Section 9.03(e)**; and

(k) a Restricted Payment by any Subsidiary that is not a Subsidiary Guarantor to Borrower or any other Subsidiary.

9.07 Payments of Indebtedness. Such Obligor will not, and will not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, (ii) scheduled payments of other Indebtedness, (iii) repayment of intercompany Indebtedness permitted in reliance upon **Section 9.01(f)** and (iv) on or prior to the first Borrowing Date, payments due under the Oxford Agreement.

9.08 Change in Fiscal Year. Such Obligor will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of Borrower.

9.09 Sales of Assets, Exclusive Licenses, Etc. Such Obligor will not, and will not permit any of its Subsidiaries to, sell, lease, transfer, or otherwise dispose of any of its Property (including accounts receivable and capital stock of Subsidiaries) or exclusively license (in terms of geography or field of use) the Product to any Person in one transaction or series of transactions (any thereof, an "***Asset Transaction***"), except:

(a) transfers of cash in the ordinary course of its business for equivalent value;

(b) sales of inventory in the ordinary course of its business on ordinary business terms;

(c) development and other collaborative arrangements where such arrangements provide for the licenses or disclosure of Patents, Trademarks, Copyrights or other Intellectual Property rights in the ordinary course of business and consistent with general market practices where such licenses are provided for in development and other collaborative arrangements that require periodic payments based on per unit sales of a product over a period of time and *provided* that such license does not effect a legal transfer of title to such Intellectual Property rights and such licenses must be true licenses as opposed to licenses that are sales transactions in substance;

(d) transfers of Property by any Subsidiary Guarantor to any other Obligor;

(e) dispositions of any Property that is surplus, obsolete or worn out or no longer used or useful in the Business;

(f) any transaction permitted under **Section 9.03** or **9.05**;

(g) licenses for the use of the Intellectual Property of Borrower or its Subsidiaries (but not to any of Borrower's Affiliates except for a Permitted Commercialization Arrangement Vehicle) that are approved by Borrower's board of directors and which would not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory and that may be exclusive as to territory only as to discrete areas outside of the United States; *except* that Borrower or its Subsidiaries may not grant to another party an exclusive license of the Intellectual Property of Borrower or its Subsidiaries in the field of use or scope covering the Product within the United States;

(h) assignments, licenses, sublicenses, sales or other transfers of any Obligor's Intellectual Property specifically related to individual GPCR targets (but not the GPCR platform as a whole) in connection with the development and commercialization thereof as contemplated by the Vulcan Agreement;

(i) one or more licenses granted (i) pursuant to the Fagron License or any Fagron Replacement License or (ii) in connection with exclusive manufacturing, fill-finish or packaging, marketing, promotion or distribution arrangements for or on behalf of Borrower entered into in the ordinary course of business; *provided* that each such license (x) does not effect a legal transfer of title to such Intellectual Property rights and (y) must be a true license as opposed to a license that is a sales transaction in substance;

(j) dispositions consisting of the sale, transfer, assignment or other disposition of unpaid and overdue accounts receivable in connection with the collection, compromise or settlement thereof in the ordinary course of business and not as part of a financing transaction;

(k) dispositions of equipment to the extent that (i) such equipment is exchanged for credit against the purchase price of similar replacement equipment or (ii) the proceeds of such disposition are applied to the purchase price of such replacement equipment within 180 days;

(l) dispositions resulting from casualty events or any other insured damage to any property or asset of any Obligor or any Obligor's Subsidiary;

(m) non-exclusive licenses of Borrower's and its Subsidiaries' Intellectual Property; and

(n) any other Disposition the Asset Transaction Net Proceeds of which are applied as required under **Section 3.03(b)(i)**.

9.10 Transactions with Affiliates. Such Obligor will not, and will not permit any of its Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

(a) transactions between or among Obligors;

(b) any transaction permitted under **Section 9.01**, **9.05**, **9.06** or **9.09**;

(c) customary compensation (including equity based compensation) and indemnification of, and other employment or compensation arrangements with, directors, officers and employees of Borrower or any Subsidiary and reimbursement of expenses of current or former directors, officers and employees, in each case in the ordinary course of business,

(d) Borrower may issue Equity Interests to Affiliates in exchange for cash, *provided* that the terms thereof are no less favorable (including the amount of cash received by Borrower) to Borrower than those that would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower;

(e) the transactions set forth on **Schedule 9.10** to the Disclosure Letter; and

(f) transactions between an Obligor and Omeros London Limited with respect to the European operations of the Product that may be effected by Omeros London Limited as the Marketing Authorization Holder of the Product and any other transactions between an Obligor and Omeros London Limited in furtherance of the same; *provided* that, immediately prior to and immediately following any such transaction, Omeros London Limited shall not be required to become a Subsidiary Guarantor pursuant to **Section 8.12**.

9.11 Restrictive Agreements. Such Obligor will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (a) restrictions and conditions imposed by law or by the Loan Documents, (b) Restrictive Agreements listed on **Schedule 7.15** to the Disclosure Letter, (c) restrictions or conditions imposed by an agreement relating to Permitted Priority Debt or Permitted Cure Debt and (d) prior to the first Borrowing Date, the Oxford Agreement.

9.12 Amendments to Material Agreements; Organizational Documents. Such Obligor will not, and will not permit any of its Subsidiaries to, enter into any material amendment to or material modification of any Material Agreement or terminate any Material Agreement (other than the termination of the Oxford Agreement or unless replaced with another agreement that, viewed as a whole, is on better terms for Borrower or such Subsidiary within 60 days of such termination) without, in each case, the prior written consent of the Majority Lenders (which consent shall not be unreasonably withheld or delayed). Such Obligor will not, and will not permit any of its Subsidiaries to, enter into any amendment to or modification of its organizational documents in a manner that could (a) be materially adverse to the rights or remedies of the Lenders under the Loan Documents or (b) prevent any Obligor from fulfilling, or limit any Obligor's ability to fulfill, all of its obligations under the Loan Documents.

9.13 Operating Leases. Borrower will not, and will not permit any of its Subsidiaries to, make any expenditures in respect of operating leases, except for:

(a) real estate operating leases;

(b) operating leases between Borrower and any of its wholly-owned Subsidiaries or between any of Borrower's wholly-owned Subsidiaries;

(c) operating leases in respect of motor vehicles that would not cause Borrower and its Subsidiaries, on a consolidated basis, to make payments exceeding $1,250,000 (or the Equivalent Amount in other currencies) in any fiscal year; and

(d) other operating leases that would not cause Borrower and its Subsidiaries, on a consolidated basis, to make payments exceeding $500,000 (or the Equivalent Amount in other currencies) in any fiscal year.

9.14 Sales and Leasebacks. Except as disclosed on **Schedule 9.14** to the Disclosure Letter or as otherwise permitted by, and subject to the threshold and limitations of, **Section 9.01(i)** or **Section 9.13**, as applicable, such Obligor will not, and will not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a

Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which Borrower or such Subsidiary has sold or transferred or is to sell or transfer to any other Person and (ii) which Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.15 Hazardous Material. Such Obligor will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not reasonably be expected to result in a Material Adverse Change.

9.16 Accounting Changes. Such Obligor will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

9.17 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (a) any event that could result in the imposition of a Lien with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event that would, in the aggregate, have a Material Adverse Effect. No Obligor or Subsidiary thereof shall cause or suffer to exist any event that could result in the imposition of a Lien with respect to any Benefit Plan that would have a Material Adverse Effect.

SECTION 10
FINANCIAL COVENANTS

10.01 Minimum Liquidity. After the first Borrowing Date, Borrower shall maintain at all times Liquidity in an amount which shall exceed the greater of (i) $5,000,000 and (ii) to the extent Borrower has incurred Permitted Priority Debt, the minimum cash balance, if any, required of Borrower by Borrower's Permitted Priority Debt creditors.

10.02 Minimum Revenue or Minimum Market Capitalization. Borrower shall have met the requirements set forth in either **Section 10.02(a)** or **Section 10.02(b)**.

(a) The Obligors shall have annual Revenue (for each respective calendar year, the "***Minimum Required Revenue***"):

(i) during the twelve-month period beginning on January 1, 2016, of at least $35,000,000;

(ii) during the twelve-month period beginning on January 1, 2017, of at least $55,000,000;

(iii) during the twelve-month period beginning on January 1, 2018, of at least $65,000,000;

(iv) during the twelve-month period beginning on January 1, 2019, of at least $75,000,000;

(v) during the twelve-month period beginning on January 1, 2020, of at least $90,000,000; and

(vi) during the twelve-month period beginning on January 1, 2021, of at least $100,000,000.

For purposes of this Section 10.02(a), any Minimum Required Revenue shall be determined as of the last day of the twelve-month period set forth above.

(b) At the end of the fifth (5th) Business Day following the announcement of earnings results for each calendar year, the Market Capitalization of Borrower shall be equal to or greater than the Market Cap Threshold.

10.03 Cure Right.

(a) Notwithstanding anything to the contrary contained in **Section 11**, in the event that Borrower fails to comply with the covenants contained in **Section 10.02(a)(i) through (vi)** or **Section 10.02(b)** (such covenants for such applicable periods being the "***Specified Financial Covenants***"), Borrower shall have the right within 90 (ninety) days of the end of the respective calendar year:

(i) to issue additional Equity Interests in exchange for cash (the "***Equity Cure Right***"), or

(ii) to borrow Permitted Cure Debt (the "***Subordinated Debt Cure Right***" and, collectively with the Equity Cure Right, the "***Cure Right***"),

in an amount equal to (x) one (1) multiplied by (y) the Minimum Required Revenue for the respective calendar year with respect to which the Cure Right is being exercised less the Obligors' annual Revenue (the "***Cure Amount***"). The cash therefrom immediately shall be contributed as equity or subordinated debt (only as permitted pursuant to **Section 9.01**), as applicable, to Borrower, and upon the receipt by Borrower of the Cure Amount pursuant to the exercise of such Cure Right, such Cure Amount shall be deemed to constitute Revenue of the Obligors for purposes of the Specified Financial Covenants and the Specified Financial Covenants shall be recalculated for all purposes under the Loan Documents. If, after giving effect to the foregoing recalculation, Borrower shall then be in compliance with the requirements of the Specified Financial Covenants, Borrower shall be deemed to have satisfied the requirements of the Specified Financial Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Specified Financial Covenants that had occurred, the related Default and Event of Default, shall be deemed cured without any further action of Borrower or Lenders for all purposes under the Loan Documents. Upon the Lenders' receipt of a notice from Borrower that it intends to exercise the Cure Right with respect to **Section 10.02(a)** or **(b)** (the "***Notice of Intent to Cure***"), then, so long as no other Event of Default then exists and solely with respect to Borrower's exercise of the Equity Cure Right and Subordinated Debt Cure Right, through the 90th day subsequent to the calendar year to which such Notice of Intent to Cure relates, neither Administrative Agent nor any Lender shall exercise the right to accelerate the Loans or terminate the Commitments and neither Administrative Agent nor any Lender shall exercise any right to

foreclose on or take possession of the Collateral solely on the basis of an Event of Default having occurred and being continuing under **Section 10.02(a)** or **(b)** in respect of such calendar year; *provided* that, if Borrower fails to raise the Cure Amount on or before the 90th day subsequent to the calendar year to which such Notice of Intent to Cure relates, the applicable breach of the Specified Financial Covenants, the related Default and Event of Default, shall be deemed to have occurred as of the day following the last day of such calendar year and the Default Rate shall be deemed to have been implemented as of such date.

(b) Notwithstanding anything herein to the contrary, the Cure Amount received by Borrower from investors investing in or lending to Borrower pursuant to **Section 10.03(a)** shall be used to immediately prepay the Loans, including any Prepayment Premium and any fees payable pursuant to the Fee Letter, credited in the order set forth in **Sections 3.03(b)(i)(A)-(E)**.

SECTION 11
EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an "***Event of Default***":

(a) Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of (i) in the case of Obligations payable on demand and consisting of indemnified amounts or costs and expenses, fifteen (15) Business Days, and (ii) in all other cases, seven (7) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of Borrower or any of its Subsidiaries in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier;

(d) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Section 8.02** (and such failure continues unremedied for five (5) days), **8.03** (with respect to Borrower's existence), **8.11**, **8.12(a) and (b)**, **8.14**, **9** or **10**;

(e) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a)**, **(b)** or **(d)**) or any other Loan Document, and, in the case of any failure that is capable of cure, if such failure shall continue unremedied for a period of thirty (30) or more days after written notice thereof from the Lenders is received by a Responsible Officer of Borrower;

(f) Borrower or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as originally provided by the terms of such Indebtedness;

(g) (i) any material breach of, or "event of default" or similar event by any Obligor under, any Material Agreement shall occur, which would give the counterparty to such Material Agreement the right to terminate such Material Agreement pursuant to the terms thereof (after giving effect to any applicable grace or cure period and provided that such material breach, "event of default" or similar event is not being contested in good faith with reasonable basis by such Obligor) and the termination of which would reasonably be expected to result in a Material Adverse Effect, to the extent that (1) the Obligor has received written notice of termination of such Material Agreement and (2) the counterparty to such Material Agreement has not waived such material breach, "event of default" or similar event within twenty (20) Business Days of the Obligor's receipt of the written notice, (ii) any material breach of, or "event of default" or similar event under, the documentation governing any Material Indebtedness shall occur and continue unredeemed, uncured or unwaived for a period of five (5) Business Days after the expiration of any cure period thereunder or (iii) any event or condition occurs (A) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided* that this **Section 11.01(g)** shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness.

(h) any Obligor with assets (at fair market value) constituting more than five percent (5%) of the asset value of Borrower and its Subsidiaries on a consolidated basis:

(i) becomes insolvent, or generally does not or becomes unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors;

(ii) commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so);

(iii) institutes any proceeding seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or composition of it or its debts or any other relief, under any federal, provincial or foreign Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property; or

(v) takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(h)** or **(i)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof;

(i) any petition is filed, application made or other proceeding instituted against or in respect of any Obligor with assets (at fair market value) constituting more than five percent (5%) of the asset value of Borrower and its Subsidiaries on a consolidated basis:

(i) seeking to adjudicate it as insolvent;

(ii) seeking a receiving order against it;

(iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or composition of it or its debts or any other relief under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity; or

(iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of ninety (90) days after the institution thereof; *provided* that if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; *provided further* that if Borrower or such Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply;

(j) any other event occurs which, under the laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in either of **Section 11.01(h)** or **(i)**;

(k) one or more judgments for the payment of money in an aggregate amount in excess of $500,000 (or the Equivalent Amount in other currencies) (to the extent not covered by independent third party insurance as to which the insurer has been notified of the potential claim and does not dispute coverage) shall be rendered against any Obligor or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment;

(l) (i) an ERISA Event shall have occurred that, in the opinion of the Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in liability of Borrower and its Subsidiaries in an aggregate amount exceeding (i) $500,000 in any year or (ii) $1,500,000 for all periods until repayment of all Obligations;

(m) a Change of Control shall have occurred;

(n) a Material Adverse Change shall have occurred;

(o) [Reserved];

(p) (i) any Lien created by any of the Security Documents over Collateral that individually or in the aggregate exceeds $250,000 in market value shall at any time not constitute a valid and perfected Lien on the applicable Collateral intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required herein or therein) in favor of the Secured Parties, free and clear of all other Liens (other than Permitted Liens) to the extent required by the Security Documents, (ii) except for expiration in accordance with its terms, any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 14**) shall for whatever reason cease to be in full force and effect, or (iii) any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 14**), or the enforceability thereof, shall be repudiated or contested by any Obligor; and

(q) any injunction, whether temporary or permanent, shall be rendered against any Obligor that prevents the Obligors from selling or manufacturing the Product or its commercially available successors in the United States for more than 60 consecutive calendar days;

11.02 Remedies. (a) Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h)**, **(i)** or **(j)**), and at any time thereafter during the continuance of such event, the Majority Lenders may, by written notice to Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations (including fees specified in the Fee Letter), shall become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

(b) Upon the occurrence of any Event of Default described in **Section 11.01(h)**, **(i)** or **(j)**, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, shall automatically become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

(c) **Prepayment Premium and Redemption Price**. (i) For the avoidance of doubt, the Prepayment Premium (as a component of the Redemption Price) and the fees specified in the

Fee Letter that are payable upon the repayment of the Loans shall be due and payable whenever so stated in this Agreement and the Fee Letter, or by any applicable operation of law, regardless of the circumstances causing any related acceleration or payment prior to the Stated Maturity Date, including without limitation any Event of Default or other failure to comply with the terms of this Agreement, whether or not notice thereof has been given, or any acceleration by, through or on account of any bankruptcy filing.

(ii) For the avoidance of doubt, the Prepayment Premium (as a component of the Redemption Price) and any fees specified in the Fee Letter shall be due and payable at any time the Loans become due and payable prior to the Stated Maturity Date for any reason, whether due to acceleration pursuant to the terms of this Agreement (in which case it shall be due immediately, upon the giving of written notice to Borrower in accordance with **Section 11.02(a)**, or automatically, in accordance with **Section 11.02(b)**), by operation of law or otherwise (including, without limitation, where bankruptcy filings or the exercise of any bankruptcy right or power, whether in any plan of reorganization or otherwise, results or would result in a payment, discharge, modification or other treatment of the Loans or Loan Documents that would otherwise evade, avoid, or otherwise disappoint the expectations of Lenders in receiving the full benefit of their bargained-for Prepayment Premium or Redemption Price as provided herein). The Obligors and Lenders acknowledge and agree that any Prepayment Premium and the fees specified in the Fee Letter due and payable in accordance with this Agreement shall not constitute unmatured interest, whether under section 502(b)(3) of the Bankruptcy Code or otherwise, but instead is reasonably calculated to ensure that the Lenders receive the benefit of their bargain under the terms of this Agreement.

(iii) Each Obligor acknowledges and agrees that the Lenders shall be entitled to recover the full amount of the Redemption Price and the fees specified in the Fee Letter in each and every circumstance such amount is due pursuant to or in connection with this Agreement and the Fee Letter, including without limitation in the case of any Obligor's bankruptcy filing, so that the Lenders shall receive the benefit of their bargain hereunder and otherwise receive full recovery as agreed under every possible circumstance, and Borrower hereby waives, to the extent permitted by applicable law, any defense to payment, whether such defense may be based in public policy, ambiguity, or otherwise. Each Obligor further acknowledges and agrees, and waives, to the extent permitted by applicable law, any argument to the contrary, that payment of such amounts does not constitute a penalty or an otherwise unenforceable or invalid obligation. Any damages that the Lenders may suffer or incur resulting from or arising in connection with any breach hereof or thereof by Borrower shall constitute secured obligations owing to the Lenders.

SECTION 12
ADMINISTRATIVE AGENT

12.01 Appointment and Duties. (a) **Appointment of Administrative Agent**. Each Lender hereby irrevocably appoints CRG Servicing (together with any successor Administrative Agent pursuant to **Section 12.09**) as Administrative Agent hereunder and authorizes Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Obligor or any of its Subsidiaries, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Administrative

Agent under such Loan Documents, (iii) act as agent of such Lender for purposes of acquiring, holding, enforcing and perfecting all Liens granted by the Obligors on the Collateral to secure any of the Obligations and (iv) exercise such powers as are reasonably incidental thereto.

(b) **Duties as Collateral and Disbursing Agent**. Without limiting the generality of **Section 12.01(a)**, Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any proceeding described in **Section 11.01(h)**, **(i)** or **(j)** or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in **Section 11.01(h)**, **(i)** or **(j)** or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of acquiring, holding, enforcing and perfecting all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise, (vii) enter into subordination agreements with respect to Permitted Cure Debt, intercreditor agreements with respect to Permitted Priority Debt or any other subordination agreement or intercreditor agreement with respect to Indebtedness of an Obligor, (viii) enter into Non-Disturbance Agreements and similar agreements in accordance with **Section 2.07**, and (ix) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; *provided*, *however*, that Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Administrative Agent and the Secured Parties for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by an Obligor with, and cash and Permitted Cash Equivalent Investments held by, such Lender, and may further authorize and direct any Lender to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) **Limited Duties**. Under the Loan Documents, Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in **Section 12.11**), with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Administrative Agent", the terms "agent", "administrative agent" and "collateral agent" and similar terms in any Loan Document to refer to Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender hereby waives and agrees not to

assert any claim against Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in the foregoing **clauses (i)** through **(iii)**.

12.02 Binding Effect. Each Lender agrees that (i) any action taken by Administrative Agent or the Majority Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Administrative Agent in reliance upon the instructions of the Majority Lenders (or, where so required, such greater proportion) and (iii) the exercise by Administrative Agent or the Majority Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

12.03 Use of Discretion. (a) **No Action without Instructions**. Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) **Right Not to Follow Certain Instructions**. Notwithstanding **Section 12.03(a)**, Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to Administrative Agent, any other Secured Party) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Administrative Agent or any Related Person thereof or (ii) that is, in the opinion of Administrative Agent or its counsel, contrary to any Loan Document or applicable Requirement of Law.

12.04 Delegation of Rights and Duties. Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through or to any trustee, co-agent, sub-agent, employee, attorney-in-fact and any other Person (including any other Secured Party). Any such Person shall benefit from this **Section 12** to the extent provided by Administrative Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

12.05 Reliance and Liability. (a) Administrative Agent may, without incurring any liability hereunder, (i) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Obligor) and (ii) rely and act upon any document and information and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of Administrative Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and each Obligor hereby waives and shall not assert any right, claim

or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Administrative Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Majority Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of Administrative Agent, when acting on behalf of Administrative Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Person, in or in connection with any Loan Document or any transaction contemplated therein, whether or not transmitted by Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Administrative Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Obligor or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Borrower or any Lender describing such Default or Event of Default clearly labeled “notice of default” (in which case Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in **clauses (i) through (iv)** above, each Lender and each Obligor hereby waives and agrees not to assert any right, claim or cause of action it might have against Administrative Agent based thereon.

12.06 Administrative Agent Individually. Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire Equity Interests of, engage in any kind of business with, any Obligor or Affiliate thereof as though it were not acting Administrative Agent and may receive separate fees and other payments therefor. To the extent Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender”, “Majority Lender”, and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Majority Lenders, respectively.

12.07 Lender Credit Decision. Each Lender acknowledges that it shall, independently and without reliance upon Administrative Agent, any Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Administrative Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Obligor and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate.

12.08 Expenses; Indemnities. (a) Each Lender agrees to reimburse Administrative Agent and each of its Related Persons (to the extent not reimbursed by any Obligor) promptly upon demand for such Lender's Proportionate Share of any costs and expenses (including fees, charges and disbursements of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Obligor) that may be incurred by Administrative Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify Administrative Agent and each of its Related Persons (to the extent not reimbursed by any Obligor), from and against such Lender's aggregate Proportionate Share of the liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against Administrative Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document, any Related Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Administrative Agent or any of its Related Persons under or with respect to any of the foregoing; *provided, however,* that no Lender shall be liable to Administrative Agent or any of its Related Persons to the extent such liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Administrative Agent's or such Related Person's gross negligence or willful misconduct.

12.09 Resignation of Administrative Agent. (a) Administrative Agent may resign at any time by delivering written notice of such resignation to the Lenders and Borrower, effective on the date set forth in such notice or, if not such date is set forth therein, upon the date such notice shall be effective. If Administrative Agent delivers any such notice, the Majority Lenders shall have the right to appoint a successor Administrative Agent. If, within 30 days after the retiring Administrative Agent having given notice of resignation, no successor Administrative Agent has been appointed by the Majority Lenders that has accepted such appointment, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent from among the Lenders. Each appointment under this **Section 12.09(a)** shall be subject to the prior written consent of Borrower, which may not be unreasonably withheld but shall not be required during the continuance of an Event of Default.

(b) Effective immediately upon its resignation, (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders

shall assume and perform all of the duties of Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the retiring Administrative Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Administrative Agent was, or because such Administrative Agent had been, validly acting as Administrative Agent under the Loan Documents and (iv) subject to its rights under **Section 12.03**, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent under the Loan Documents.

12.10 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs Administrative Agent to release (or, in the case of **Section 12.10(b)(ii)**, release or subordinate) the following:

(a) any Subsidiary of Borrower from its guaranty of any Obligation of any Obligor if all of the Equity Interests in such Subsidiary owned by any Obligor or any of its Subsidiaries are disposed of in an Asset Transaction permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Asset Transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to **Section 8.12**; and

(b) any Lien held by Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is disposed of by an Obligor in an Asset Transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in any Collateral pursuant to **Section 8.12** after giving effect to such Asset Transaction have been granted, (ii) any property subject to a Lien described in **Section 9.02(d)** and (iii) all of the Collateral and all Obligors, upon (A) termination of the Commitments, (B) payment and satisfaction in full of all Loans and all other Obligations that Administrative Agent has been notified in writing are then due and payable, (C) deposit of cash collateral with respect to all contingent Obligations for which a claim has been made, in amounts and on terms and conditions and with parties satisfactory to the Majority Lenders and each Indemnitee that is owed such Obligations and (D) to the extent requested by Administrative Agent, receipt by the Secured Parties of liability releases from the Obligors each in form and substance acceptable to Administrative Agent.

Each Lender hereby directs Administrative Agent, and Administrative Agent hereby agrees, upon receipt of reasonable advance notice from Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this **Section 12.10**.

12.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by Administrative Agent, shall confirm such agreement in a

writing in form and substance acceptable to Administrative Agent) this **Section 12** and the decisions and actions of Administrative Agent and the Majority Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; *provided*, *however*, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by **Section 12.08** only to the extent of liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Proportionate Share or similar concept, (b) each of Administrative Agent and each Lender shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

SECTION 13
MISCELLANEOUS

13.01 No Waiver. No failure on the part of Administrative Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

13.02 Notices. All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including by telecopy, facsimile or electronic means) delivered, if to Borrower, another Obligor, Administrative Agent or any Lender, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by email or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger. All such communications provided for herein by telecopy, facsimile or electronic means shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication). Notwithstanding anything to the contrary in this Agreement, all notices, documents, certificates and other deliverables to the Lenders by any Obligor may be made solely to Administrative Agent and Administrative Agent shall promptly deliver such notices, documents, certificates and other deliverables to the other Lenders hereunder.

13.03 Expenses, Indemnification, Etc.

(a) **Expenses**. Borrower agrees to pay or reimburse (i) Administrative Agent and the Lenders for all of their reasonable and documented out of pocket costs and expenses (including the reasonable and documented fees and expenses of Cooley LLP, special counsel to Administrative Agent and the Lenders (*provided* that it is understood and agreed that general descriptions of work performed by counsel to Administrative Agent and the Lenders shall be "documented" for purposes of this **Section 13.03(a)**) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement and the other Loan Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) Administrative Agent and the Lenders for all of their documented out of pocket costs and expenses (including the fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default; *provided, however,* that Borrower shall not be required to pay or reimburse any amounts pursuant to **Section 13.03(a)(i)(x)** in excess of the Expense Cap and that any such expenses shall be subject to the limitations set forth in **Section 8.12(c)**; *provided further* that, so long as the first Borrowing is made, such fees incurred prior to the first Borrowing Date shall be credited from the fees paid by Borrower pursuant to the Fee Letter.

(b) **Indemnification**. Borrower hereby indemnifies Administrative Agent, each Lender, their respective Affiliates, and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an "***Indemnified Party***") from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind (including reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the transactions contemplated hereby or thereby or any use made or proposed to be made with the proceeds of the Loans and any claim, investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with or relating to any of the foregoing, whether or not any Indemnified Party is a party to an actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based in contract, tort or any other theory and whether or not such investigation, litigation or proceeding is brought by Borrower, any of its shareholders or creditors and whether or not the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss (x) is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct or (y) arises from any dispute among Indemnified Parties not involving any action of an Obligor. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans. Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a "***Borrower Party***." No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special

or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans.

13.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by Borrower and the Majority Lenders (or Administrative Agent on behalf of such Majority Lenders); *provided however,* that:

(a) the written consent of all of the Lenders shall be required to:

(i) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal, interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans;

(ii) amend the provisions of **Section 6**;

(iii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release a material part of the Collateral subject thereto other than pursuant to the terms hereof or thereof; or

(iv) amend this **Section 13.04**; and

(b) no amendment, waiver or consent shall affect the rights or duties under any Loan Document of, or any payment to, Administrative Agent (or otherwise modify any provision of **Section 12** or the application thereof) unless in writing and signed by Administrative Agent in addition to any signature otherwise required.

Notwithstanding anything to the contrary herein, a Defaulting Lender shall not have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

13.05 Successors and Assigns.

(a) **General**. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or under any of the other Loan Documents without the prior written consent of the Lenders. Any of the Lenders may assign or otherwise transfer any of their rights or obligations hereunder or under any of the other Loan Documents to an assignee (i) in accordance with the provisions of **Section 13.05(b)**, (ii) by way of participation in accordance

with the provisions of **Section 13.05(e)** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 13.05(g)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 13.05(e)** and, to the extent expressly contemplated hereby, the Indemnified Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders**. Any of the Lenders may at any time assign to one or more Eligible Transferees (or, if an Event of Default has occurred and is continuing, to any Person) all or a portion of their rights and obligations under this Agreement (including all or a portion of the Commitment and the Loans at the time owing to it); *provided*, *however*, that (i) no such assignment shall be made to Borrower, an Affiliate of Borrower, or any employees or directors of Borrower at any time and (ii) so long as no Event of Default has occurred and is continuing and except in connection with an assignment by a Lender to its Affiliate, the assigning Lender shall provide written notice of such assignment to Borrower at least five Business Days prior thereto. Subject to the recording thereof by Administrative Agent pursuant to **Section 13.05(d)**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the Lenders under this Agreement and the other Loan Documents, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of a Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) and the other Loan Documents but shall continue to be entitled to the benefits of **Section 5** and **Section 13.03**. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 13.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 13.05(e)**.

(c) **Amendments to Loan Documents**. Each of Administrative Agent, the Lenders and the Obligors agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to Administrative Agent, the Lenders and the Obligors, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 13.05**.

(d) **Register**. Administrative Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices a register for the recordation of the name and address of any assignee of the Lenders and the Commitment and outstanding principal amount of the Loans owing thereto (the "***Register***"). The entries in the Register shall be conclusive, absent manifest error, and Borrower shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the "Lender" hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, at any reasonable time and from time to time upon reasonable prior notice. This **Section 13.05** shall be construed so that the Obligations are at all times maintained in "registered form" within the meaning of Sections 871(h)(2) and 881(c)(2) of the Code.

(e) **Participations**. Any of the Lenders may at any time, without the consent of, or notice to, Borrower, sell participations to any Person (other than a natural person or Borrower or any of 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 the Commitment and/or the Loans owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower shall continue to deal solely and directly with the Lenders in connection therewith.

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, modification or waiver that would (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest. Subject to **Section 13.05(f)**, Borrower agrees that each Participant shall be entitled to the benefits of **Section 5** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.05(b)**. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 4.04(a)** as though it were the Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letter 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, letters of credit or its 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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) **Limitations on Rights of Participants**. A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **5.03** than a Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent.

(g) **Certain Pledges**. The Lenders may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement and any other Loan Document to secure obligations of the Lenders, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release the Lenders

from any of their obligations hereunder or substitute any such pledgee or assignee for the Lenders as a party hereto.

13.06 Survival. The obligations of the Obligors under **Sections 5.01**, **5.02**, **5.03**, **13.03**, **13.05**, **13.09**, **13.10**, **13.11**, **13.12**, **13.13**, **13.14, 13.16, 13.20** and **Section 14** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Obligations and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a Notice of Borrowing, herein or pursuant hereto shall survive the making of such representation and warranty.

13.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

13.08 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

13.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, 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.

13.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction**. Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 13.10(a)** is for the benefit of Administrative Agent and the Lenders only and, as a result, neither Administrative Agent nor any Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by applicable Laws, Administrative Agent and the Lenders may take concurrent proceedings in any number of jurisdictions.

(b) **Alternative Process**. Nothing herein shall in any way be deemed to limit the ability of Administrative Agent or the Lenders to serve any such process or summonses in any other manner permitted by applicable law.

(c) **Waiver of Venue, Etc**. Each Obligor irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan

Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

13.11 Waiver of Jury Trial. EACH OBLIGOR AND EACH LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

13.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its Property or Revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement and the other Loan Documents.

13.13 Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH ADMINISTRATIVE AGENT OR THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

13.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by applicable law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

13.15 No Fiduciary Relationship. Each Obligor acknowledges that Administrative Agent and the Lenders have no fiduciary relationship with, or fiduciary duty to, Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and Borrower is solely that of creditor and debtor. This Agreement and the other Loan Documents do not create a joint venture among the parties.

13.16 Confidentiality. Each of Administrative Agent and the Lenders agree to maintain the confidentiality of the Information (as defined below) and not use the Information for purposes other than as provided for herein (including this **Section 13.16**) or in furtherance of and the enforcement of the terms of this Agreement and their respective business as agent or lenders, as

the case may be (including any financing activities in connection therewith), except that Information may be disclosed (a) to its Affiliates, to its Related Persons and to service providers to Administrative Agent and the Lenders in connection with the administration and enforcement of this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and shall undertake in writing or shall otherwise be obligated to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Persons (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) subject to a binding agreement containing provisions substantially the same as those of this **Section 13.16**, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement (excluding any Person known by the assignor as a Person described in clause (1) or (2) of the definition of "Eligible Transferee") or (ii) any actual or prospective party (or its Related Persons) to any swap, derivative or other transaction under which payments are to be made by reference to Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating Borrower or its Subsidiaries or the Loans or (ii) the CUSIP Global Services or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans; (h) with the consent of Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this **Section 13.16**, or (y) becomes available to Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower if such source was not, to the knowledge of Administrative Agent or such Lender or their respective Affiliates, as applicable, prohibited from disclosing such Information by a legal, contractual or fiduciary obligation. In addition, Administrative Agent and the Lenders may disclose the existence of this Agreement and the material terms thereof to market data collectors, similar service providers to the lending industry and service providers to Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

For purposes of this Section, "***Information***" means all information furnished by Borrower or any of its Subsidiaries relating to Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower or any of its Subsidiaries; *provided* that the source was not, to the knowledge of the Administrative Agent or such Lender, prohibited from disclosing such Information by a legal, contractual or fiduciary obligation. Any Person required to maintain the confidentiality of Information as provided in this **Section 13.16** 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.

13.17 USA PATRIOT Act. Administrative Agent and the Lenders hereby notify the Obligors that, pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Act***") or any Anti-Money Laundering Laws, they are required

to obtain, verify and record information that identifies each Obligor, which information includes the name and address of such Obligor and other information that will allow such Lender to identify such Obligor in accordance with the Act and any other Anti-Money Laundering Laws.

13.18 Maximum Rate of Interest. 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 (in each case, the "***Maximum Rate***"). If the Lenders shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans, and not to the payment of interest, or, if the excessive interest exceeds such unpaid principal, the amount exceeding the unpaid balance shall be refunded to the applicable Obligor. In determining whether the interest contracted for, charged, or received by the Lenders exceeds the Maximum Rate, the Lenders 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, (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Indebtedness and other obligations of any Obligor hereunder, or (d) allocate interest between portions of such Indebtedness and other obligations under the Loan Documents to the end that no such portion shall bear interest at a rate greater than that permitted by applicable Law.

13.19 Waiver of Marshaling. WITHOUT LIMITING THE FOREGOING IN ANY WAY, EACH OBLIGOR HEREBY IRREVOCABLY WAIVES AND RELEASES, TO THE EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS IT MAY HAVE AT ANY TIME (WHETHER ARISING DIRECTLY OR INDIRECTLY, BY OPERATION OF LAW, CONTRACT OR OTHERWISE) TO REQUIRE THE MARSHALING OF ANY ASSETS OF ANY OBLIGOR, WHICH RIGHT OF MARSHALING MIGHT OTHERWISE ARISE FROM ANY PAYMENTS MADE OR OBLIGATIONS PERFORMED.

13.20 Tax Treatment. The parties hereto agree (a) that any contingency associated with the Loans is described in Treasury Regulations Section 1.1272-1(c) and/or Treasury Regulations Section 1.1275-2(h), and therefore no Loan is governed by the rules set out in Treasury Regulations Section 1.1275-4, (b) except for a Lender described in Sections 871(h)(3) or 881(c)(3) of the Code, all interest on the Loans is "portfolio interest" within the meaning of Sections 871(h) or 881(c) of the Code, and therefore is exempt from withholding tax under Sections 1441(c)(9) or 1442(a) of the Code, and (c) to adhere to this Section 13.20 for federal income and any other applicable tax purposes and not to take any action or file any Tax Return, report or declaration inconsistent herewith.

13.21 Original Issue Discount. For purposes of Sections 1272, 1273 and 1275 of the Code, each Loan is being issued with original issue discount; please contact Michael A. Jacobsen, Chief Accounting Officer, 201 Elliott Ave. W., Seattle, WA 98119, telephone: (206) 676-5000 to obtain information regarding the issue price, the amount of original issue discount and the yield to maturity.

SECTION 14
GUARANTEE

14.01 The Guarantee. The Subsidiary Guarantors hereby jointly and severally guarantee to the Secured Parties and their respective successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans and all fees and other amounts from time to time owing to the Secured Parties by Borrower under this Agreement or under any other Loan Document and by any other Obligor under any of the Loan Documents, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "***Guaranteed Obligations***"). The Subsidiary Guarantors hereby further jointly and severally agree that if Borrower shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

14.02 Obligations Unconditional. The obligations of the Subsidiary Guarantors under **Section 14.01** are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Borrower under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this **Section 14.02** that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Subsidiary Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(d) any lien or security interest granted to, or in favor of, the Secured Parties as security for any of the Guaranteed Obligations shall fail to be perfected.

The Subsidiary Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust

any right, power or remedy or proceed against Borrower under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

14.03 Reinstatement. The obligations of the Subsidiary Guarantors under this **Section 14** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Secured Parties on demand for all reasonable and documented out-of-pocket costs and expenses (including reasonable and documented fees of counsel (*provided* that it is understood and agreed that general descriptions of work performed by counsel to Administrative Agent and the Lenders shall be "documented" for purposes of this **Section 14.03**) incurred by the Lenders in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

14.04 Subrogation. The Subsidiary Guarantors hereby jointly and severally agree that until the payment and satisfaction in full of all Guaranteed Obligations (other than contingent obligations for which no claim has been made) and the expiration and termination of the Commitments under this Agreement, they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in **Section 14.01**, whether by subrogation or otherwise, against Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

14.05 Remedies. The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors and the Secured Parties, the obligations of Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 14.01** notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 14.01**.

14.06 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this **Section 14** constitutes an instrument for the payment of money, and consents and agrees that the Secured Parties, at their sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

14.07 Continuing Guarantee. The guarantee in this **Section 14** is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

14.08 Rights of Contribution. The Subsidiary Guarantors hereby agree, as between themselves, that if any Subsidiary Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Subsidiary Guarantor of any Guaranteed Obligations, each other Subsidiary Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Subsidiary Guarantor's *Pro rata* Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Subsidiary Guarantor to any Excess Funding Guarantor under this **Section 14.08** shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Subsidiary Guarantor under the other provisions of this **Section 14** and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

For purposes of this **Section 14.08**, (i) "***Excess Funding Guarantor***" means, in respect of any Guaranteed Obligations, a Subsidiary Guarantor that has paid an amount in excess of its *Pro rata* Share of such Guaranteed Obligations, (ii) "***Excess Payment***" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its *Pro rata* Share of such Guaranteed Obligations and (iii) "***Pro Rata Share***" means, for any Subsidiary Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all properties of such Subsidiary Guarantor (excluding any shares of stock of any other Subsidiary Guarantor) exceeds the amount of all the debts and liabilities of such Subsidiary Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Subsidiary Guarantor hereunder and any obligations of any other Subsidiary Guarantor that have been Guaranteed by such Subsidiary Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Subsidiary Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of Borrower and the Subsidiary Guarantors hereunder and under the other Loan Documents) of all of the Subsidiary Guarantors, determined (A) with respect to any Subsidiary Guarantor that is a party hereto on the first Borrowing Date, as of such Borrowing Date, and (B) with respect to any other Subsidiary Guarantor, as of the date such Subsidiary Guarantor becomes a Subsidiary Guarantor hereunder.

14.09 General Limitation on Guarantee Obligations. In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 14.01** would otherwise, taking into account the provisions of **Section 14.08**, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 14.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, any Secured Party or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER:

OMEROS CORPORATION

By /s/ Gregory A. Demopulos, M.D.
Name: Gregory A. Demopulos, M.D.
Title: Chairman & Chief Executive Officer

Address for Notices:
201 Elliott Avenue West
Seattle, Washington 98119
Attn: Chief Executive Officer
Tel.: 206-676-5000
Fax: 206-676-5005
Email: gdemopulos@omeros.com

with a copy to:

201 Elliott Avenue West
Seattle, Washington 98119
Attn: General Counsel
Tel.: 206-676-5000
Fax: 206-676-5005
Email: mkelbon@omeros.com

SUBSIDIARY GUARANTOR:

NURA, INC.

By /s/ Gregory A. Demopulos, M.D.
Name: Gregory A. Demopulos, M.D.
Title: President

Address for Notices:
201 Elliott Avenue West
Seattle, Washington 98119
Attn: Chief Executive Officer
Tel.: 206-676-5000
Fax: 206-676-5005
Email: gdemopulos@omeros.com

with a copy to:

201 Elliott Avenue West
Seattle, Washington 98119
Attn: General Counsel
Tel.: 206-676-5000
Fax: 206-676-5005
Email: mkelbon@omeros.com

ADMINISTRATIVE AGENT:
CRG SERVICING LLC

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@crglp.com

LENDERS:

CRG PARTNERS III L.P.
By CRG PARTNERS III GP L.P., its General Partner
By CRG PARTNERS III GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@crglp.com

CRG PARTNERS III – PARALLEL FUND "A" L.P.
By CRG PARTNERS III – PARALLEL FUND "A" GP L.P., its General Partner
By CRG PARTNERS III – PARALLEL FUND "A" GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@crglp.com

CRG PARTNERS III (CAYMAN) L.P.
By CRG PARTNERS III (CAYMAN) GP L.P., its General Partner
By CRG PARTNERS III (CAYMAN) GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

Witness: /s/ Nicole Nesson

Name: Nicole Nesson

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@crglp.com

Schedule 1
to Term Loan Agreement

COMMITMENTS

Lender	Commitment	Proportionate Share
CRG Partners III – Parallel Fund "A" L.P.	$19,792,667.19	15.83%
CRG Partners III L.P.	$31,088,862.50	24.87%
CRG Partners III (Cayman) L.P.	$74,118,470.31	59.29%
TOTAL	**$125,000,000**	**100%**

137168310 v21

Exhibit A
to Term Loan Agreement

FORM OF GUARANTEE ASSUMPTION AGREEMENT

GUARANTEE ASSUMPTION AGREEMENT dated as of [DATE] by [NAME OF ADDITIONAL SUBSIDIARY GUARANTOR], a _____ [corporation][limited liability company][other type of entity] (the "***Additional Subsidiary Guarantor***"), in favor of CRG SERVICING LLC, as administrative agent and collateral agent (the "***Administrative Agent***") for the benefit of the Secured Parties under that certain Term Loan Agreement, dated as of October 26, 2016 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the "***Loan Agreement***"), among OMEROS CORPORATION, a Washington corporation ("***Borrower***"), Administrative Agent, the lenders from time to time party thereto and the Subsidiary Guarantors from time to time party thereto. The terms defined in the Loan Agreement are herein used as therein defined.

Pursuant to **Section 8.12(a)** of the Loan Agreement, the Additional Subsidiary Guarantor hereby agrees to become a "Subsidiary Guarantor" for all purposes of the Loan Agreement, and a "Grantor" for all purposes of the Security Agreement. Without limiting the foregoing, the Additional Subsidiary Guarantor hereby, jointly and severally with the other Subsidiary Guarantors, guarantees to the Lenders and their successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of all Guaranteed Obligations in the same manner and to the same extent as is provided in **Section 14** of the Loan Agreement. In addition, as of the date hereof, the Additional Subsidiary Guarantor hereby makes the representations and warranties set forth in **Sections 7.01**, **7.02**, **7.03**, **7.05(a)**, **7.06**, **7.07**, **7.08** and **7.18** of the Loan Agreement, and in **Section 2** of the Security Agreement, with respect to itself and its obligations under this Agreement and the other Loan Documents, as if each reference in such Sections to the Loan Documents included reference to this Agreement, such representations and warranties to be made as of the date hereof.

The Additional Subsidiary Guarantor hereby instructs its counsel to deliver the opinions referred to in **Section 8.12(a)** of the Loan Agreement to Administrative Agent.

IN WITNESS WHEREOF, the Additional Subsidiary Guarantor has caused this Guarantee Assumption Agreement to be duly executed and delivered as of the day and year first above written.

[ADDITIONAL SUBSIDIARY GUARANTOR]

By _____
Name:
Title:

Exhibit B
to Term Loan Agreement

FORM OF NOTICE OF BORROWING

Date : [_____]

To: CRG Servicing LLC and the Lenders referred to below

1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel

Re: Borrowing under Term Loan Agreement

Ladies and Gentlemen:

The undersigned, OMEROS CORPORATION, a Washington corporation ("***Borrower***"), refers to the Term Loan Agreement, dated as of October 26, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Borrower, CRG Servicing LLC, as administrative agent and collateral agent (in such capacities, the "***Administrative Agent***"), and the lenders from time to time party thereto and the subsidiary guarantors from time to time party thereto. The terms defined in the Loan Agreement are herein used as therein defined.

Borrower hereby gives you notice irrevocably, pursuant to **Section 2.02** of the Loan Agreement, of the borrowing of the Loan specified herein:

1. The proposed Borrowing Date is [_____].
2. The amount of the proposed Borrowing is $[_____].
3. The payment instructions with respect to the funds to be made available to Borrower are as follows:

Bank name:	[_____]
Bank Address:	[_____]
Routing Number:	[_____]
Account Number:	[_____]
Swift Code:	[_____]

Borrower hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed borrowing of the Loan, before and after giving effect thereto and to the application of the proceeds therefrom:

a) the representations and warranties made by Borrower in **Section 7** of the Loan Agreement shall be true in all material respects (unless qualified by materiality or Material Adverse Effect, in which case they shall be true and correct in all respects) on and as of the Borrowing Date and immediately after giving effect to the application of the proceeds of the Borrowing with the same force and effect as if made on and as of such date except that the

representation regarding representations and warranties that refer to a specific earlier date shall be that they were true on such earlier date;

b) on and as of the Borrowing Date, there shall have occurred no Material Adverse Change since [_____]; and

c) no Default exists or would result from such proposed Borrowing or the application of the proceeds thereof.

IN WITNESS WHEREOF, Borrower has caused this Notice of Borrowing to be duly executed and delivered as of the day and year first above written.

BORROWER:

OMEROS CORPORATION

By _____

Name:
Title:

Exhibit C-1
to Term Loan Agreement

FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Term Loan Agreement, dated as of October 26, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Omeros Corporation, CRG Servicing LLC, as administrative agent and collateral agent (in such capacities, the "***Administrative Agent***"), and the lenders and the subsidiary guarantors from time to time party thereto. [_____] (the "***Foreign Lender***") is providing this certificate pursuant to **Section 5.03(e)(ii)(B)** of the Loan Agreement. The Foreign Lender hereby represents and warrants that:

1. The Foreign Lender is the sole record owner of the Loans in respect of which it is providing this certificate;

2. The Foreign Lender is not a "bank" for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "***Code***"). In this regard, the Foreign Lender further represents and warrants that:

(a) The Foreign Lender is not subject to regulatory or other legal requirements as a bank in any jurisdiction; and

(b) The Foreign Lender has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;

3. The Foreign Lender is not a 10-percent shareholder of Borrower within the meaning of Section 881(c)(3)(B) of the Code; and

4. The Foreign Lender is not a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

5. The undersigned has furnished Administrative Agent and Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[Signature follows]

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered as of the date indicated below.

[NAME OF NON-U.S. LENDER]

By _____
Name:
Title:

Date: _____

Exhibit C-2
to Term Loan Agreement

FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Term Loan Agreement, dated as of October 26, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Omeros Corporation, CRG Servicing LLC, as administrative agent and collateral agent (in such capacities, the "***Administrative Agent***"), and the lenders and the subsidiary guarantors from time to time party thereto. [_____] (the "***Foreign Participant***") is providing this certificate pursuant to **Section 5.03(e)(ii)(B)** of the Loan Agreement. The Foreign Participant hereby represents and warrants that:

1. The Foreign Participant is the sole record and beneficial owner of the participation in respect of which it is providing this certificate;

2. The Foreign Participant is not a "bank" for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "***Code***"). In this regard, the Foreign Participant further represents and warrants that:

(a) The Foreign Participant is not subject to regulatory or other legal requirements as a bank in any jurisdiction; and

(b) The Foreign Participant has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;

3. The Foreign Participant is not a 10-percent shareholder of Borrower within the meaning of Section 881(c)(3)(B) of the Code; and

4. The Foreign Participant is not a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

5. The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E, as applicable.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[Signature follows]

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered as of the date indicated below.

[NAME OF NON-U.S. PARTICIPANT]

By _____
Name:
Title:

Date: _____

Exhibit C-3
to Term Loan Agreement

FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Term Loan Agreement, dated as of October 26, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Omeros Corporation, CRG Servicing LLC, as administrative agent and collateral agent (in such capacities, the "***Administrative Agent***"), and the lenders and the subsidiary guarantors from time to time party thereto. [_____] (the "***Foreign Participant***") is providing this certificate pursuant to **Section 5.03(e)(ii)(B)** of the Loan Agreement. The Foreign Participant hereby represents and warrants that:

1. The Foreign Participant is the sole record owner of the participation in respect of which it is providing this certificate;

2. The Foreign Participant's direct or indirect partners/members are the sole beneficial owners of the participation in respect of which it is providing this certificate;

3. Neither the Foreign Participant nor its direct or indirect partners/members is a "bank" for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "***Code***"). In this regard, the Foreign Participant further represents and warrants that:

(a) neither the Foreign Participant nor its direct or indirect partners/members is subject to regulatory or other legal requirements as a bank in any jurisdiction; and

(b) neither the Foreign Participant nor its direct or indirect partners/members has been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;

4. Neither the Foreign Participant nor its direct or indirect partners/members is a 10-percent shareholder of Borrower within the meaning of Section 881(c)(3)(B) of the Code; and

5. Neither the Foreign Participant nor its direct or indirect partners/members is a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

6. The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms for each of its partners/members that is claiming the portfolio interest exemption : (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each such partner's/member's beneficial owners that is claiming the portfolio interest exemption.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[Signature follows]

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered as of the date indicated below.

[NAME OF NON-U.S. PARTICIPANT]

By _____
Name:
Title:

Date: _____

Exhibit C-4
to Term Loan Agreement

FORM OF U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to the Term Loan Agreement, dated as of October 26, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Omeros Corporation, CRG Servicing LLC, as administrative agent and collateral agent (in such capacities, the "***Administrative Agent***"), and the lenders and the subsidiary guarantors from time to time party thereto. [_____] (the "***Foreign Lender***") is providing this certificate pursuant to **Section 5.03(e)(ii)(B)** of the Loan Agreement. The Foreign Lender hereby represents and warrants that:

1. The Foreign Lender is the sole record owner of the Loans in respect of which it is providing this certificate;

2. The Foreign Lender's direct or indirect partners/members are the sole beneficial owners of the Loans in respect of which it is providing this certificate;

3. Neither the Foreign Lender nor its direct or indirect partners/members is a "bank" for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "***Code***"). In this regard, the Foreign Lender further represents and warrants that:

(a) neither the Foreign Lender nor its direct or indirect partners/members is subject to regulatory or other legal requirements as a bank in any jurisdiction; and

(b) neither the Foreign Lender nor its direct or indirect partners/members has been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;

4. Neither the Foreign Lender nor its direct or indirect partners/members is a 10-percent shareholder of Borrower within the meaning of Section 881(c)(3)(B) of the Code; and

5. Neither the Foreign Lender nor its direct or indirect partners/members is a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

6. The undersigned has furnished Administrative Agent and Borrower with an IRS Form W-8IMY accompanied by one of the following forms for each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or W-8BEN-E, as applicable, from each such partner's/member's beneficial owners that is claiming the portfolio interest exemption.

Unless otherwise defined herein, terms defined in the Loan Agreement and used herein shall have the meanings given to them in the Loan Agreement.

[Signature follows]

Exhibit C-4

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered as of the date indicated below.

[NAME OF NON-U.S. LENDER]

By _____
Name:
Title:

Date: _____

Exhibit D
to Term Loan Agreement

FORM OF COMPLIANCE CERTIFICATE

[DATE]

This certificate is delivered pursuant to **Section 8.01(c)** of, and in connection with the consummation of the transactions contemplated in, the Term Loan Agreement, dated as of October 26, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Omeros Corporation ("***Borrower***"), CRG Servicing LLC, as administrative agent and collateral agent (in such capacities, the "***Administrative Agent***"), and the lenders and the subsidiary guarantors from time to time party thereto. Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Loan Agreement.

The undersigned, a duly authorized Responsible Officer of Borrower having the name and title set forth below under his signature, hereby certifies, on behalf of Borrower for the benefit of the Secured Parties and pursuant to **Section 8.01(c)** of the Loan Agreement that such Responsible Officer of Borrower is familiar with the Loan Agreement and that, in accordance with each of the following sections of the Loan Agreement, each of the following is true on the date hereof, both before and after giving effect to any Loan to be made on or before the date hereof:

In accordance with Section **8.01**[**(a)/(b)**] of the Loan Agreement, attached hereto as **Annex A** are the financial statements for the [fiscal quarter/fiscal year] ended [_____] required to be delivered pursuant to **Section 8.01**[**(a)/(b)**] of the Loan Agreement. Such financial statements fairly present in all material respects the consolidated financial position, results of operations and cash flow of Borrower and its Subsidiaries as at the dates indicated therein and for the periods indicated therein in accordance with GAAP [(subject to the absence of footnote disclosure and normal year-end audit adjustments)] [without qualification as to the scope of the audit or as to going concern and without any other similar qualification. The examination by such auditors in connection with such financial statements has been made in accordance with the standards of the United States' Public Company accounting Oversight Board (or any successor entity).]

Attached hereto as **Annex B** are the calculations used to determine compliance with each financial covenant contained in **Section 10** of the Loan Agreement.

No Default or Event of Default is continuing as of the date hereof[, except as provided for on **Annex C** attached hereto, with respect to each of which Borrower proposes to take the actions set forth on **Annex C**].

[1] Insert language in brackets only for quarterly certifications.

[2] Insert language in brackets only for annual certifications.

[Except as provided on **Annex D**, no Material Agreement has been terminated other than upon its scheduled termination date, (ii) Borrower or its Subsidiaries has not received written notice from a counterparty asserting a default or breach by Borrower or any of its subsidiaries under any Material Agreement where such alleged default or breach, if accurate, would permit such counterparty to terminate such Material Agreement, (iii) no new Material Agreement has been entered into by an Obligor and (iv) no material amendment to a Material Agreement in any manner is materially adverse to Lender.]

[Attached hereto as **Annex E** are the material changes, if any, in accounting policies or reporting practices of the Obligors.]

[Attached hereto as **Annex F** is a list of (1) Copyrights registered with the U.S Copyright Office and (ii) Trademarks registered or Patents issued by the U.S. Patent and Trademark Office that were created or acquired since the delivery of the last Compliance Certificate.]

IN WITNESS WHEREOF, the undersigned has executed this certificate on the date first written above.

OMEROS CORPORATION

By _____

Name:

Title:

FINANCIAL STATEMENTS

[see attached]

Exhibit D-3

Annex B to Compliance Certificate

CALCULATIONS OF FINANCIAL COVENANT COMPLIANCE

I.	**Section 10.01: Minimum Liquidity**	
A.	Amount of unencumbered (other than Liens securing the Obligations and Liens permitted pursuant to **Section 9.02(c)** and **Section 9.02(j)**; *provided* that, with respect to cash subject to a Lien in connection with Permitted Priority Debt, there is no default under the documentation governing the Permitted Priority Debt) cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines), in each case, to the extent held in an account over which the Lenders have a perfected security interest:	$_____
B.	The greater of:	$_____
	(1) $5,000,000 and	
	(2) to the extent Borrower has incurred Permitted Priority Debt, the minimum cash balance required of Borrower by Borrower's Permitted Priority Debt creditors	
	Is Line IA equal to or greater than Line IB?	*Yes: In compliance; No: Not in compliance*
II.	**Section 10.02(a)(i)-(vi) or Section 10.02(b): Minimum Revenue or Minimum Market Capitalization**	
A.1	Revenues during the twelve-month period beginning on January 1, 2016	$_____
A.2	Market Capitalization of Borrower and its Subsidiaries at the end of the fifth Business Day following the announcement of earnings results for 2016	$_____
A.3	Market Cap Threshold of Borrower at the end of the fifth Business Day following the announcement of earnings results for 2016	$_____
	Is (x) line II.A.1 equal to or greater than $35,000,000 or (y) line II.A.2 equal to or greater than line II.A.3?	*Yes: In compliance; No: Not in compliance*
B.1	Revenues during the twelve-month period beginning on January 1, 2017	$_____
B.2	Market Capitalization of Borrower and its Subsidiaries at the end of the fifth Business Day following the announcement of earnings results for 2017	$_____
B.3	Market Cap Threshold of Borrower at the end of the fifth Business Day following the announcement of earnings results for 2017	$_____

	Is (x) line II.B.1 equal to or greater than $55,000,000 or (y) line II.B.2 equal to or greater than line II.B.3?	*Yes: In compliance; No: Not in compliance*
C.1	Revenues during the twelve-month period beginning on January 1, 2018	$_____
C.2	Market Capitalization of Borrower and its Subsidiaries at the end of the fifth Business Day following the announcement of earnings results for 2018	$_____
C.3	Market Cap Threshold of Borrower at the end of the fifth Business Day following the announcement of earnings results for 2018	$_____
	Is (x) line II.A.1 equal to or greater than $65,000,000 or (y) line II.C.2 equal to or greater than line II.C.3?	*Yes: In compliance; No: Not in compliance*
D.1	Revenues during the twelve-month period beginning on January 1, 2019	$_____
D.2	Market Capitalization of Borrower and its Subsidiaries at the end of the fifth Business Day following the announcement of earnings results for 2019	$_____
D.3	Market Cap Threshold of Borrower at the end of the fifth Business Day following the announcement of earnings results for 2019	$_____
	Is (x) line II.D.1 equal to or greater than $75,000,000 or (y) line II.D.2 equal to or greater than line II.D.3?	*Yes: In compliance; No: Not in compliance*
E.1	Revenues during the twelve-month period beginning on January 1, 2020	$_____
E.2	Market Capitalization of Borrower and its Subsidiaries at the end of the fifth Business Day following the announcement of earnings results for 2020	$_____
E.3	Market Cap Threshold of Borrower at the end of the fifth Business Day following the announcement of earnings results for 2020	$_____
	Is (x) line II.A.1 equal to or greater than $90,000,000 or (y) line II.E.2 equal to or greater than line II.E.3?	*Yes: In compliance; No: Not in compliance*
F.1	Revenues during the twelve-month period beginning on January 1, 2021	$_____
F.2	Market Capitalization of Borrower and its Subsidiaries at the end of the fifth Business Day following the announcement of earnings results for 2021	$_____
F.3	Market Cap Threshold of Borrower at the end of the fifth Business Day following the announcement of earnings results for 2021	$_____
	Is (x) line II.F.1 equal to or greater than $100,000,000 or (y) line II.F.2 equal to or greater than line II.F.3?	*Yes: In compliance; No: Not in compliance*

OPINION REQUEST

The opinion of legal counsel to Borrower and each other Obligor should address the following matters (capitalized terms used but not defined herein have the meanings given to them in the Agreement):

1. Power and authority (Section 7.01)
2. Due organization/good standing (Section 7.01)
3. Due authorization (Section 7.02)
4. Due execution & delivery (Section 7.02)
5. Enforceability (Section 7.02)
6. No consents/conflicts (Section 7.03)
7. Investment company (Section 7.10(a))
8. Legal, valid and enforceable security interest (Section 7.18)
9. Perfection of security interest (UCC and US IP filings, Control Agreements) (Section 7.18)

[3] The section numbers relate to those sections that are relevant to the particular opinion.

Exhibit F
to Term Loan Agreement

FORM OF LANDLORD CONSENT

THIS LANDLORD CONSENT (the "***Agreement***") is made and entered into as of [l], 2016, by and among CRG Servicing LLC, as administrative agent and collateral agent for the "Secured Parties" as defined in the Loan Agreement referred to below (in such capacities, "***Agent***"), Omeros Corporation, a Washington corporation ("***Debtor***"), and BMR-201 Elliott Avenue LLC, a Delaware limited liability company ("***Landlord***").

WHEREAS, Debtor has entered into a Term Loan Agreement, dated as of October 26, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "***Loan Agreement***"), among Borrower, Agent, the lenders from time to time party thereto (the "***Lenders***") and the subsidiary guarantors from time to time party thereto, pursuant to which the Secured Parties have been granted a security interest in substantially all of Debtor's personal property, including, but not limited to, inventory, equipment and trade fixtures (hereinafter "***Personal Property***"); and

WHEREAS, Landlord is the owner of the real property located at 201 Elliott Avenue West, Seattle, Washington 98119 (the "***Premises***"); and

WHEREAS, Landlord and Debtor have entered into that certain Lease dated January 27, 2012, as amended by the First Amendment dated November 5, 2012, the Second Amendment dated November 16, 2012, the Third Amendment dated October 16, 2013, and the Fourth Amendment dated September 8, 2015 (collectively, the "***Lease***"); and

WHEREAS, certain of the Personal Property has or may become affixed to or be located on, wholly or in part, the Premises.

NOW, THEREFORE, in consideration of any loans or other financial accommodation extended by the Secured Parties to Debtor at any time, and other good and valuable consideration, the parties agree as follows:

1. Landlord subordinates to Agent all security interests or other interests or rights Landlord may now or hereafter have in or to any of the Personal Property, whether for rent or otherwise, while Debtor is indebted to the Lenders.

2. Landlord consents to the entrance into the Loan Agreement by Debtor and waives any requirements or obligations of Debtor or Agent under the Lease with regards to the Loan Agreement and the transactions contemplated thereby.

3. The Personal Property may be installed in or located on the Premises and is not and shall not be deemed a fixture or part of the real estate and shall at all times be considered personal property.

4. Agent or its representatives may enter upon the Premises during normal business hours, and upon not less than 24 hours' advance notice, to inspect the Personal Property.

5. Upon and during the continuance of an Event of Default under the Loan Agreement, Agent or its representatives, at Agent's option, upon written notice delivered to Landlord not less than ten (10) business days in advance, may enter the Premises during normal business hours for the purpose of repossessing, removing or otherwise dealing with said Personal Property for a period from the date Agent enters the Premises for as long as Agent reasonably deems necessary but not to exceed a period of ninety (90) days; *provided* that neither Agent nor the Lenders shall be permitted to operate the business of Debtor on the Premises or sell, auction or otherwise dispose of any Personal Property at the Premises or advertise any of the foregoing. During the period Agent occupies the Premises, it shall pay to Landlord the rent provided under the Lease relating to the Premises, prorated on a per diem basis to be determined on a thirty (30) day month, without incurring any other obligations of Debtor.

6. Agent shall pay to Landlord any costs for damage to the Premises or the building in which the Premises is located in removing or otherwise dealing with said Personal Property pursuant to paragraph 4 above, and shall indemnify and hold harmless Landlord from and against (i) all claims, disputes and expenses, including reasonable attorneys' fees, suffered or incurred by Landlord arising from Agent's exercise of any of its rights hereunder and (ii) any injury to third persons caused by actions of Agent pursuant to this consent.

7. Landlord agrees to give notice to Agent in writing by certified mail or facsimile of Landlord's intent to exercise its remedies in response to any default by Debtor of any of the provisions of the Lease, to:

CRG Servicing LLC
1000 Main Street, Suite 2500
Houston, TX 77002
Attention: General Counsel
Fax: 713.209.7351

8. Landlord shall have no obligation to preserve or protect the Personal Property or take any action in connection therewith, and Agent waives all claims it may now or hereafter have against Landlord in connection with the Personal Property.

9. This consent shall terminate and be of no further force or effect upon the earlier of (i) the date on which all indebtedness secured by the Personal Property indefeasibly is paid in full in cash and (ii) the date on which the Lease is terminated or expires.

10. Nothing contained herein shall be construed to amend the Lease, and the Lease remains unchanged and in full force and effect.

This consent shall be construed and interpreted in accordance with and governed by the laws of the State of Washington.

This consent may not be changed or terminated orally and is binding upon and shall inure to the benefit of Landlord, Agent, the Lenders and Debtor and the heirs, personal representatives, successors and assigns of Landlord, Agent, the Lenders and Debtor.

[Signature Pages follow]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

LANDLORD:

BMR-201 ELLIOTT AVENUE LLC

By _____
Name:
Title:

AGENT:

CRG SERVICING LLC

By _____
Charles Tate
Sole Member

Address for Notices:

1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@crglp.com

Acknowledged and Agreed:

OMEROS CORPORATION

By _____
Name:
Title:

Exhibit G
to Term Loan Agreement

FORM OF SUBORDINATION AGREEMENT

This Subordination Agreement is made as of [_____] (this "***Agreement***") among CRG Servicing LLC, a Delaware limited liability company ("***Senior Agent***"), and [_____], a [_____] [corporation] ("***Subordinated Creditor***").

RECITALS:

A. OMEROS CORPORATION, a Washington corporation ("***Borrower***"), will, as of the date hereof, issue in favor of Subordinated Creditor the Subordinated Note (as defined below)[, and grant a security interest in the Subordinated Collateral (as defined below) in favor of Subordinated Creditor].

B. Senior Creditors, Borrower and certain of its subsidiaries have entered into the Senior Loan Agreement (as defined below), and Senior Agent, Borrower and certain of its subsidiaries have entered into the Senior Security Agreement (as defined below) under which Borrower and such subsidiaries have granted a security interest in the Collateral (as defined below) in favor of the Senior Creditors as security for the payment of Borrower's obligations under the Senior Loan Agreement.

C. To induce the Lenders under and as defined in the Senior Loan Agreement referred to below to make and maintain the credit extensions to Borrower under the Senior Loan Agreement, Subordinated Creditor is willing to subordinate the Subordinated Debt (as defined below) to the Senior Debt (as defined below) on the terms and conditions herein set forth.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions. As used herein, the following terms have the following meanings:

"***Bankruptcy Code***" means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*.

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

"***Enforcement Action***" means, with respect to any indebtedness, obligation (contingent or otherwise) or Collateral at any time held by any lender or noteholder, (i) commencing, by judicial or non-judicial means, the enforcement of, or otherwise attempting to enforce, such indebtedness, obligation or Collateral of any of the default remedies under any of the applicable agreements or documents of such lender or noteholder, the UCC or other applicable law (other than the mere issuance of a notice of default or notice of the right by such lender or noteholder to seek specific performance with respect to any covenants in favor of such lender or noteholder), (ii) repossessing, selling, leasing or otherwise disposing of all or any part of such Collateral, including without limitation causing any attachment of, levy upon, execution against, foreclosure upon or the taking of other action against or institution of other proceedings with respect to any Collateral, or exercising account debtor or obligor notification or collection rights with respect to all or any portion thereof, or attempting or agreeing to do so, (iii) appropriating, setting off or

applying to such lender or noteholder's claim any part or all of such Collateral or other property in the possession of, or coming into the possession of, such lender or noteholder or its agent, trustee or bailee, (iv) asserting any claim or interest in any insurance with respect to such indebtedness, obligation or Collateral, (v) instituting or commencing, or joining with any Person in commencing, any action or proceeding with respect to any of the foregoing rights or remedies (including any action of foreclosure, enforcement, collection or execution and any Insolvency Event involving any Obligor), (vi) exercising any rights under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Subordinated Creditor is a party or (vii) otherwise enforcing, or attempting to enforce, any other rights or remedies under or with respect to any such indebtedness, obligation or Collateral.

"***Insolvency Event***" means that any Obligor or any of its subsidiaries shall have (i) applied for, consented to or acquiesced in the appointment of a trustee, receiver or other custodian for it or any of its property, or (ii) made a general assignment for the benefit of creditors or similar arrangement in respect of such Obligor's or subsidiary's creditors generally or any substantial portion thereof, or (iii) permitted, consented to, or suffered to exist the appointment of a trustee, receiver or other custodian for it or for a substantial part of its property, or (iv) commenced any case, action or proceeding before any court or other governmental agency or authority relating to bankruptcy, reorganization, insolvency, debt arrangement or relief or other case, action or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation case, action or proceeding, including without limitation any case under the Bankruptcy Code, in respect of it, or (v) (A) permitted, consented to, or suffered to exist the commencement of any case, action or proceeding before any court or other governmental agency or authority relating to bankruptcy, reorganization, insolvency, debt arrangement or relief or other case, action or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation case, action or proceeding, including without limitation any case under the Bankruptcy Code, in respect of it, or (B) any such case, action or proceeding shall have resulted in the entry of an order for relief or shall have remained for sixty (60) days undismissed.

"***Obligor***" has the meaning set forth in the Senior Loan Agreement.

"***Person***" has the meaning set forth in the Senior Loan Agreement.

"***Senior Creditors***" means Senior Agent and the Lenders under and as defined in the Senior Loan Agreement.

"***Senior Debt***" means the Obligations (as defined in the Senior Loan Agreement).

"***Senior Discharge Date***" means the first date on which all of the Senior Debt (other than contingent indemnification obligations) has been paid indefeasibly in full in cash and all commitments of Senior Lenders under the Senior Loan Documents have been terminated.

"***Senior Loan Agreement***" means that certain Term Loan Agreement, dated as of October 26, 2016, by and among Borrower, the guarantors from time to time party thereto and the Senior Creditors from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"***Senior Loan Documents***" means, collectively, the Loan Documents (as defined in the Senior Loan Agreement), in each case as amended, restated, supplemented or otherwise modified from time to time.

"***Senior Security Agreement***" means that certain Security Agreement, dated as of October [l], 2016, among Borrower, the other Obligors party thereto, and Senior Agent, as amended, restated, supplemented or otherwise modified from time to time.

"***Subordinated Debt***" means and includes all obligations, liabilities and indebtedness of Borrower owed to Subordinated Creditor, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, including without limitation, principal, premium (if any), interest, fees, charges, expenses, costs, professional fees and expenses, and reimbursement obligations.

"***Subordinated Debt Documents***" means, collectively, the Subordinated Note and each other loan document or agreement entered into by Borrower in connection with the Subordinated Note[, including without limitation each Subordinated Collateral Document], as amended, restated, supplemented or otherwise modified from time to time.

"***Subordinated Note***" means that certain $[_____] subordinated promissory note, dated [_____], issued by Borrower to Subordinated Creditor, as amended, restated, supplemented or otherwise modified from time to time.

"***UCC***" means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect in the State of New York.

2. Liens. (a) Subordinated Creditor represents and warrants that the Subordinated Debt is unsecured. Subordinated Creditor agrees that it will not request or accept any security interest in any Collateral to secure the Subordinated Debt; *provided* that, should Subordinated Creditor obtain a lien or security interest on any asset or Collateral to secure all or any portion of the Subordinated Debt for any reason (which action shall be in violation of this Agreement), notwithstanding the respective dates of attachment and perfection of the security interests in the Collateral in favor of the Senior Creditors or Subordinated Creditor, or any contrary provision of the UCC, or any applicable law or decision to the contrary, or the provisions of the Senior Loan Documents or the Subordinated Debt Documents, and irrespective of whether Subordinated Creditor or the Senior Creditors hold possession of any or all part of the Collateral, all now existing or hereafter arising security interests in the Collateral in favor of Subordinated Creditor in respect of the Subordinated Debt Documents shall at all times be subordinate to the security interest in such Collateral in favor of the Senior Creditors in respect of the Senior Loan Documents.

(b) Subordinated Creditor acknowledges that the Senior Creditors have been granted liens upon the Collateral [(including the Subordinated Collateral)], and Subordinated Creditor hereby consents thereto and to the incurrence of the Senior Debt.

(c) Until the Senior Discharge Date, in the event of any private or public sale or other disposition of all or any portion of the Collateral, Subordinated Creditor agrees that such

Collateral shall be sold or otherwise disposed of free and clear of any liens in favor of Subordinated Creditor. Subordinated Creditor agrees that any such sale or disposition of Collateral shall not require any consent from Subordinated Creditor, and Subordinated Creditor hereby waives any right it may have to object to such sale or disposition.

d) Subordinated Creditor agrees that it will not request or accept any guaranty of the Subordinated Debt.

3. Payment Subordination. (a) Notwithstanding the terms of the Subordinated Debt Documents, until the Senior Discharge Date, (i) all payments and distributions of any kind or character, whether in cash, property or securities, in respect of the Subordinated Debt are subordinated in right and time of payment to all payments in respect of the Senior Debt, and (ii) Subordinated Creditor will not demand, sue for or receive from Borrower (and Borrower will not pay) any part of the Subordinated Debt, whether by payment, prepayment, distribution, setoff, or otherwise, or accelerate the Subordinated Debt.

(b) Subordinated Creditor must deliver to the Senior Agent in the form received (except for endorsement or assignment by Subordinated Creditor) any payment, distribution, security or proceeds it receives on the Subordinated Debt other than according to this Agreement.

4. Subordination of Remedies. Until the Senior Discharge Date, and whether or not any Insolvency Event has occurred, Subordinated Creditor will not accelerate the maturity of all or any portion of the Subordinated Debt, enforce, attempt to enforce, or exercise any right or remedy with respect to any Collateral or the Subordinated Debt, or take any other Enforcement Action with respect to the Subordinated Debt.

5. Payments Over. All payments and distributions of any kind, whether in cash, property or securities, in respect of the Subordinated Debt to which Subordinated Creditor would be entitled if the Subordinated Debt were not subordinated pursuant to this Agreement, shall be paid to the Senior Creditors in respect of the Senior Debt, regardless of whether such Senior Debt, or any portion thereof, is reduced, expunged, disallowed, subordinated or recharacterized. Notwithstanding the foregoing, if any payment or distribution of any kind, whether in cash, property or securities, shall be received by Subordinated Creditor on account of the Subordinated Debt before Senior Discharge Date (whether or not expressly characterized as such), then such payment or distribution shall be segregated by Subordinated Creditor and held in trust for, and shall be promptly paid over to, the Senior Creditors in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, in respect of the Senior Debt, regardless of whether such Senior Debt, or any portion thereof, is reduced, expunged, disallowed, subordinated or recharacterized. Subordinated Creditor irrevocably appoints the Senior Agent as Subordinated Creditor’s attorney-in-fact, and grants to the Senior Creditors a power of attorney with full power of substitution (which power of attorney is coupled with an interest), in the name of Subordinated Creditor or in the name of the Senior Agent, for the use and benefit of the Senior Creditors, without notice to Subordinated Creditor, to make any such endorsements. This **Section 5** shall be enforceable even if the Senior Creditors’ liens on the Collateral are alleged, determined, or held to constitute fraudulent transfers (whether constructive or actual), preferential transfers, or otherwise avoided or voidable, set aside, recharacterized or equitably subordinated.

6. Insolvency Proceedings. (a) This Agreement is intended to constitute and shall be deemed to constitute a "subordination agreement" within the meaning of Section 510(a) of the Bankruptcy Code and is intended to be and shall be interpreted to be enforceable to the maximum extent permitted pursuant to applicable nonbankruptcy law. All references to Borrower or any other Obligor shall include Borrower or such Obligor as debtor and debtor-in-possession and any receiver or trustee for Borrower or any other Obligor (as the case may be) in connection with any case under the Bankruptcy Code or in connection with any other Insolvency Event.

(b) Without limiting the generality of the other provisions of this Agreement, until the Senior Discharge Date, without the express written consent of the Senior Agent, Subordinated Creditor shall not institute or commence (nor shall it join with or support any third party instituting, commencing, opposing, objecting or contesting, as the case may be, or otherwise suffer to exist), any Insolvency Event involving Borrower or any other Obligor.

(c) The Senior Creditors shall have the right to enforce rights, exercise remedies (including set-off and the right to credit bid its debt) and make determinations regarding the release, disposition, or restrictions with respect to the Collateral without any consultation with or consent of Subordinated Creditor.

(d) Subordinated Creditor will not, and hereby waives any right to bring, join in, or otherwise support or take any action to (i) contest the validity, legality, enforceability, perfection, priority or avoidability of any of the Senior Debt, any of the Senior Loan Documents or any security interests and/or liens of the Senior Creditors on or in any property or assets of Borrower or any other Obligor, including without limitation, the Collateral; (ii) interfere with or in any manner oppose or support any other Person in opposing any foreclosure on or other disposition of any Collateral by the Senior Creditors in accordance with applicable law, or otherwise to contest, protest, object to or interfere with the manner in which the Senior Creditors may seek to enforce the Liens on any Collateral; (iii) provide a debtor-in-possession facility (including on a priming basis) to Borrower or any other Obligor, under Section 362, 363 or 364 of the Bankruptcy Code or any other applicable law, without the consent, in their sole discretion, of the Senior Creditors; or (iv) exercise any rights against the Senior Creditors or the Collateral under Section 506(c) of the Bankruptcy Code.

(e) Subordinated Creditor will not, and hereby waives any right to, oppose, contest, object to, join in, or otherwise support any opposition to or objection with respect to, (i) any request or motion of the Senior Creditors seeking, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, the modification, lifting or vacating of the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in connection with any Insolvency Event or seeking adequate protection of the Senior Creditors' interests in the Collateral or with respect to the Senior Debt (whether under Sections 362, 363, and/or 364 of the Bankruptcy Code or other applicable law), and, until Senior Discharge Date, Subordinated Creditor agrees that it shall not seek relief from such automatic stay without the prior written consent of the Senior Agent; (ii) any debtor-in-possession financing (including on a priming basis) or use of cash collateral (as defined in Section 363(a) of the Bankruptcy Code or other applicable law) arrangement by Borrower, whether from the Senior Creditors or any other third party under Section 362, 363 or 364 of the Bankruptcy Code or any other applicable law, if the Senior Creditors, in their sole

discretion, consent to such debtor-in-possession financing or cash collateral arrangement, and Subordinated Creditor shall not request adequate protection (whether under Sections 362, 363, and/or 364 of the Bankruptcy Code or other applicable law) or any other relief in connection therewith; (iii) any sale or other disposition of the Collateral or substantially all of the assets of Borrower or any other Obligor (include any such sale free and clear of liens or other claims) under Section 363 of the Bankruptcy Code or other applicable law if the Senior Creditors, in their sole discretion, consent to such sale or disposition; (vii) the Senior Creditors' exercise or enforcement of its right to make an election under Section 1111(b) of the Bankruptcy Code, and Subordinated Creditor hereby waives any claim it may hereafter have against the Senior Creditors arising out of such election; (viii) the Senior Creditors' exercise or enforcement of its right to credit bid any or all of its debt claims against Borrower or any other Obligor, including, without limitation, the Senior Debt; or (ix) any plan of reorganization or liquidation if the Senior Creditors, in their sole discretion, consent to, vote in favor of, or otherwise do not oppose such plan of reorganization or liquidation, and, in furtherance thereof, Subordinated Creditor hereby grants to the Senior Creditors the right to vote Subordinated Creditor's claim or claims (as such term is defined in the Bankruptcy Code) arising on account of or in connection with the Subordinated Debt, as Subordinated Creditor's agent, with respect to any plan of reorganization or liquidation to which Subordinated Creditor may be entitled to vote in any bankruptcy or liquidation proceeding or in connection with any other Insolvency Event of Borrower or any other Obligor.

7. Distributions of Proceeds of Collateral. All realizations upon any Collateral pursuant to or in connection with an Enforcement Action, an Insolvency Event or otherwise shall be paid or delivered to the Senior Agent in respect of the Senior Debt until the Senior Discharge Date before any payment may be made to Subordinated Creditor.

8. Release of Liens. In the event of any private or public sale or other disposition, by or with the consent of the Senior Agent, of all or any portion of the Collateral, Subordinated Creditor agrees that such sale or disposition shall be free and clear of any liens Subordinated Creditor may have on such Collateral. Subordinated Creditor agrees that, in connection with any such sale or other disposition, (i) the Senior Creditors are authorized to file any and all UCC and other applicable lien releases and/or terminations in respect of any liens held by Subordinated Creditor in connection with such a sale or other disposition, and (ii) it shall execute any and all lien releases or other documents reasonably requested by the Senior Agent in connection therewith. In furtherance of the foregoing, Subordinated Creditor hereby appoints the Senior Agent as its attorney-in-fact, with full authority in the place and stead of Subordinated Creditor and full power of substitution and in the name of Subordinated Creditor or otherwise, to execute and deliver any document or instrument which Subordinated Creditor is required to deliver pursuant to this **Section 8**, such appointment being coupled with an interest and irrevocable. Subordinated Creditor agrees that the Senior Creditors may release or refrain from enforcing their security interest in any Collateral, or permit the use or consumption of such Collateral by Borrower free of any Subordinated Creditor security interest, without incurring any liability to Subordinated Creditor.

9. Attorney-In-Fact. Until the Senior Discharge Date, Subordinated Creditor irrevocably appoints the Senior Agent as its attorney-in-fact, with power of attorney with power of

substitution, in Subordinated Creditor's name or in any Senior Creditor's name, for the Senior Creditors' use and benefit without notice to Subordinated Creditor, to do the following during an Insolvency Event:

(a) file any claims in respect of the Subordinated Debt on behalf of Subordinated Creditor if Subordinated Creditor does not do so at least 30 days before the time to file claims expires; and

(b) vote Subordinated Creditor's claim or claims (as such term is defined in the Bankruptcy Code) arising on account of or in connection with the Subordinated Debt, as Subordinated Creditor's agent, with respect to any plan of reorganization or liquidation to which Subordinated Creditor may be entitled to vote in any bankruptcy or liquidation proceeding or in connection with any other Insolvency Event of Borrower or any other Obligor.

Such power of attorney is irrevocable and coupled with an interest.

10. Legend; Amendment of Debt. (a) Subordinated Creditor will immediately put a legend on or otherwise indicate on the Subordinated Note that the Subordinated Note is subject to this Agreement.

(b) Until the Senior Discharge Date, Subordinated Creditor shall not, without prior written consent of the Senior Agent, agree to any amendment, modification or waiver of any provision of the Subordinated Debt Documents, if the effect of such amendment, modification or waiver is to: (i) terminate or impair the subordination of the Subordinated Debt in favor of the Senior Creditors; (ii) increase the interest rate on the Subordinated Debt or change (to earlier dates) the dates upon which principal, interest and other sums are due under the Subordinated Note; (iii) alter the redemption, prepayment or subordination provisions of the Subordinated Debt; (iv) impose on Borrower or any other Obligor any new or additional prepayment charges, premiums, reimbursement obligations, reimbursable costs or expenses, fees or other payment obligations; (v) alter the representations, warranties, covenants, events of default, remedies and other provisions in a manner which would make such provisions materially more onerous, restrictive or burdensome to Borrower or any other Obligor; (vi) grant a lien or security interest in favor of any holder of the Subordinated Debt on any asset or Collateral to secure all or any portion of the Subordinated Debt; or (vii) otherwise increase the obligations, liabilities and indebtedness in respect of the Subordinated Debt or confer additional rights upon Subordinated Creditor, which individually or in the aggregate would be materially adverse to Borrower, any other Obligor or the Senior Creditors. Any such amendment, modification or waiver made in violation of this **Section 10(b)** shall be void.

(c) At any time without notice to Subordinated Creditor, the Senior Creditors may take such action with respect to the Senior Debt as the Senior Creditors, in their sole discretion, may deem appropriate, including, without limitation, terminating advances, increasing the principal, extending the time of payment, increasing interest rates, renewing, compromising or otherwise amending any documents affecting the Senior Debt and any Collateral securing the Senior Debt, and enforcing or failing to enforce any rights against Borrower or any other person. No action or inaction will impair or otherwise affect any Senior Creditor's rights under this Agreement.

11. Certain Waivers. (a) Subordinated Creditor hereby (i) waives any and all notice of the incurrence of the Senior Debt or any part thereof; (ii) waives any and all rights it may have to require the Senior Creditors to marshal assets, to exercise rights or remedies in a particular manner, to forbear from exercising such rights and remedies in any particular manner or order, or to claim the benefit of any appraisal, valuation or other similar right that may otherwise be available under applicable law, regardless of whether any action or failure to act by or on behalf of the Senior Creditors is adverse to the interest of Subordinated Creditor; (iii) agrees that the Senior Creditors shall have no liability to Subordinated Creditor, and Subordinated Creditor hereby waives any claim against the Senior Creditors arising out of any and all actions not in breach of this Agreement which the Senior Creditors may take or permit or omit to take with respect to the Senior Loan Documents (including any failure to perfect or obtain perfected security interests in the Collateral), the collection of the Senior Debt or the foreclosure upon, or sale, liquidation or other disposition of, any Collateral; and (iv) agrees that the Senior Creditors have no duty, express or implied, fiduciary or otherwise, to them in respect of the maintenance or preservation of the Collateral, the Senior Debt or otherwise. Without limiting the foregoing, Subordinated Creditor agrees that the Senior Creditors shall have no duty or obligation to maximize the return to any class of creditors holding indebtedness of any type (whether Senior Debt or Subordinated Debt), notwithstanding that the order and timing of any realization, sale, disposition or liquidation of the Collateral may affect the amount of proceeds actually received by such class of creditors from such realization, sale, disposition or liquidation.

(b) Subordinated Creditor confirms that this Agreement shall govern as between the Senior Creditors and the Subordinated Creditor irrespective of: (i) any lack of validity or enforceability of any Senior Loan Document or any Subordinated Debt Document; (ii) the occurrence of any Insolvency Event in respect of any Obligor; (iii) whether the Senior Debt, or the liens or security interests securing the Senior Debt, shall be held to be unperfected, deficient, invalid, void, voidable, voided, unenforceable, subordinated, reduced, discharged or are set aside by a court of competent jurisdiction, including pursuant or in connection with any Insolvency Event; (iv) any change in the time, manner or place of payment of, or in any other terms of, all or any of the Senior Debt or the Subordinated Debt, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Senior Loan Document or any Subordinated Debt Document or any guarantee thereof; or (v) any other circumstances which otherwise might constitute a defense available to, or a discharge of, any Obligor in respect of the Senior Debt or the Subordinated Debt.

12. Representations and Warranties. Subordinated Creditor represents and warrants to the Senior Creditors that:

(a) all action on the part of Subordinated Creditor, its officers, directors, partners, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of Subordinated Creditor hereunder has been taken;

(b) this Agreement constitutes the legal, valid and binding obligation of Subordinated Creditor, enforceable against Subordinated Creditor in accordance with its terms;

(c) the execution, delivery and performance of and compliance with this Agreement by Subordinated Creditor will not (i) result in any material violation or default of any term of any of Subordinated Creditor's charter, formation or other organizational documents (such as Articles or Certificate of Incorporation, bylaws, partnership agreement, operating agreement, etc.) or (ii) violate any material applicable law, rule or regulation; and

(d) Subordinated Creditor has not previously assigned any interest in the Subordinated Debt, and no Person other than the Subordinated Creditor owns an interest in the Subordinated Debt.

13. Term; Reinstatement. This Agreement shall remain in full force and effect until the Senior Discharge Date, notwithstanding the occurrence of an Insolvency Event. If, after the Senior Discharge Date, the Senior Creditors must disgorge any payments made on the Senior Debt for any reason (including, without limitation, in connection with the bankruptcy of Borrower or in connection with any other Insolvency Event), this Agreement and the relative rights and priorities provided in it, will be reinstated as to all disgorged payments as though such payments had not been made, and Subordinated Creditor will immediately pay the Senior Agent all payments received in respect of the Subordinated Debt to the extent such payments or retention thereof would have been prohibited under this Agreement.

14. Successors and Assigns. This Agreement binds Subordinated Creditor, its successors or assigns, and benefits the Senior Creditors' successors or assigns. This Agreement is for Subordinated Creditor's and the Senior Creditors' benefit and not for the benefit of Borrower or any other party. Subordinated Creditor shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Debt or any related document or any interest in any Collateral therefor unless prior to the consummation of any such action, the transferee thereof shall execute and deliver to the Senior Agent an agreement of such transferee to be bound hereby, or an agreement substantially identical to this Agreement providing for the continued subjection of the Subordinated Debt, the interests of the transferee in the Collateral and the remedies of the transferee with respect thereto as provided herein with respect to Subordinated Creditor and for the continued effectiveness of all of the other rights of the Senior Creditors arising under this Agreement, in each case in form satisfactory to the Senior Creditors. Any such sale, assignment, pledge, disposition or transfer not made in compliance with the terms of this **Section 14** shall be void.

15. Further Assurances. Subordinated Creditor hereby agrees to execute such documents and/or take such further action as the Senior Agent may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by the Senior Agent.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Executed counterparts may be delivered by facsimile.

17. Governing Law; Waiver of Jury Trial. (a) This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the

law of the State of New York, 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) EACH PARTY HERETO WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

18. Entire Agreement; Waivers and Amendments. This Agreement represents the entire agreement with respect to the subject matter hereof, and supersedes all prior negotiations, agreements and commitments. The Senior Creditors and Subordinated Creditor are not relying on any representations by the other creditor party or Borrower in entering into this Agreement, and each of the Senior Creditors and Subordinated Creditor has kept and will continue to keep itself fully apprised of the financial and other condition of Borrower. No amendment, modification, supplement, termination, consent or waiver of or to any provision of this Agreement, nor any consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the Senior Agent and Subordinated Creditor. Any waiver of any provision of this Agreement, or any consent to any departure from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which given.

19. No Waiver. No failure or delay on the part of any Senior Creditor or Subordinated Creditor in the exercise of any power, right, remedy or privilege under this Agreement shall impair such power, right, remedy or privilege or shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise of any other power, right or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to any Senior Creditor.

20. Legal Fees. In the event of any legal action to enforce the rights of a party under this Agreement, the party prevailing in such action shall be entitled, in addition to such other relief as may be granted, all reasonable, invoiced and out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred in such action.

21. Severability. Any provision of this Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent such illegality, invalidity, prohibition or unenforceability without invalidating or impairing the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

22. Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be delivered or sent by first-class mail, postage prepaid, or by overnight courier or messenger service or by facsimile or electronic mail, message confirmed, and shall be deemed to be effective for purposes of this Agreement on the day that delivery is made or refused. Unless otherwise specified in a notice mailed or delivered in accordance with the foregoing sentence, notices, demands, instructions and other communications in writing shall be given to or made upon the

respective parties hereto at their respective addresses and facsimile numbers indicated on the signature pages hereto.

23. No Third-Party Beneficiaries; Other Benefits. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and the parties do not intend to confer third party beneficiary rights upon any other person. Subordinated Creditor understands that there may be various agreements between the Senior Creditors and Borrower or the other Obligors evidencing and governing the Senior Debt, and Subordinated Creditor acknowledges and agrees that such agreements are not intended to confer any benefits on Subordinated Creditor and that the Senior Creditors shall have no obligation to Subordinated Creditor or any other Person to exercise any rights, enforce any remedies, or take any actions which may be available to it under such agreements.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

SUBORDINATED CREDITOR:
[_____]

By _____
Name:
Title:

Address for Notices:

SENIOR AGENT (on behalf of the SENIOR CREDITORS):

CRG SERVICING LLC

By _____
Name:
Title:

Address for Notices:

1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@crglp.com

OMEROS CORPORATION

By _____
Name:
Title:

Address for Notices:
201 Elliott Avenue West
Seattle, Washington 98119
Attn: Chief Executive Officer
Tel.: 206-676-5000
Fax: 206-676-5005
Email: gdemopulos@omeros.com

with a copy to:

201 Elliott Avenue West
Seattle, Washington 98119
Attn: General Counsel
Tel.: 206-676-5000
Fax: 206-676-5005
Email: mkelbon@omeros.com

Exhibit H
to Term Loan Agreement

FORM OF INTERCREDITOR AGREEMENT

This Intercreditor Agreement, dated as of [_____] (this "***Agreement***"), is made between CRG Servicing LLC, a Delaware limited liability company, as Administrative Agent, and [INSERT NAME OF A/R LENDER], a [_____] ("***[A/R Lender]***").

RECITALS

A. Omeros Corporation, a Washington corporation ("***Borrower***"), has entered into the A/R Facility Agreement (as defined below) with [A/R Lender], which, along with any other obligations owing to [A/R Lender] by Borrower, is secured by certain property of Borrower [and the other Obligors (as defined below)].

B. Borrower [has][and the other Obligors have] entered into that certain Term Loan Agreement, dated as of October 26, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "***CRG Credit Agreement***"), with certain lenders and CRG Servicing LLC, a Delaware limited liability company, as administrative agent and collateral agent for such lenders (in such capacities and together with its successors and assigns, "***CRG Agent***"), which is secured by certain property of Borrower [and the other Obligors].

C. To induce each of [A/R Lender] and the lenders under the CRG Credit Agreement to make and maintain the credit extensions under the A/R Facility Agreement and the CRG Credit Agreement, respectively, each of [A/R Lender] and CRG Agent, on behalf of the "Secured Parties" (as defined in the CRG Credit Agreement, the "***CRG Creditors***"; CRG Creditors, collectively with [A/R Lender], "***Creditors***" and each individually, a "***Creditor***"), is willing to enter into this Agreement to, among other things, subordinate certain of its liens on the terms and conditions herein set forth.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions. As used herein, the following terms have the following meanings:

"***A/R Facility Agreement***" means that certain [Credit Agreement], dated as of [_____], between [A/R Lender] and Borrower, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"***A/R Facility Documents***" means the A/R Facility Agreement and all [Loan Documents], each as defined in the A/R Facility Agreement.

"***A/R Facility Senior Collateral***" means (i) [Borrower's] accounts arising from the sale or lease of inventory or the provision of services, excluding IP/Equipment Accounts (collectively, "***Inventory/Service Accounts***"), (ii) [Borrower's] inventory, (iii) to the extent evidencing, governing, or securing [Borrower's] Inventory/Service Accounts or inventory, [Borrower's] payment intangibles, chattel paper, instruments and documents, (iv) to the extent held in a

segregated deposit account, cash proceeds of [Borrower's] Inventory/Service Accounts and inventory, and (v) proceeds of insurance policies covering [Borrower's] Inventory/Service Accounts and inventory received with respect to such accounts and inventory; *provided* that, for purposes of clarification, notwithstanding the foregoing, in no event shall "A/R Facility Senior Collateral" include any right, title or interest of any Obligor in (A) any Intellectual Property or any licenses thereof, (B) any accounts or proceeds arising from the sale, transfer, licensing or other disposition of any Intellectual Property or licenses, or from the sale, transfer, lease or other disposition of equipment (collectively, "***IP/Equipment Accounts***"), (C) equipment, (D) to the extent evidencing, governing, securing or otherwise related to equipment, any general intangibles, chattel paper, instruments or documents or (E) proceeds of equipment or proceeds of insurance policies with respect to equipment.

"***Bankruptcy Code***" means the federal bankruptcy law of the United States as from time to time in effect, currently as Title 11 of the United States Code. Section references to current sections of the Bankruptcy Code shall refer to comparable sections of any revised version thereof if section numbering is changed.

"***Claim***" means, (i) in the case of [A/R Lender], any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of [A/R Lender] now or hereafter arising or existing under or relating to the A/R Facility Documents (with the portion of [A/R Lender]'s Claim at any time consisting of the aggregate principal amount of indebtedness under the A/R Facility Documents not to exceed the lesser of $[_____] and 80% of the face amount at such time of [Borrower's] eligible Inventory/Service Accounts (as defined in the A/R Facility Agreement as of the date hereof), whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against any Obligor under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination fees, and (ii) in the case of CRG Creditors, any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of CRG Creditors now or hereafter arising or existing under or relating to the CRG Documents, whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against any Obligor under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination fees.

"***Collateral***" means all real or personal property of any Obligor in which any Creditor now or hereafter has a security interest.

"***Common Collateral***" means all Collateral in which both [A/R Lender] and CRG Agent have a security interest.

"***CRG Documents***" means all documentation related to the CRG Credit Agreement and all Loan Documents (as defined in the CRG Credit Agreement), including security or pledge agreements and all other related agreements.

"***CRG Senior Collateral***" means all Collateral in which CRG Agent has a security interest, other than the A/R Facility Senior Collateral, including, for the avoidance of doubt and without limitation, any additional Collateral in which CRG Agent may have a security interest following the commencement of or in connection with any Insolvency Proceeding, including without limitation Collateral subject to any CRG Agent security interests, superpriority claims, or other rights arising under Sections 507(b) and 552 of the Bankruptcy Code.

"***Credit Documents***" means, collectively, the CRG Documents and the A/R Facility Documents.

"***Enforcement Action***" means, with respect to any Creditor and with respect to any Claim of such Creditor or any item of Collateral in which such Creditor has or claims a security interest, lien, or right of offset, (i) any action, whether judicial or nonjudicial, to repossess, collect, offset, recoup, give notification to third parties with respect to, sell, dispose of, foreclose upon, give notice of sale, disposition, or foreclosure with respect to, or obtain equitable or injunctive relief with respect to, such Claim or Collateral, (ii) any action in connection with any Insolvency Proceeding to protect, defend, enforce or assert rights with respect to such Claim or Collateral, including without limitation filing and defending any proof of claim, opposing or joining in the opposition of any sale of assets or confirmation of a plan of reorganization, or opposing or joining in the opposition of any proposed debtor-in-possession loan or use of cash collateral, and (iii) the filing of, or the joining in the filing of, an involuntary bankruptcy or insolvency proceeding against any Obligor.

"***Intellectual Property***" means, collectively, all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof, all rights to recover for past, present or future infringements thereof and all other rights whatsoever accruing thereunder or pertaining thereto (collectively, "***Copyrights***"), all patents and patent applications, including the inventions and improvements described and claimed therein together with the reissues, divisions, continuations, renewals, extensions and continuations in part thereof, all damages and payments for past or future infringements thereof and rights to sue therefor, and all rights corresponding thereto throughout the world and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect thereto (collectively, "***Patents***"), and all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including all renewals of trademark and service mark registrations, all rights to recover for all past, present and future infringements thereof and all rights to sue therefor, and all rights corresponding thereto throughout the world (collectively, "***Trademarks***"), together, in each case, with the product lines and goodwill of the business connected with the use of, and symbolized by, each such trade name, trademark and service mark, together with (a) all inventions, processes, production methods, proprietary information, know-how and trade secrets; (b) all licenses or user

or other agreements granted to any Obligor with respect to any of the foregoing, in each case whether now or hereafter owned or used; (c) all information, customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, processing standards, performance standards, catalogs, computer and automatic machinery software and programs; (d) all field repair data, sales data and other information relating to sales or service of products now or hereafter manufactured; (e) all accounting information and all media in which or on which any information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data; (f) all licenses, consents, permits, variances, certifications and approvals of governmental agencies now or hereafter held by any Obligor; and (g) all causes of action, claims and warranties now or hereafter owned or acquired by any Obligor in respect of any of the items listed above.

"***Junior Collateral***" means, (i) in the case of [A/R Lender], all Common Collateral consisting of CRG Senior Collateral and (ii) in the case of CRG Creditors, all Common Collateral consisting of A/R Facility Senior Collateral.

"***Obligor***" means Borrower, each subsidiary thereof and each other person or entity that provides a guaranty of, or collateral for, any Claim of any Creditor.

"***Proceeds Sweep Period***" means the period beginning on the later to occur of (i) the occurrence of an event of default under any Creditor's Credit Documents and (ii) receipt by the other Creditor of written notice from such Creditor of such event of default, and ending on the date on which such event of default shall have been waived in writing by the Creditor issuing such notice.

"***Senior Collateral***" means, (i) in the case of [A/R Lender], all A/R Facility Senior Collateral and (ii) in the case of CRG Creditors, all CRG Senior Collateral.

"***UCC***" means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect in the State of New York. The following terms have the meanings given to them in the applicable UCC: "account", "chattel paper", "commodity account", "deposit account", "document", "equipment", "general intangible", "instrument", "inventory", "proceeds" and "securities account".

2. Lien Subordination. (a) Notwithstanding the respective dates of attachment or perfection of the security interests of CRG Creditors and the security interests of [A/R Lender], or any contrary provision of the UCC, or any applicable law or decision, or the provisions of the Credit Documents, and irrespective of whether [A/R Lender] or any CRG Creditor holds possession of all or any part of the Collateral, (i) all now existing and hereafter arising security interests of [A/R Lender] in any A/R Facility Senior Collateral shall at all times be senior to the security interests of CRG Creditors in such A/R Facility Senior Collateral, and (ii) all now existing and hereafter arising security interests of CRG Creditors in any CRG Senior Collateral shall at all times be senior to any interests, including the security interests of [A/R Lender] in such CRG Senior Collateral. Notwithstanding the foregoing, [A/R Lender] agrees and

acknowledges that it shall not receive, and [neither Borrower nor any Obligor shall grant][Borrower shall not grant], any security interest to [A/R Lender] in the CRG Senior Collateral.

(b) Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors:

(i) acknowledges and consents to (A) [Borrower][each Obligor] granting to the other Creditor a security interest in the Common Collateral of such other Creditor, (B) the other Creditor filing any and all financing statements and other documents as reasonably deemed necessary by the other Creditor in order to perfect its security interest in its Common Collateral, and (C) [Borrower's][each Obligor's] entry into the Credit Documents to which the other Creditor is a party.

(ii) acknowledges, agrees and covenants, notwithstanding **Section 2(c)** but subject to **Section 5**, that it shall not contest, challenge or dispute the validity, attachment, perfection, priority or enforceability of the other Creditor's security interest in the Common Collateral, or the validity, priority or enforceability of the other Creditor's Claim. For the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, [A/R Lender] shall not file or join in any motion or pleading in connection with any Insolvency Proceeding or take any other action seeking to recharacterize any Intellectual Property, the proceeds thereof, or any other CRG Senior Collateral or proceeds thereof as A/R Facility Senior Collateral.

(c) Subject to **Section 2(b)(ii)**, the priorities provided for herein with respect to security interests and liens are applicable only to the extent that such security interests and liens are enforceable, perfected and have not been avoided; if a security interest or lien is judicially determined to be unenforceable or unperfected or is judicially avoided with respect to one or more Claims or any part thereof, the priorities provided for herein shall not be available to such security interest or lien to the extent that it is avoided or determined to be unenforceable. Nothing in this **Section 2(c)** affects the operation of any turnover of payment provisions hereof, or of any other agreements among any of the parties hereto.

3. Distribution of Proceeds of Common Collateral. (a) During each Proceeds Sweep Period, all proceeds including proceeds of any sale, exchange, collection, or other disposition of:

(i) A/R Facility Senior Collateral shall be distributed first, to [A/R Lender], in an amount up to the amount of [A/R Lender]'s Claim; then, to CRG Agent, in an amount up to the amount of CRG Creditors' Claim;

(ii) CRG Senior Collateral shall be distributed first, to CRG Agent, in an amount up to the amount of CRG Creditors' Claim; then, to [A/R Lender], in an amount up to the amount of [A/R Lender]'s Claim.

(b) In the event that, notwithstanding **Section 3(a)**, any Creditor shall during any Proceeds Sweep Period receive any payment, distribution, security or proceeds constituting its Junior Collateral prior to the indefeasible payment in full of the other set of Creditors' Claims and termination of all commitments of the other set of Creditors under their Credit Documents, such Creditor shall hold in trust, for such other Creditor, such payment, distribution, security or proceeds, and shall deliver to such other Creditor, in the form received (with any necessary

endorsements or as a court of competent jurisdiction may otherwise direct) such payment, distribution, security or proceeds for application to the other set of Creditors' Claims in accordance with **Section 3(a)**.

(c) At all times other than during a Proceeds Sweep Period, all proceeds including proceeds of any sale, exchange, collection, or other disposition of Collateral shall be distributed or applied, as applicable, in accordance with the CRG Documents and the A/R Facility Documents.

(d) Except as expressly set forth herein, nothing in this **Section 3** shall obligate any Creditor (i) to sell, exchange, collect or otherwise dispose of Collateral at any time, or (ii) to take any action in violation of any stay imposed in connection with any Insolvency Proceeding, including without limitation the automatic stay in Section 362(a) of the Bankruptcy Code, nor shall any Creditor have any liability to the other arising from or in connection with such Creditor's failure to take such action.

4. Subordination of Remedies. Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors (such Person for purposes of this **Section 4**, the "***Junior Creditor***"), agrees, subject to **Section 5**, that, (i) unless and until all Claims of the other set of Creditors (for purposes of this **Section 4**, the "***Senior Creditor***") have been indefeasibly paid in full and all commitments of the Senior Creditor under its Credit Documents have been terminated, or (ii) until the expiration of a period of 180 days from the date of notice of default under the Senior Creditor's Credit Documents given by the Senior Creditor to the Junior Creditor, whichever is earlier, and whether or not any Insolvency Proceeding has been commenced by or against any Obligor, the Junior Creditor shall not, without the prior written consent of the Senior Creditor, enforce, or attempt to enforce, any rights or remedies under or with respect to any of such Junior Creditor's Junior Collateral, including causing or compelling the pledge or delivery of such Junior Collateral, any attachment of, levy upon, execution against, foreclosure upon or the taking of other action against or institution of other proceedings with respect to any such Junior Collateral, notifying any account debtors of any Obligor, asserting any claim or interest in any insurance with respect to such Junior Collateral, or exercising any rights under any lockbox agreement, account control agreement, landlord waiver or bailee's letter or similar agreement or arrangement with respect to such Junior Collateral, or institute or commence, or join with any person or entity in commencing, any action or proceeding with respect to such rights or remedies (including any action of foreclosure, enforcement, collection or execution and any Insolvency Proceeding involving any Obligor), except that notwithstanding the foregoing, at all times, including during a Proceeds Sweep Period, the Junior Creditor shall be able to exercise its rights under a lockbox agreement or an account control agreement with respect to any deposit account, securities account or commodity account constituting Collateral, including its rights to freeze such account or exercise any rights of offset, *provided* that any distribution or withdrawal from such account shall be applied in accordance with **Section 3(a)**.

5. Insolvency Proceedings. (a) **Rights Continue**. In the event of any Obligor's insolvency, reorganization or any case, action or proceeding, commenced by or against such Obligor, under any bankruptcy or insolvency law or laws relating to the relief of debtors, including, without limitation, any voluntary or involuntary bankruptcy (including any case commenced under the Bankruptcy Code), insolvency, receivership, liquidation, dissolution,

winding-up or other similar statutory or common law proceeding or arrangement involving any Obligor, the readjustment of its liabilities, any assignment for the benefit of its creditors, or any marshalling of its assets or liabilities (each, an "***Insolvency Proceeding***"), (i) this Agreement shall remain in full force and effect in accordance with Section 510(a) of the United States Bankruptcy Code, and (ii) the Collateral shall include, without limitation, all Collateral arising during or after any such Insolvency Proceeding (which Collateral shall be subject to the priorities set forth in this Agreement).

(b) **Proof of Claim, Sales and Plans**. At any meeting of creditors or in the event of any Insolvency Proceeding, each Creditor shall retain the right to vote, file a proof of claim and otherwise act with respect to its Claims (including the right to vote to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition, or extension (a "***Plan***")), *provided* that (i) no Creditor shall initiate, prosecute or participate in any claim or action in such Insolvency Proceeding directly or indirectly challenging the enforceability, validity, perfection or priority of the other set of Creditors' Claims, this Agreement, the Credit Documents, or any liens securing the other set of Creditors' Claims; and (ii) no Creditor shall propose any Plan or file or join in any motion or pleading in support of any motion or Plan or exercise any other voting rights unless such Plan provides for the treatment of the Creditors' claims in accordance with the terms of **Section 5(g)** and otherwise consistent with the terms of this Agreement, or that would otherwise impair the timely repayment of the other set of Creditors' Claims in accordance with its terms or impair or impede any rights of the other set of Creditors.

(c) **Finance and Sale Issues**. (i) If any Obligor shall be subject to any Insolvency Proceeding and a Creditor shall desire to permit the use by such Obligor of cash collateral (as defined in Section 363(a) of the Bankruptcy Code, "***Cash Collateral***") constituting such Creditor's Senior Collateral or to permit any Obligor to obtain financing (including on a priming basis with respect to such Creditor's Senior Collateral), whether from such Creditor or any other third party under Section 362, 363 or 364 of the Bankruptcy Code or any other applicable law (each, a "***Post-Petition Financing***"), then the other set of Creditors shall not oppose or raise any objection to or contest (or join with or support any third party opposing, objecting to or contesting), such use of Cash Collateral or Post-Petition Financing and shall not request adequate protection or any other relief in connection therewith (except as specifically permitted under **Section 5(e)**); *provided, however,* that, notwithstanding the foregoing, each Creditor shall be entitled to oppose, raise objection to, or contest (or join with or support any third party opposing, objecting to, or contesting) any such use of Cash Collateral or Post-Petition Financing if such proposed use of Cash Collateral or Post-Petition Financing would result in any liens on such Creditor's Senior Collateral to be subordinated to or *pari passu* with such Cash Collateral or Post-Petition Financing.

(ii) Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, agrees that it shall raise no objection to, and shall not oppose or contest (or join with or support any third party opposing, objecting to or contesting), a sale, revesting or other disposition of any Collateral constituting its Junior Collateral free and clear of its liens or other Claims, whether under Sections 363 or 1141 of the Bankruptcy Code or other applicable law, if the other set of Creditors has consented to such sale or disposition of such assets; *provided, however,* that,

notwithstanding the foregoing and for the avoidance of doubt, any Creditor shall be entitled to oppose, raise objection to, or contest (or join with or support any third party opposing, objecting to, or contesting) any sale, revesting or other disposition of any Collateral constituting its Senior Collateral free and clear of its liens or other Claims.

(d) **Relief from the Automatic Stay**. Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, agrees that, until the other set of Creditors' Claims have been indefeasibly paid in full, such Creditor shall not seek relief, pursuant to Section 362(d) of the Bankruptcy Code or otherwise, from the automatic stay of Section 362(a) of the Bankruptcy Code or from any other stay in any Insolvency Proceeding in respect of its Junior Collateral without the prior written consent of such other Creditor.

(e) **Adequate Protection**. [A/R Lender] agrees that it shall not:

(i) oppose, object to or contest (or join with or support any third party opposing, objecting to or contesting) (A) any request by CRG Agent for adequate protection in any Insolvency Proceeding (or any granting of such request), or (B) any objection by CRG Agent to any motion, relief, action or proceeding based on such Senior Creditor claiming a lack of adequate protection; or

(ii) seek or accept any form of adequate protection under any of Sections 362, 363 and/or 364 of the Bankruptcy Code with respect to the Collateral, except to the extent that, in the sole discretion of CRG Agent, the receipt by [A/R Lender] of any such adequate protection would not reduce (or would not have the effect of reducing) or adversely affect the adequate protection that CRG Creditors otherwise would be entitled to receive, it being understood that, in any event, (y) no adequate protection shall be requested or accepted by [A/R Lender] unless CRG Agent is satisfied in its sole discretion with the adequate protection afforded to CRG Creditors, and (z) any such adequate protection is in the form of a replacement lien on the Obligors' assets, which lien shall be subordinated to the liens securing CRG Creditors' Claims (including any replacement liens granted in respect of CRG Creditors' Claims) and any Post-Petition Financing (and all obligations relating thereto) on the same basis as the other liens securing [A/R Lender]'s Claims are so subordinated to the liens securing CRG Creditors' Claims as set forth in this Agreement.

(f) **Post-Petition Interest**. Each Creditor shall not oppose or seek to challenge any claim by the other set of Creditors for allowance in any Insolvency Proceeding of Claims consisting of post-petition interest, fees or expenses, *provided* that the treatment of such Claims are consistent with the Creditors' relative priorities set forth in this Agreement.

(g) **Separate Class**. Without limiting anything to the contrary contained herein or in the Credit Documents, each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, acknowledges and agrees that (i) the grants of liens pursuant to the CRG Documents and the A/R Facility Documents constitute two separate and distinct grants of liens, and (ii) because of, among other things, their differing rights in the Collateral, each set of Creditors' Claims are fundamentally different from the other's Claims and must be separately classified in any Plan proposed or adopted in an Insolvency Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the respective Claims of the

Creditors in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, acknowledges and agrees (x) that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Obligors in respect of the Collateral, and (y) to turn over to the other Creditor amounts otherwise received or receivable by it in the manner described in **Section 3(b)** to the extent necessary to effectuate the intent of this sentence.

(h) **Waiver**. Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, waives any claim it may hereafter have against the other set of Creditors arising out of the election by such other set of Creditors of the application to the claims of such other set of Creditors of Section 1111(b)(2) of the Bankruptcy Code, and/or out of any Cash Collateral or Post-Petition Financing arrangement or out of any grant of a lien in connection with the Collateral in any Insolvency Proceeding.

6. Notice of Default. Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, shall give to the other prompt written notice of the occurrence of any default or event of default (which has not been promptly waived or cured) under any of its Credit Documents of which it has knowledge (and any subsequent cure or waiver thereof) and shall, simultaneously with giving any notice of default or acceleration to Borrower, provide to such other Creditor a copy of such notice of default. [A/R Lender] acknowledges and agrees that any event of default under the A/R Facility Documents shall be deemed to be an event of default under the CRG Documents. For the avoidance of doubt, nothing in this **Section 6** shall obligate any Creditor to provide any notice in violation of any stay imposed in connection with any Insolvency Proceeding, including without limitation the automatic stay in Section 362(a) of the Bankruptcy Code, nor shall any Creditor have any liability to the other arising from or in connection with such Creditor's failure to take such action.

7. Release of Liens. In the event of any private or public sale or other disposition, by or with the consent of [A/R Lender] and CRG Agent, on behalf of CRG Creditors (such Person, for purposes of this **Section 7**, the "***Senior Creditor***"), of all or any portion of such set of Creditors' Senior Collateral, CRG Agent, on behalf of CRG Creditors, and [A/R Lender], respectively (for purposes of this **Section 7**, the "***Junior Creditor***"), agrees that such sale or disposition shall be free and clear of such Junior Creditor's liens, *provided* that such sale or disposition is made in accordance with the UCC or applicable provisions of the Bankruptcy Code, including without limitation Sections 363(f) or 1141(c) of the Bankruptcy Code. The Junior Creditor agrees that, in connection with any such sale or other disposition, (i) the Senior Creditor is authorized to file any and all UCC and other applicable lien releases and/or terminations in respect of the liens held by the Junior Creditor in connection with such a sale or other disposition, and (ii) it shall execute any and all lien releases or other documents reasonably requested by the Senior Creditor in connection therewith.

8. Attorney-In-Fact. Until the CRG Creditors' Claims have been fully paid in cash and the CRG Creditors' arrangements to lend any funds to the Obligors have been terminated, [A/R Lender] irrevocably appoints CRG Agent as [A/R Lender]'s attorney-in-fact, and grants to CRG Agent a power of attorney with full power of substitution (which power of attorney is coupled with an interest), in the name of [A/R Lender] or in the name of CRG Agent, for the use and

benefit of CRG Agent, without notice to [A/R Lender], to perform at CRG Agent's option the following acts in any bankruptcy, insolvency or similar proceeding involving Borrower:

(a) To file the appropriate claim or claims in respect of the [A/R Lender] Claims on behalf of [A/R Lender] if [A/R Lender] does not do so prior to 30 days before the expiration of the time to file claims in such proceeding and if CRG Agent elects, in its sole discretion, to file such claim or claims; and

(b) To accept or reject any plan of reorganization or arrangement on behalf of [A/R Lender] and to otherwise vote [A/R Lender]'s claims in respect of any [A/R Lender] Claim in any manner that CRG Agent deems appropriate for the enforcement of its rights hereunder.

9. Agent for Perfection. [A/R Lender] acknowledges that applicable provisions of the UCC may require, in order to properly perfect CRG Creditors' security interest in the Common Collateral securing the CRG Creditors' Claims, that CRG Agent possess certain of such Common Collateral, and may require the execution of control agreements in favor of CRG Agent concerning such Common Collateral. In order to help ensure that CRG Creditors' security interest in such Common Collateral is properly perfected (but subject to and without waiving the other provisions of this Agreement), [A/R Lender] agrees to hold both for itself and, solely for the purposes of perfection and without incurring any duties or obligations to CRG Creditors as a result thereof or with respect thereto, for the benefit of CRG Creditors, any such Common Collateral, and agrees that CRG Creditors' lien in such Common Collateral shall be deemed perfected in accordance with applicable law.

10. Credit Documents. (a) Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, represents and warrants that it has provided to the other true, correct and complete copies of all Credit Documents which relate to its credit agreement.

(b) At any time and from time to time, without notice to the other set of Creditors, each Creditor may take such actions with respect to its Claims as such Creditor, in its sole discretion, may deem appropriate, including, without limitation, terminating advances under its Credit Documents, increasing the principal amount, extending the time of payment, increasing applicable interest to the default rate, renewing, compromising or otherwise amending the terms of any documents affecting its Claims and any Collateral therefor, and enforcing or failing to enforce any rights against Borrower or any other person, and no such action or inaction described in this sentence shall impair or otherwise affect such Creditor's rights hereunder; *provided, however,* that (i) no Creditor shall take any action that is inconsistent with the provisions of this Agreement, and (ii) [A/R Lender] shall not increase the portion of [A/R Lender]'s Claim consisting of principal to an amount in excess of $[_____] without the prior written consent of CRG Agent. Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, waives the benefits, if any, of any statutory or common law rule that may permit a subordinating creditor to assert any defenses of a surety or guarantor, or that may give the subordinating creditor the right to require a senior creditor to marshal assets, and each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, agrees that it shall not assert any such defenses or rights.

(c) Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, agrees that

any other Creditor may release or refrain from enforcing its security interest in the Collateral, or permit the use or consumption of such Collateral by any Obligor free of the other Creditor's security interest, without incurring any liability to any other Creditor.

11. Waiver of Right to Require Marshaling. Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, expressly waives any right that it otherwise might have to require any other Creditor to marshal assets or to resort to Collateral in any particular order or manner, whether provided for by common law or statute. No Creditor shall be required to enforce any guaranty or any security interest or lien given by any person or entity as a condition precedent or concurrent to the taking of any Enforcement Action with respect to the Collateral.

12. Representations and Warranties. Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, represents and warrants to the other that:

(a) all action on the part of such Creditor, its officers, directors, partners, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of such Creditor hereunder has been taken;

(b) this Agreement constitutes the legal, valid and binding obligation of such Creditor, enforceable against such Creditor in accordance with its terms;

(c) the execution, delivery and performance of and compliance with this Agreement by such Creditor will not (i) result in any material violation or default of any term of any of such Creditor's charter, formation or other organizational documents (such as Articles or Certificate of Incorporation, bylaws, partnership agreement, operating agreement, etc.) or (ii) violate any material applicable law, rule or regulation.

13. Disgorgement. (a) If, at any time after payment in full of the [A/R Lender] Claims any payments of the [A/R Lender] Claims must be disgorged by [A/R Lender] for any reason (including, without limitation, any Insolvency Proceeding), this Agreement and the relative rights and priorities set forth herein shall be reinstated as to all such disgorged payments as though such payments had not been made and CRG Creditors shall immediately pay over to [A/R Lender] all money or funds received or retained by CRG Creditors with respect to the CRG Creditors' Claims to the extent that such receipt or retention would have been prohibited hereunder.

(b) If, at any time after payment in full of the CRG Creditors' Claims any payments of the CRG Creditors' Claims must be disgorged by any CRG Creditor for any reason (including, without limitation, any Insolvency Proceeding), this Agreement and the relative rights and priorities set forth herein shall be reinstated as to all such disgorged payments as though such payments had not been made and [A/R Lender] shall immediately pay over to CRG Agent all money or funds received or retained by [A/R Lender] with respect to the [A/R Lender] Claims to the extent that such receipt or retention would have been prohibited hereunder.

14. Successors and Assigns. This Agreement shall bind any successors or assignees of each Creditor. This Agreement shall remain effective until all Claims are indefeasibly paid or otherwise satisfied in full and [A/R Lender] and the CRG Creditors have no commitment to extend credit under the Credit Documents. This Agreement is solely for the benefit of the Creditors and not for the benefit of Borrower or any other party. Each Creditor shall not sell,

assign, pledge, dispose of or otherwise transfer all or any portion of its Claims or any of its Credit Documents or any interest in any Common Collateral unless, prior to the consummation of any such action, the transferee thereof shall execute and deliver to the other set of Creditors an agreement of such transferee to be bound hereby, or an agreement substantially identical to this Agreement providing for the continued subjection of such Claims, the interests of the transferee in the Collateral and the remedies of the transferee with respect thereto as provided herein with respect to the transferring Creditor and for the continued effectiveness of all of the other rights of the other Creditor arising under this Agreement, in each case in form satisfactory to the other set of Creditors.

15. Further Assurances. Each of [A/R Lender] and CRG Agent, on behalf of CRG Creditors, agrees to execute such documents and/or take such further action as the other Creditor may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by the other Creditor.

16. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

17. Governing Law; Waiver of Jury Trial. (a) This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction.

(b) EACH CREDITOR WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

18. Entire Agreement. This Agreement represents the entire agreement with respect to the subject matter hereof, and supersedes all prior negotiations, agreements and commitments. Each Creditor is not relying on any representations by the other Creditor, Borrower or any other Obligor in entering into this Agreement, and each Creditor has kept and will continue to keep itself fully apprised of the financial and other condition of each Obligor. This Agreement may be amended only by written instrument signed by the Creditors.

19. Relationship among Creditors. The relationship among the Creditors is, and at all times shall remain solely that of creditors of Obligors. Creditors shall not under any circumstances be construed to be partners or joint venturers of one another; nor shall the Creditors under any circumstances be deemed to be in a relationship of confidence or trust or a fiduciary relationship with one another, or to owe any fiduciary duty to one another. Creditors do not undertake or assume any responsibility or duty to one another to select, review, inspect, supervise, pass judgment upon or otherwise inform each other of any matter in connection with any Obligor’s property, any Collateral held by any Creditor or the operations of any Obligor. Each Creditor shall rely entirely on its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by any Creditor in connection with such matters is solely for the protection of such Creditor.

20. No Modification. Notwithstanding anything contained herein, no provision of this Agreement shall be deemed to waive, amend, limit or otherwise modify any term or condition of the CRG Credit Agreement and the A/R Facility Documents.

21. Severability. Any provision of this Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent such illegality, invalidity, prohibition or unenforceability without invalidating or impairing the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

22. Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be delivered or sent by first-class mail, postage prepaid, or by overnight courier or messenger service or by facsimile, message confirmed, and shall be deemed to be effective for purposes of this Agreement on the day that delivery is made or refused. Unless otherwise specified in a notice mailed or delivered in accordance with the foregoing sentence, notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties hereto at their respective addresses and facsimile numbers indicated on the signature pages hereto.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned have executed this Intercreditor Agreement as of the date first above written.

[A/R Lender]:

[INSERT NAME OF A/R LENDER]

By _____
Name: [_____]
Title: [_____]

Address for Notices:

[_____]
[_____]
[_____]
Tel: [_____]
Email: [_____]

CRG AGENT:

CRG SERVICING LLC

By _____
Nate Hukill
Authorized Signatory

Address for Notices:
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@crglp.com

Acknowledged and Agreed to:

BORROWER:

OMEROS CORPORATION

By:_____
Name: [_____]
Title: [_____]

Address for Notices:
201 Elliott Avenue West
Seattle, Washington 98119
Attn: Chief Executive Officer
Tel.: 206-676-5000
Fax: 206-676-5005
Email: gdemopulos@omeros.com

with a copy to:

201 Elliott Avenue West
Seattle, Washington 98119
Attn: General Counsel
Tel.: 206-676-5000
Fax: 206-676-5005
Email: mkelbon@omeros.com

Exhibit I
to Term Loan Agreement

FORM OF NON-DISTURBANCE AGREEMENT

THIS AGREEMENT, made as of this__day of__, 20 , by and among Omeros Corporation [and Other Grantor] ("***Licensor***") and [INSERT NAME OF LICENSEE] ("***Licensee***"), as parties to the License Agreement (as defined below), and the Administrative Agent (as defined below) as the holder of the Security Interest (as defined below).

W I T N E S S E T H:

WHEREAS, Licensor and Licensee [are parties to/will enter into] that certain [License Agreement] [dated [as of/on or about] , 20[ ] (the "***License Agreement***"), providing for a collaboration, license, joint venture, partnership, royalty agreement or similar agreement or other research, development, manufacturing or other commercial exploitation arrangement with respect to certain intellectual property and other property owned or controlled by Licensor (the "***Licensed Property***") for the term and upon the conditions set forth therein; and

WHEREAS, Licensor has entered into that Term Loan Agreement (the "***Loan Agreement***") dated as of October 26, 2016 with the lenders from time to time party thereto (the "***Lenders***") and CRG Servicing LLC, as administrative agent and collateral agent (in such capacities, the "***Administrative Agent***") and has entered into a Security Agreement and related documents in the forms attached to the Loan Agreement (collectively, the "***Security Documents***", and together with the Loan Agreement, the "***Loan Documents***") with the Administrative Agent (together with the Lenders and other secured parties thereunder, the "***Secured Parties***") pursuant to which Licensor has granted to the Administrative Agent and the other Secured Parties a security interest in some or all of the Licensed Property (the "***Security Interest***"); and

WHEREAS, Licensee has requested that the Administrative Agent agree not to disturb any of Licensee's rights with respect to the Licensed Property granted under the License Agreement (the "***Licensee Rights***") in the event that upon an Event of Default (as such term is used in the Loan Documents), the Administrative Agent or any Secured Party takes possession of, sells, assigns, grants a license with respect to or otherwise exercises its rights and remedies under the Loan Documents with respect to all or any portion of the collateral constituting Licensed Property (in each case, a "***Foreclosure***").

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the

mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed as follows:

1. The Administrative Agent, acting on its own behalf and on behalf of the other Secured Parties, acknowledges that it has received and reviewed a copy of the License Agreement attached hereto as Exhibit A. To the extent consent is required under the Loan Documents for Licensor to execute, deliver or perform under the License Agreement, the Administrative Agent, acting on its own behalf and on behalf of the other Secured Parties, consents to Licensor's execution, delivery and performance of the License Agreement attached hereto as Exhibit A, provided that such consent shall not extend to Licensor's execution, delivery and performance of an amended License Agreement that (A) is materially different from the form attached hereto as Exhibit A in a way that is materially adverse to the interests of the Secured Parties, or (B) would constitute a breach or default under the Loan Documents.

2. In the event of a Foreclosure, it is agreed as follows:

(a) Any transfer of Licensor's rights in the Licensed Property or the License Agreement to Secured Parties or any other purchaser at a secured parties' sale or other disposition (any such transferee of the Licensed Property, a "***Successor Licensor***") shall be subject to and not free and clear of the Licensee Rights and none of the Licensee Rights shall be discharged, waived, modified, impaired or terminated solely as a result of such transfer of the Licensed Property.

(b) Provided that (i) the License Agreement is in full force and effect and (ii) Licensee is not in default or breach of the License Agreement in a manner that would permit the Licensor to terminate the License Rights and that continues beyond any applicable cure period provided therein, if any, neither Secured Parties nor any Successor Licensor will disturb, diminish or interfere with the Licensee Rights, including, without limitation, any sublicenses granted or permitted to be granted thereunder. Subject solely to the limitations set forth in Section 2(a) and the first sentence of this Section 2(b), Secured Parties and any Successor Licensor shall have any rights of Licensor in the Licensed Property and the License Agreement to the extent such rights were transferred by Licensor to Secured Parties or Successor Licensor by operation of the Foreclosure or applicable law.

(c) Provided that (i) the License Agreement is in full force and effect, and
(ii) Licensee is not in default or breach of the License Agreement in a manner that would permit the Licensor to terminate the Licensee Rights and that continues beyond any applicable cure period provided therein, if any, the Administrative Agent, on behalf of itself and the other Secured Parties, undertakes that it shall cause to be ratified by Successor Licensor, all of Licensor's duties and obligations to Licensee under the License Agreement with respect to Licensee Rights in the Licensed Property, and shall cause the Successor Licensor to be bound to Licensee under all of the terms, covenants and conditions of the License Agreement with respect to such Licensee Rights in the Licensed Property for the remaining term of the License Agreement, with the same force and effect as if Successor Licensor, as the case may be, were the Licensor under the License Agreement.

(d) Notwithstanding the foregoing, except to the extent expressly undertaken in writing, neither Secured Parties nor any Successor Licensor who acquires an interest in the Licensed Property or the License Agreement as a result of any such Foreclosure or other enforcement action or proceeding (the date on which the Secured Parties, Successor Licensor, or such other party acquires such interest, hereinafter called the "***Acquisition Date***") shall be (i) liable for any act or omission of Licensor under the License Agreement or otherwise or for any damages arising as a result of a breach of the License Agreement by the Licensor; (ii) liable for the return of any payments made by the Licensee to the Licensor under the License Agreement prior to the Acquisition Date; or (iii) required to perform or be liable for any affirmative obligations or covenants of the Licensor under the License Agreement, or liable for any of the representations or warranties of the Licensor under the License Agreement, or liable for any indemnities of the Licensor (other than, with respect to any Successor Licensor, any such obligations, covenants, representations or warranties or indemnities occurring, made or required to be performed after the Acquisition Date).

3. This Agreement is for the express benefit of Licensee, any of its successors-in-interest, and any of its sublicensees under the License Agreement.

4. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.

5. This Agreement was prepared in the English language, which language shall govern the interpretation of, and any dispute regarding, the terms of this Agreement. This Agreement and all disputes arising out of or related to this Agreement or any breach hereof shall be governed by and construed under the laws of the State of New York, without giving effect to any choice of law principles that would require the application of the laws of a different state.

[SEE ATTACHED SIGNATURE PAGES]

SIGNATURE PAGE TO
NON-DISTURBANCE AGREEMENT

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

[LICENSEE],
AS LICENSEE

By: ___

Name:
Title:

[**OMEROS COPORPATION][OTHER GRANTOR],**
AS LICENSOR

By:___

Name:
Title:

ADMINISTRATIVE AGENT:

CRG SERVICING LLC

By ___

Name: Nathan Hukill
Title: President

Address for Notices:

1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@crglp.com

EXHIBIT A

LICENSE AGREEMENT

[See attached]

EXHIBIT 12.1

Omeros Corporation

Computation of Deficiency in the Coverage of Fixed Charges by Earnings Before Fixed Charges

	For the nine months ended	Year Ended December 31,				
	2016	2015	2014	2013	2012	2011
	(in thousands)	(in thousands)				
Earnings before fixed charges:						
Loss from continuing operations before income taxes	$ (47,113)	$ (75,096)	$ (73,673)	$ (39,796)	$ (38,444)	$ (28,546)
Add fixed charges	7,667	8,295	6,824	5,621	2,305	2,144
Add amortization of capitalized interest	—	—	—	—	—	—
Add distributed income of equity investees	—	—	—	—	—	—
Subtract capitalized interest	—	—	—	—	—	—
Loss before fixed charges	$ (39,446)	$ (66,801)	$ (66,849)	$ (34,175)	$ (36,139)	$ (26,402)
Fixed Charges:						
Interest expense	$ 4,174	$ 2,709	$ 2,710	$ 1,865	$ 1,355	$ 1,532
Amortization of debt expense and loss from extinguishment of debt	1,193	2,177	759	502	374	352
Estimate of interest expense within rental expense	2,300	3,409	3,355	3,254	576	260
Preference security dividend requirements of consolidated subsidiaries	—	—	—	—	—	—
Total fixed charges	$ 7,667	$ 8,295	$ 6,824	$ 5,621	$ 2,305	$ 2,144
Deficiency of earnings available to cover fixed charges	$ (47,113)	$ (75,096)	$ (73,673)	$ (39,796)	$ (38,444)	$ (28,546)

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO RULE 13a-14(a)/15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gregory A. Demopulos, M.D., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Omeros Corporation;

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.

Dated: November 9, 2016

/s/ Gregory A. Demopulos

Gregory A. Demopulos, M.D.
Principal Executive Officer

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO RULE 13a-14(a)/15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael A. Jacobsen, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Omeros Corporation;

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.

Dated: November 9, 2016

/s/ Michael A. Jacobsen

Michael A. Jacobsen

Principal Financial and Accounting Officer

Exhibit 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Omeros Corporation (the "Company") for the quarter ended September 30, 2016, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned officer of the Company certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as may be expressly set forth by specific reference in such filing.

Dated: November 9, 2016

/s/ Gregory A. Demopulos

Gregory A. Demopulos, M.D.

Principal Executive Officer

Exhibit 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Omeros Corporation (the "Company") for the quarter ended September 30, 2016, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned officer of the Company certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as may be expressly set forth by specific reference in such filing.

Dated: November 9, 2016

/s/ Michael A. Jacobsen

Michael A. Jacobsen

Principal Financial and Accounting Officer