FORM 8-K

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

Date of Report (Date of Earliest Event Reported): March 13, 2018

MELINTA THERAPEUTICS, INC.
(Exact name of registrant as specified in its charter)

300 George Street, Suite 301, New Haven, CT
(Address of principal executive offices)

Registrant’s telephone number, including area code (312) 767-0291

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

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

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

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐
Item 8.01 Other Events
Melinta Therapeutics, Inc. (the “Company”) is filing this Current Report on Form 8-K solely for the purpose of filing certain Exhibits that will be incorporated by reference into the Company’s Annual Report on Form 10-K, which the Company intends to file no later than March 16, 2018. The Company completed a merger transaction with the former privately-held Melinta Therapeutics, Inc. in November 2017, resulting in additional Exhibits being required to be filed with the Company’s Form 10-K.

Item 9.01 Financial Statements and Exhibits
(a) Exhibits.

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Warrant Agreement, dated December 17, 2014, by and between Melinta Therapeutics, Inc. and Hercules Technology Growth Capital, Inc.</td>
</tr>
<tr>
<td>10.1+</td>
<td>Amendment No. 1 to the Cempra, Inc. 2011 Equity Incentive Plan, as amended March 9, 2018.</td>
</tr>
<tr>
<td>10.3+</td>
<td>Amended and Restated Severance Agreement, dated August 29, 2017, by and between Melinta Therapeutics, Inc. and Paul Estrem.</td>
</tr>
<tr>
<td>10.4+</td>
<td>Employee Noncompetition, Nondisclosure and Developments Agreement, dated December 9, 2017, by and between Melinta Therapeutics, Inc. and Paul Estrem.</td>
</tr>
<tr>
<td>10.5+</td>
<td>Letter Agreement, dated November 18, 2013, by and between Melinta Therapeutics, Inc. and Sue Cammarata.</td>
</tr>
<tr>
<td>10.6+</td>
<td>Amended and Restated Severance Agreement, dated August 29, 2017, by and between Melinta Therapeutics, Inc. and Sue Cammarata.</td>
</tr>
<tr>
<td>10.7+</td>
<td>Employee Noncompetition, Nondisclosure and Developments Agreement, dated November 18, 2013, by and between Melinta Therapeutics, Inc. and Sue Cammarata.</td>
</tr>
<tr>
<td>10.8+</td>
<td>Letter Agreement, dated as of December 2, 2001, by and between Melinta Therapeutics, Inc. and Erin Duffy.</td>
</tr>
<tr>
<td>10.9+</td>
<td>Amended and Restated Severance Agreement, dated August 29, 2017, by and between Melinta Therapeutics, Inc. and Erin Duffy.</td>
</tr>
<tr>
<td>10.10+</td>
<td>Employee Noncompetition, Nondisclosure and Developments Agreement, dated January 9, 2001, by and between Melinta Therapeutics, Inc. and Erin Duffy.</td>
</tr>
<tr>
<td>10.11+</td>
<td>Letter Agreement, dated as of February 5, 2016, by and between Melinta Therapeutics, Inc. and John Temperato.</td>
</tr>
<tr>
<td>10.12+</td>
<td>Employee Noncompetition, Nondisclosure and Developments Agreement, dated as of February 16, 2016, by and between Melinta Therapeutics, Inc. and John Temperato.</td>
</tr>
<tr>
<td>10.13+</td>
<td>Amended and Restated Severance Agreement, dated August 29, 2017, by and between Melinta Therapeutics, Inc. and John Temperato.</td>
</tr>
<tr>
<td>10.14*</td>
<td>Amended and Restated License Agreement, dated May 1, 2017, between Melinta Therapeutics, Inc. and Wakunaga Pharmaceutical Co. Ltd.</td>
</tr>
<tr>
<td>10.15</td>
<td>Patheon Master Manufacturing Services Agreement, dated July 20, 2016, by and between Melinta Therapeutics, Inc. and Patheon UK Limited.</td>
</tr>
<tr>
<td>10.16+</td>
<td>Separation and Release Agreement, dated December 21, 2017, between Melinta Therapeutics, Inc. and John Temperato.</td>
</tr>
<tr>
<td>10.18</td>
<td>Amendment to the License Agreement, dated as of January 6, 2009, by and between Eli Lilly and Company and Targanta Therapeutics Corporation</td>
</tr>
</tbody>
</table>

* The Company has requested confidential treatment with respect to portions of this exhibit. Those portions have been omitted and filed separately with the Securities and Exchange Commission pursuant to a confidential treatment request.

+ The exhibit contains a management contract, compensatory plan or arrangement.
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 hereunto duly authorized.

Date: March 13, 2018

Melinta Therapeutics, Inc.

By: /s/ Paul Estrem

Paul Estrem
Chief Financial Officer
Explanatory Note: Due to adjustments resulting from the transactions contemplated by the Agreement and Plan of Merger and Reorganization, dated as of August 8, 2017, by and between Melinta Therapeutics, Inc. (f/k/a Cempra, Inc.), Castle Acquisition Corp. and Melinta Subsidiary Corp. (f/k/a Melinta Therapeutics, Inc.), which were consummated on November 3, 2017, the below warrant is for a total of 44,583 shares of common stock at a purchase price of $33.30.

THIS WARRANT, AND THE SECURITIES ISSUABLE UPON THE EXERCISE OF THIS WARRANT, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, TRANSFERRED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL (WHICH MAY BE COMPANY COUNSEL) REASONABLY SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT, OR ANY APPLICABLE STATE SECURITIES LAWS.

WARRANT AGREEMENT
To Purchase Shares of Preferred Stock of
MELINTA THERAPEUTICS, INC.
Dated as of December 17, 2014 (the “Effective Date”)

WHEREAS, Melinta Therapeutics, Inc., a Delaware corporation (as more fully defined below, the “Company”), has entered into a Loan and Security Agreement of even date herewith (as modified, amended and/or restated and in effect from time to time, the “Loan Agreement”) with Hercules Technology Growth Capital, Inc., a Maryland corporation, in its capacity as administrative agent for itself and the Lender (as defined in the Loan Agreement) (the “Warrantholder”);

WHEREAS, the Company desires to grant to Warrantholder, in consideration for, among other things, the financial accommodations provided for in the Loan Agreement, the right to purchase shares of Preferred Stock (as defined below) pursuant to this Warrant Agreement (this “Warrant” or this “Agreement”);

NOW, THEREFORE, in consideration of the Warrantholder executing and delivering the Loan Agreement and providing the financial accommodations contemplated therein, and in consideration of the mutual covenants and agreements contained herein, the Company and Warrantholder agree as follows:

SECTION 1. GRANT OF THE RIGHT TO PURCHASE PREFERRED STOCK.

(a) For value received, the Company hereby grants to the Warrantholder the right to subscribe for and purchase from the Company, at any time and from time to time on or before the Expiration Date (as defined below), up to such number of fully paid and non-assessable shares of Preferred Stock as determined pursuant to Section 1(b) below, at a purchase price per share equal to the Exercise Price (as defined below). As used herein, the following terms shall have the following meanings:

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

“Company” means Melinta Therapeutics, Inc., a Delaware corporation, and any successor corporation.

“Charter” means the Company’s Certificate of Incorporation or other constitutional document, as may be amended and/or restated and in effect from time to time.

“Common Stock” means the Company’s common stock, $0.001 par value per share, and any other class, series or other designation of security into or for which such common stock is converted, substituted or exchanged pursuant to a reorganization, reclassification, recapitalization or similar transaction.

“Discounted IPO Price” means eighty percent (80%) of the price to the public per share of Common Stock offered in the Initial Public Offering as set forth in the Company’s final prospectus filed with the U.S. Securities and Exchange Commission in connection therewith pursuant to Rule 424(b) promulgated under the Act.
“Excluded Issuance” means any issuance or sale by the Company after the Effective Date of (i) shares of Preferred Stock issued upon exercise of this Agreement or (ii) securities covered by Section 4.3(e) of the Securityholders Agreement in effect as of the Effective Date.

“Exercise Price” means $0.976616 per share, subject to adjustment from time to time in accordance with the provisions of this Warrant; provided, that if the Next Preferred Round Price shall be lower than the then-effective Exercise Price, then “Exercise Price” shall mean the Next Preferred Round Price from and after the closing of the Next Preferred Round, subject to adjustment thereafter from time to time in accordance with the provisions of this Warrant; provided further, that if the Discounted IPO Price is less than the Exercise Price that would otherwise be in effect hereunder as of immediately following the consummation of the Initial Public Offering, then, assuming this Warrant has not been exercised in full prior to the consummation of the Initial Public Offering, “Exercise Price” shall mean the Discounted IPO Price from and after the consummation of the Initial Public Offering, subject to adjustment thereafter from time to time in accordance with the provisions of this Warrant.

“Merger Event” means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company, (ii) the merger or consolidation of the Company into or with another person or entity (other than a merger or consolidation effected exclusively to change the Company’s domicile), or any other corporate reorganization, in which the stockholders of the Company in their capacity as such immediately prior to such merger, consolidation or reorganization, own less than a majority of the Company’s (or the surviving or successor entity’s) outstanding voting power immediately after such merger, consolidation or reorganization (or, if such Company stockholders beneficially own a majority of the outstanding voting power of the surviving or successor entity as of immediately after such merger, consolidation or reorganization, such surviving or successor entity is not the Company); or (iii) any sale or other transfer by the stockholders of the Company of shares representing at least a majority of the Company’s then-total outstanding combined voting power.

“Next Preferred Round” means the first offering and sale by the Company, on or after the Effective Date, of shares of its convertible preferred stock (or of promissory notes or other similar instruments or rights convertible into or exchangeable or exercisable for a class and/or series of convertible preferred stock, whether or not then established by the Company in the Charter), to one or more investors for cash for financing purposes (other than an Excluded Issuance), in a single transaction or series of related transactions not registered under the Act, resulting in aggregate gross cash proceeds received by the Company of at least $1,000,000; provided, that Next Preferred Round shall not include any additional sales of Series 3 Stock by the Company.

“Next Preferred Round Price” means the lowest effective price per share for which shares of the Next Round Preferred Series are sold and issued in the Next Preferred Round (including, without limitation, issuances pursuant to the conversion, exchange or exercise of promissory notes or other similar instruments or rights to acquire shares of the Next Round Preferred Series following the Company’s original sale and issuance of such promissory notes, instruments and/or rights).

“Next Preferred Round Series” means the class, series and/or other designation of the shares of convertible preferred stock sold and issued by the Company in the Next Preferred Round (including, without limitation, issuances pursuant to the conversion, exchange or exercise of promissory notes or other similar instruments or rights to acquire shares of the Next Round Preferred Series following the Company’s original sale and issuance of such promissory notes, instruments and/or rights), and any other class, series or other designation of security into or for which such Next Preferred Round Series is converted, substituted or exchanged pursuant to a reorganization, reclassification, recapitalization or similar transaction.

“Preferred Stock” means Series 3 Stock; provided, that if the Next Preferred Round Price shall be lower than the then-effective Exercise Price, then “Preferred Stock” shall mean the Next Preferred Round Series from and after the closing of the Next Preferred Round; provided further, that, upon and after the occurrence of an event which results in the automatic or voluntary conversion, redemption or retirement of all (but not less than all) of the outstanding shares of such Preferred
Stock pursuant to the consummation of an Initial Public Offering, then from and after the date upon which such outstanding shares are so converted, redeemed or retired, “Preferred Stock” shall mean the Common Stock.

“Purchase Price” means, with respect to any exercise of this Agreement, an amount equal to the Exercise Price as of the relevant time multiplied by the number of shares of Preferred Stock requested to be exercised under this Agreement pursuant to such exercise.

“Rights Agreement” means that certain Fifth Amended and Restated Registration Rights Agreement, dated January 23, 2014, by and among the Company and the securityholders identified therein, as may be amended and/or restated and in effect from time to time.

“Securityholders Agreement” means that certain Seventh Amended and Restated Securityholders Agreement, dated January 23, 2014, by and among the Company and the securityholders identified therein, as may be amended and/or restated and in effect from time to time.

“Series 3 Stock” means the Company’s Series 3 Convertible Preferred Stock, $0.001 par value per share, as presently constituted under the Charter, and any other class, series or other designation of security into or for which such Series 3 Convertible Preferred Stock is converted, substituted or exchanged pursuant to a reorganization, reclassification, recapitalization or similar transaction.

(b) Number of Shares. This Warrant shall be exercisable for 1,151,936 shares of Preferred Stock, subject to adjustment from time to time in accordance with the provisions of this Warrant (the "Initial Shares"); provided, that, in addition to and not in lieu of the Initial Shares, on such date (if any) as a Second Term Loan Advance (as defined in the Loan Agreement) shall first be made to the Company in any amount during the Draw Period (as defined in the Loan Agreement), this Warrant automatically shall become exercisable for a number of additional shares of Preferred Stock as shall equal (i) $225,000, divided by (ii) the Exercise Price in effect on and as of such date, subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

SECTION 2. TERM OF THE AGREEMENT.

Except as otherwise provided for herein, the term of this Agreement and the right to purchase Preferred Stock as granted herein shall commence on the Effective Date and shall be exercisable for a period ending upon the tenth (10th) anniversary of the Effective Date (the "Expiration Date").

SECTION 3. EXERCISE OF THE PURCHASE RIGHTS.

(a) Exercise. The purchase rights set forth in this Agreement are exercisable by the Warrantholder, in whole or in part, at any time, or from time to time, prior to the expiration of the term set forth in Section 2 or earlier termination of this Agreement, by tendering to the Company at its principal office a notice of exercise in the form attached hereto as Exhibit I (the “Notice of Exercise”), duly completed and executed and payment in full of the Purchase Price in accordance with the terms set forth below. Promptly upon receipt of the Notice of Exercise and the payment of the Purchase Price in accordance with the terms set forth below, and in no event later than three (3) business days thereafter, the Company shall issue to the Warrantholder a certificate for the number of shares of Preferred Stock purchased and shall execute the acknowledgment of exercise in the form attached hereto as Exhibit II (the "Acknowledgment of Exercise") indicating the number of shares which remain subject to future purchases, if any.

The Purchase Price may be paid at the Warrantholder’s election either (i) by cash or check, or (ii) by surrender of all or a portion of the Warrant for shares of Preferred Stock to be exercised under this Agreement and, if applicable, an amended Agreement representing the remaining number of shares purchasable hereunder, as determined below ("Net Issuance"). If the Warrantholder elects the Net Issuance method, the Company will issue Preferred Stock in accordance with the following formula:
\[ X = \frac{Y(A-B)}{A} \]

Where:
- \( X \) = the number of shares of Preferred Stock to be issued to the Warrantholder.
- \( Y \) = the number of shares of Preferred Stock requested to be exercised under this Agreement.
- \( A \) = the fair market value of one (1) share of Preferred Stock at the time of issuance of such shares of Preferred Stock.
- \( B \) = the Exercise Price.

For purposes of the above calculation, current fair market value of Preferred Stock shall mean with respect to each share of Preferred Stock:

(i) if the exercise is in connection with an Initial Public Offering, and if the Company’s Registration Statement relating to such Initial Public Offering has been declared effective by the U.S. Securities and Exchange Commission, then the fair market value per share shall be the product of \((x)\) the initial “Price to Public” of the Common Stock specified in the final prospectus with respect to the offering and \((y)\) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise;

(ii) if the exercise is after, and not in connection with an Initial Public Offering, and:

(A) if the Common Stock is traded on a securities exchange, the fair market value shall be deemed to be the product of \((x)\) the average of the closing prices over the five (5) period before the day the current fair market value of the securities is being determined and \((y)\) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise (provided that if the Preferred Stock is Common Stock, clause \((y)\) shall equal one); or

(B) if the Common Stock is traded over-the-counter, the fair market value shall be deemed to be the product of \((x)\) the average of the closing bid and asked prices quoted on the NASDAQ system (or similar system) over the five (5) period before the day the current fair market value of the securities is being determined and \((y)\) the number of shares of Common Stock into which each share of Preferred Stock is convertible at the time of such exercise (provided that if the Preferred Stock is Common Stock, clause \((y)\) shall equal one);

(iii) if at any time the Common Stock is not listed on any securities exchange or quoted in the NASDAQ National Market or the over-the-counter market, the current fair market value of Preferred Stock shall be the fair market value as determined in good faith by its Board of Directors, unless the Company shall become subject to a Merger Event, in which case the fair market value of Preferred Stock shall be deemed to be the per share value received by the holders of the Company’s Preferred Stock on a common equivalent basis pursuant to such Merger Event.

Upon partial exercise by either cash or Net Issuance, the Company shall promptly issue an amended Agreement representing the remaining number of shares purchasable hereunder. All other terms and conditions of such amended Agreement shall be identical to those contained herein, including, but not limited to the Effective Date hereof.
(b) Exercise Prior to Expiration. To the extent this Agreement is not previously exercised as to all Preferred Stock subject hereto, and if the fair market value (as determined pursuant to Section 3(a)) of one share of the Preferred Stock is greater than the Exercise Price then in effect, this Agreement shall be deemed automatically exercised pursuant to Section 3(a) (even if not surrendered) immediately before its expiration. For purposes of such automatic exercise, the fair market value of one share of the Preferred Stock upon such expiration shall be determined pursuant to Section 3(a). To the extent this Agreement or any portion thereof is deemed automatically exercised pursuant to this Section 3(b), the Company agrees to promptly notify the Warrantholder of the number of shares of Preferred Stock, if any, the Warrantholder is to receive by reason of such automatic exercise.

SECTION 4. RESERVATION OF SHARES.

During the term of this Agreement, the Company will at all times have authorized and reserved a sufficient number of shares of its Preferred Stock to provide for the exercise of the rights to purchase Preferred Stock as provided for herein, and shall have authorized and reserved a sufficient number of shares of its Common Stock to provide for the conversion of the shares of Preferred Stock issuable hereunder.

SECTION 5. NO FRACTIONAL SHARES OR SCRIP.

No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Agreement, but in lieu of such fractional shares the Company shall make a cash payment therefor upon the basis of the then-fair market value of one share of Preferred Stock.

SECTION 6. NO RIGHTS AS STOCKHOLDER.

This Agreement does not entitle the Warrantholder to any voting rights or other rights as a stockholder of the Company prior to the exercise of this Agreement.

SECTION 7. WARRANTHOLDER REGISTRY.

The Company shall maintain a registry showing the name and address of the registered holder of this Agreement. Warrantholder's initial address, for purposes of such registry, is set forth below Warrantholder's signature on this Agreement. Warrantholder may change such address by giving written notice of such changed address to the Company.

SECTION 8. ADJUSTMENT RIGHTS.

The Exercise Price and the number of shares of Preferred Stock purchasable hereunder are subject to adjustment, as follows:

(a) Merger Event. If at any time there shall be Merger Event, then, as a part of such Merger Event, lawful provision shall be made so that the Warrantholder shall thereafter be entitled to receive, upon exercise of this Agreement, the number of shares of preferred stock or other securities or property (collectively, “Reference Property”) that the Warrantholder would have received in connection with such Merger Event if Warrantholder had exercised this Agreement immediately prior to the Merger Event. In any such case, appropriate adjustment (as determined in good faith by the Company’s Board of Directors) shall be made in the application of the provisions of this Agreement with respect to the rights and interests of the Warrantholder after the Merger Event to the end that the provisions of this Agreement (including adjustments of the Exercise Price and adjustments to ensure that the provisions of this Section 8 shall thereafter be applicable, as nearly as possible, to the purchase rights under this Agreement in relation to any Reference Property thereafter acquirable upon exercise of such purchase rights) shall continue to be applicable in their entirety, and to the greatest extent possible. Without limiting the foregoing, in connection with any Merger Event, upon the closing thereof, the successor or surviving entity shall assume the obligations of this Agreement; provided, that the foregoing assumption requirement shall not apply if the consideration to be paid for or in respect of the outstanding shares of Preferred Stock in such Merger Event consists solely of cash and/or readily Marketable Securities, which, for the avoidance of doubt, includes any right to receive cash and/or Marketable Securities following the closing of such Merger Event pursuant to an escrow, earn-out, milestone, royalty or other similar arrangement. “Marketable Securities” means securities that are freely traded on The OTC Bulletin Board, The NASDAQ Global Market, The NASDAQ Global Select Market, The NASDAQ Capital Market, the New York Stock Exchange, NYSE
Area, the NYSE MKT, or the OTCQX Marketplace or the OTCQB Marketplace operated by OTC Markets Group Inc. (or any successor to any of the foregoing) or any other similar exchanges worldwide. Marketable Securities shall include any such securities issued in a Merger Event regardless of whether such securities are subject to a lock-up agreement, provided that any such lock-up agreement applicable to the Warrantholder shall only be on the same terms as (or more favorable to the Warrantholder) and no more restrictive than the lock-up agreed to and in full force effect with respect to all holders of Preferred Stock and by all executive officers, directors and holders of at least three (3%) of the outstanding equity securities of the Company (any waiver of such lock-up for any of the foregoing shall automatically result in a waiver of the same for the Warrantholder); and the Company shall confirm the same in writing to the Warrantholder as of the date of the Merger Event. In connection with a Merger Event and upon Warrantholder’s written election to the Company, the Company shall cause this Warrant Agreement to be exchanged for the consideration that Warrantholder would have received if Warrantholder had chosen to exercise its right to have shares issued pursuant to the Net Issuance provisions of this Warrant Agreement without actually exercising such right, acquiring such shares and exchanging such shares for such consideration. The provisions of this Section 8(a) shall similarly apply to successive Merger Events.

(b) Reclassification of Shares. Except for Merger Events subject to Section 8(a), if the Company at any time shall, by combination, reclassification, reorganization, exchange or subdivision of securities or otherwise, change any of the securities as to which purchase rights under this Agreement exist into the same or a different number of securities of any other class or classes, this Agreement shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities which were subject to the purchase rights under this Agreement immediately prior to such combination, reclassification, exchange, subdivision or other change. The provisions of this Section 8(b) shall similarly apply to successive combination, reclassification, exchange, subdivision or other change.

(c) Subdivision or Combination of Shares. If the Company at any time shall combine or subdivide its Preferred Stock, (i) in the case of a subdivision, the Exercise Price shall be proportionately decreased and the number of shares of Preferred Stock purchasable hereunder shall be proportionately increased, or (ii) in the case of a combination, the Exercise Price shall be proportionately increased and the number of shares of Preferred Stock purchasable hereunder shall be proportionately decreased.

(d) Stock Dividends. If the Company at any time while this Agreement is outstanding and unexpired shall:

   (i) pay a dividend with respect to the Preferred Stock payable in Preferred Stock, then the Exercise Price shall be adjusted, from and after the date of determination of stockholders entitled to receive such dividend or distribution, to that price determined by multiplying the Exercise Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Preferred Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Preferred Stock outstanding immediately after such dividend or distribution; or

   (ii) make any other distribution with respect to Preferred Stock (or stock into which the Preferred Stock is convertible), except (x) any distribution specifically provided for in any other clause of this Section 8, and (y) any accruing dividends set forth in the Charter on the Preferred Stock, then, in each such case, provision shall be made by the Company such that the Warrantholder shall receive upon exercise or conversion of this Warrant a proportionate share of any such distribution as though it were the holder of the Preferred Stock (or other stock for which the Preferred Stock is convertible) as of the record date fixed for the determination of the stockholders of the Company entitled to receive such distribution.
(e) **Antidilution Rights.** Additional antidilution rights applicable to the Preferred Stock purchasable hereunder are as set forth in the Charter and shall be applicable with respect to the Preferred Stock issuable hereunder. The Company shall promptly provide the Warrantholder with any restatement, amendment, modification or waiver of the Charter, provided, that no such amendment, modification or waiver shall impair or reduce the antidilution rights applicable to the Preferred Stock unless such amendment, modification or waiver affects the rights of Warrantholder with respect to the Preferred Stock in the same manner as it affects all other holders of Preferred Stock. The Company shall provide Warrantholder with written notice of any issuance of its stock or other equity security to occur after the Effective Date of this Agreement, which notice shall include (a) the price at which such stock or security is sold, (b) the number of shares issued, and (c) such other information as necessary for Warrantholder to determine if a dilutive event has occurred; provided that failure to provide such notice shall not constitute a breach of this Warrant unless Warrantholder is materially prejudiced thereby. For the avoidance of doubt, there shall be no duplicate anti-dilution adjustment pursuant to this subsection (e), the foregoing subsection (d) and the Charter.

(f) [Intentionally Omitted]

(g) **Notice of Adjustments.** If: (i) the Company shall declare or pay any dividend or distribution upon the outstanding shares of Preferred Stock (or Common Stock if shares of Preferred Stock are then convertible into Common Stock) whether in stock, cash, or other property; (ii) the Company shall offer for subscription pro rata to the holders of the Preferred Stock or other capital stock any additional shares of stock of any class or other rights; (iii) there shall be any Merger Event; (iv) there shall be an Initial Public Offering; or (v) there shall be any voluntary or involuntary dissolution, liquidation or winding up of the Company; then, in connection with each such event, the Company shall use reasonable best efforts to send to the Warrantholder: (A) at least fifteen (15) days’ (but in no event less than ten (10) days’) prior written notice of the date on which the books of the Company shall close or a record shall be taken for such dividend, distribution, subscription rights (specifying the date on which the holders of Preferred Stock shall be entitled thereto) or for determining rights to vote in respect of such Merger Event, dissolution, liquidation or winding up; (B) in the case of any such Merger Event, at least fifteen (15) days’ (but in no event less than ten (10) days’) prior written notice of the date when the same shall take place (and specifying the date on which the holders of Preferred Stock shall be entitled to exchange their Preferred Stock for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding up); and (C) in the case of an Initial Public Offering, at least fifteen (15) days’ (but in no event less than ten (10) days’) written notice prior to the anticipated effective date thereof. Each such written notice shall set forth, in reasonable detail, (i) the event requiring the notice, and (ii) if any adjustment is required to be made, (A) the amount of such adjustment, (B) the method by which such adjustment was calculated, (C) the adjusted Exercise Price (if the Exercise Price has been adjusted), and (D) the number of shares subject to purchase hereunder after giving effect to such adjustment, and shall be given in accordance with Section 12(g) below.

(h) **Timely Notice.** Failure to timely provide such notice required by subsection (g) above shall entitle Warrantholder to retain the benefit of the applicable notice period notwithstanding anything to the contrary contained in any insufficient notice received by Warrantholder. For purposes of this subsection (h), and notwithstanding anything to the contrary in Section 12(g), the notice period shall begin on the date Warrantholder actually receives a written notice containing all the information required to be provided in such subsection (g).

**SECTION 9. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.**

(a) **Reservation of Preferred Stock.** The Preferred Stock issuable upon exercise of the Warrantholder’s rights has been or, in the case of Preferred Stock issuable in the Next Preferred Round, will be, and all shares of Common Stock issuable upon conversion of such Preferred Stock at all times will be, duly and validly reserved and, when issued in accordance with the provisions of this Agreement or the Charter, as applicable, will be validly issued, fully paid and non-assessable, and will be free of any taxes, liens, charges or encumbrances of any nature whatsoever other than restrictions on transfer under state
and/or federal securities laws. The Company has made available to the Warrantholder true, correct and complete copies of its Charter and current bylaws. The issuance of certificates for shares of Preferred Stock upon exercise of this Agreement shall be made without charge to the Warrantholder for any issuance tax in respect thereof, or other cost incurred by the Company in connection with such exercise and the related issuance of shares of Preferred Stock; provided, that the Company shall not be required to pay any tax which may be payable in respect of any transfer and the issuance and delivery of any certificate in a name other than that of the Warrantholder, and no such issuance or delivery shall be made unless and until the person requesting such issuance has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid.

(b) Due Authority. The execution and delivery by the Company of this Agreement and the performance of all obligations of the Company hereunder, including the issuance to Warrantholder of the right to acquire the shares of Preferred Stock and the Common Stock into which it may be converted, have been duly authorized by all necessary corporate action on the part of the Company. This Agreement: (1) does not violate the Company’s Charter or current bylaws; (2) does not contravene any material law or governmental rule, regulation or order applicable to it; and (3) does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, material contract or other material instrument to which it is a party or by which it is bound. This Agreement constitutes a legal, valid and binding agreement of the Company, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting or relating to creditors’ rights generally, and the availability of injunctive relief and other equitable remedies.

(c) Consents and Approvals. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of any state, federal or other governmental authority or agency is required with respect to the execution, delivery and performance by the Company of its obligations under this Agreement, except, if applicable, for the filing of notices pursuant to Regulation D under the Act (“Regulation D”) and any filing required by applicable state securities law, which filings will be effective by the time required thereby.

(d) Issued Securities. All issued and outstanding shares of Common Stock, Preferred Stock or any other securities of the Company have been duly authorized and validly issued and are fully paid and non-assessable. All outstanding shares of Common Stock, Preferred Stock and any other securities were issued in full compliance with all federal and state securities laws. In addition, as of the date immediately preceding the date of this Agreement:

(i) The authorized capital of the Company consists of (A) 210,000,000 shares of Common Stock, of which 68,866 shares are issued and outstanding, and (B) 181,725,142 shares of Preferred Stock, of which 159,198,380 shares are issued and outstanding.

(ii) The Company has reserved 27,165,274 shares of Common Stock for issuance under its Stock Option Plan(s), under which 22,309,765 options are outstanding. Except for options under the Stock Option Plan and the warrants set forth on Schedule 9, there are no other options, warrants, conversion privileges or other rights presently outstanding to purchase or otherwise acquire any authorized but unissued shares of the Company’s capital stock or other securities of the Company. The Company has no outstanding loans to any employee, officer or director of the Company.

(iii) Except as set forth in the Securityholders Agreement and in the Letter Agreement between the Company and Oxford Finance LLC, dated February 17, 2012, no shareholder of the Company has preemptive rights to purchase new issuances of the Company’s capital stock.
(e) Registration Rights. The Company agrees that the shares of Common Stock issued and issuable upon conversion of the shares of Preferred Stock issued and issuable upon exercise of this Warrant, and, at all times (if any) when the Preferred Stock shall be Common Stock, the shares of Preferred Stock issued and issuable upon exercise of this Warrant, shall have the registration rights pursuant to and as set forth in the Rights Agreement on a pari passu basis with the holders of outstanding shares of Preferred Stock who are parties thereto. The provisions set forth in the Rights Agreement or similar agreement relating to such registration rights in effect as of the Effective Date (other than provisions relating to demand registration rights) may not be amended, modified or waived without the prior written consent of the Warrantholder unless such amendment, modification or waiver affects the rights associated with the shares of Preferred Stock issued and issuable upon exercise hereof in the same manner as such amendment, modification, or waiver affects the rights associated with all outstanding shares of Preferred Stock whose holders are parties thereto. For the avoidance of doubt, the Warrantholder shall not be entitled to any demand registration rights under the Rights Agreement.

(f) Other Commitments to Register Securities. Except as set forth in this Agreement and the Rights Agreement, the Company is not, pursuant to the terms of any other agreement currently in existence, under any obligation to register under the Act any of its presently outstanding securities or any of its securities which may hereafter be issued.

(g) Exempt Transaction. Subject to the accuracy of the Warrantholder’s representations in Section 10, the issuance of the Preferred Stock upon exercise of this Agreement, and the issuance of the Common Stock upon conversion of the Preferred Stock, will each constitute a transaction exempt from (i) the registration requirements of Section 5 of the Act, in reliance upon Section 4(2) thereof, and (ii) the qualification requirements of the applicable state securities laws.

(h) Compliance with Rule 144. Following the Initial Public Offering or in the event the Company is publicly traded, if the Warrantholder proposes to sell Preferred Stock or Common Stock issuable upon exercise of this Agreement in compliance with Rule 144 promulgated by the SEC, then, upon Warrantholder’s written request to the Company, the Company shall furnish to the Warrantholder, within ten days after receipt of such request, a written statement confirming the Company’s compliance with the filing requirements of the SEC as set forth in such Rule, as such Rule may be amended from time to time.

(i) Information Rights. From the Effective Date until the date a registration statement is declared effective in connection with an Initial Public Offering, Warrantholder shall be entitled to the information rights contained in Section 7.1(a)-(c) of the Loan Agreement, and Section 7.1(a)-(c) of the Loan Agreement is hereby incorporated into this Agreement by this reference as though fully set forth herein.

SECTION 10. REPRESENTATIONS AND COVENANTS OF THE WARRANTHOLDER.

This Agreement has been entered into by the Company in reliance upon the following representations and covenants of the Warrantholder:

(a) Investment Purpose. This Warrant is being acquired, and the Preferred Stock issuable upon exercise hereof will be acquired, for investment for the Warrantholder’s own account and not with a view to the sale or distribution of any part thereof, and the Warrantholder has, and at the time of exercise will have, no present intention of selling or engaging in any public distribution of the same except pursuant to an effective registration statement or an exemption from the registration requirements of the Act.

(b) Private Issuance. The Warrantholder understands (i) that the Preferred Stock issuable upon exercise of this Agreement is not registered under the Act or qualified under applicable state securities laws on the ground that the issuance contemplated by this Agreement will be exempt from the registration and qualifications requirements thereof, and (ii) that the Company’s reliance on such exemption is predicated on the representations set forth in this Section 10.
(c) **Financial Risk.** The Warrantholder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment. The Warrantholder has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Warrant and the business, properties, prospects and financial condition of the Company.

(d) **Risk of No Registration.** The Warrantholder understands that if the Company does not register with the SEC pursuant to Section 12 of the Securities Exchange Act of 1934 (the “1934 Act”), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the Act is not in effect when it desires to sell (i) the rights to purchase Preferred Stock pursuant to this Agreement or (ii) the Preferred Stock issuable upon exercise of the right to purchase, it may be required to hold such securities for an indefinite period. The Warrantholder also understands that any sale of (A) its rights hereunder to purchase Preferred Stock or (B) Preferred Stock issued or issuable hereunder which might be made by it in reliance upon Rule 144 under the Act may be made only in accordance with the terms and conditions of that Rule.

(e) **Accredited Investor.** Warrantholder is an “accredited investor” within the meaning of the Securities and Exchange Rule 501 of Regulation D, as presently in effect.

(f) **Authorization.** The Warrantholder has full power and authority to enter into this Agreement. This Agreement constitutes a legal, valid and binding agreement of the Warrantholder, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting or relating to creditors’ rights generally, and the availability of injunctive relief and other equitable remedies.

(g) **Confidentiality.** Warrantholder acknowledges that certain information and materials provided by the Company pursuant to its obligations under this Warrant are confidential and proprietary information of the Company, and Warrantholder agrees to treat and hold such information in accordance with the confidentiality provisions set forth in Section 11.12 of the Loan Agreement.

(h) **Securityholders Agreement.**

(i) Notwithstanding anything to the contrary contained herein, if this Warrant is exercised in whole or in part during the term of the Securityholders Agreement (including if this Warrant is exchanged for the consideration in a Merger Event pursuant to Section 8(a)), the Warrantholder shall automatically become a party to and bound by the Securityholders Agreement (and upon the request of the Company the Warrantholder shall execute an instrument of accession to the Securityholders Agreement agreeing to be bound by and subject to the terms of the Securityholders Agreement) and shall be deemed to be a “Securityholder” and “Series 3 Holder” (and shall have the rights of the same) (as revised, if necessary, to reflect the applicable series of Preferred Stock) thereunder. If this Warrant is exchanged for the consideration in a Merger Event pursuant to Section 8(a), the Warrantholder shall be deemed automatically to become a party to and bound by the Securityholders Agreement immediately prior to the consummation of such Merger Event. The provisions of this Section 10(h)(ii) shall only be applicable if (a) all holders of outstanding shares of the Preferred Stock are then parties thereto, and (ii) the Securityholders Agreement is then by its terms in force and effect.
(ii) If at any time there shall be an Initial Public Offering, if this Warrant has not been exercised by the Warrantholder prior to the consummation of such Initial Public Offering, the Warrantholder acknowledges and agrees to be bound by Section 8.8 (No Sale Period) of the Securityholders Agreement as if the Warrantholder had become a party to the Securityholders Agreement. The provisions of this Section 10(h)(ii) shall only be applicable if (a) all holders of outstanding shares of the Preferred Stock are then parties to Section 8.8 (No Sale Period) of the Securityholders Agreement, and (ii) Section 8.8 (No Sale Period) of the Securityholders Agreement is then by its terms in force and effect.

SECTION 11. TRANSFERS.

Subject to compliance with applicable federal and state securities laws, this Agreement and all rights hereunder are transferable, in whole or in part, without charge to the holder hereof (except for transfer taxes) upon surrender of this Agreement properly endorsed; provided, that any transferee prior to the Initial Public Offering shall make the representations set forth in Section 10 and agrees, by acceptance of such transfer, to be bound by the covenants, terms and conditions of this Warrant (in which event the transferee shall be deemed to be the Warrantholder for all purposes hereunder). Each taker and holder of this Agreement, by taking or holding the same, consents and agrees that this Agreement, when endorsed in blank, shall be deemed negotiable, and that the holder hereof, when this Agreement shall have been so endorsed and its transfer recorded on the Company’s books, shall be treated by the Company and all other persons dealing with this Agreement as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented by this Agreement. The transfer of this Agreement shall be recorded on the books of the Company upon receipt by the Company of a notice of transfer in the form attached hereto as Exhibit III (the “Transfer Notice”), at its principal offices and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer. Until the Company receives such Transfer Notice, the Company may treat the registered owner hereof as the owner for all purposes. Notwithstanding the foregoing, prior to any proposed transfer of this Warrant, unless there is in effect a registration statement under the Act covering the proposed transfer, Warrantholder shall give written notice to the Company of Warrantholder’s intention to effect such transfer. Each such notice shall describe the manner and circumstances of the proposed transfer in sufficient detail, and shall, if the Company so requests, be accompanied by a customary written opinion of legal counsel who shall be reasonably satisfactory to the Company addressed to the Company and reasonably satisfactory in form and substance to Company’s counsel, to the effect that the proposed transfer of this Warrant may be effected without registration under the Act and any applicable state securities laws, whereupon Warrantholder shall be entitled to transfer this Warrant in accordance with the terms of the notice delivered by Warrantholder to the Company; provided, however, that the Company shall not require delivery of a legal opinion in connection with any assignment or transfer of this Warrant or any shares of Preferred Stock issued on exercise hereof to an “affiliate” (as defined in Regulation D) of Warrantholder, provided that such affiliate transferee is an “accredited investor” (as defined in Regulation D). Notwithstanding the foregoing, so long as no Event of Default (as defined and pursuant to the Loan Agreement) has occurred and is continuing, this Warrant shall not be transferable to any direct competitor of the Company prior to the Initial Public Offering (as determined in good faith by the Board of Directors of the Company); provided that any entity (or any affiliate thereof) that is engaged in the pharmaceutical business shall be deemed to be a direct competitor of the Company.

SECTION 12. MISCELLANEOUS.

(a) Effective Date. The provisions of this Agreement shall be construed and shall be given effect in all respects as if it had been executed and delivered by the parties hereto on the date hereof. This Agreement shall be binding upon any successors or permitted assigns of the Company and any successors or assigns of the Warrantholder.
(b) Remedies. In the event of any default hereunder, the non-defaulting party may proceed to protect and enforce its rights either by suit in equity and/or by action at law, including but not limited to an action for damages as a result of any such default, and/or an action for specific performance for any default where such party will not have an adequate remedy at law and where damages will not be readily ascertainable. Each party to this Agreement expressly agrees that it shall not oppose an application by the other party or any other person entitled to the benefit of this Agreement requiring specific performance of any or all provisions hereof or enjoining the breaching party from continuing to commit any such breach of this Agreement.

(c) Warrantholder acknowledges that certain items of information that may be provided to Warrantholder pursuant to Section 12(d) are confidential and proprietary information of the Company, if and to the extent such information either (x) is marked as confidential by the Company at the time of disclosure, or (y) should reasonably be understood to be confidential (the “Confidential Information”). Accordingly, Warrantholder agrees that any Confidential Information it may obtain pursuant to Section 12(d) shall not be disclosed to any other person or entity in any manner whatsoever, in whole or in part, without the prior written consent of the Company, except that Warrantholder may disclose any such information: (a) to its own directors, officers, employees, accountants, counsel and other professional advisors and to its affiliates if Warrantholder in its sole discretion determines that any such party should have access to such information in connection with Warrantholder’s evaluation of whether to exercise (in cash or a net issuance basis) this Warrant and, provided that such recipient of such Confidential Information either (i) agrees to be bound by the confidentiality provisions of this paragraph or (ii) is otherwise subject to confidentiality restrictions that reasonably protect against the disclosure of Confidential Information; (b) if such information is generally available to the public; (c) if required or appropriate in any report, statement or testimony submitted to any governmental authority having or claiming to have jurisdiction over Warrantholder; (d) if required or appropriate in response to any summons or subpoena or in connection with any litigation, to the extent permitted or deemed advisable by Warrantholder’s counsel; (e) to comply with any legal requirement or law applicable to Warrantholder; (f) to any transferee of Warrantholder permitted by and pursuant to Section 11 or any prospective transferee permitted by and pursuant to Section 11; provided, that such transferee or prospective transferee agrees in writing to be bound by this Section prior to disclosure; or (g) otherwise with the prior consent of the Company; provided, that any disclosure made in violation of this Agreement shall not affect the obligations of any party under this Agreement.

(d) Additional Documents. Upon Warrantholder’s written request, the Company shall supply legal and financial documentation reasonably necessary to evaluate whether to exercise (in cash or a net issuance basis) this Warrant, including without limitation, (i) any merger/purchase/asset sale agreement and related documents and estimated payout allocations to each of the respective shareholders, warrant and option holders in connection with a Merger Event, (ii) the most recent capitalization tables, 409A valuations (if any), and board determination of share value (including any waterfall or per share allocations provided to the shareholders), and (iii) most recent Charter.

(e) Attorneys’ Fees. In any litigation, arbitration or court proceeding between the Company and the Warrantholder relating hereto, the prevailing party shall be entitled to reasonable attorneys’ fees and expenses and all costs of proceedings incurred in enforcing this Agreement. For the purposes of this Section 12(e), attorneys’ fees shall include without limitation reasonable fees incurred in connection with the following: (i) contempt proceedings; (ii) discovery; (iii) any motion, proceeding or other activity of any kind in connection with an insolvency proceeding; (iv) garnishment, levy, and debtor and third party examinations; and (v) post-judgment motions and proceedings of any kind, including without limitation any activity taken to collect or enforce any judgment.

(f) Severability. In the event any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.
(g) **Notices.** Except as otherwise provided herein, any notice, demand, request, consent, approval, declaration, service of process or other communication that is required, contemplated, or permitted under this Agreement or with respect to the subject matter hereof shall be in writing, and shall be deemed to have been validly served, given, delivered, and received upon the earlier of: (i) the day of transmission by facsimile, e-mail or hand delivery if transmission or delivery occurs on a business day at or before 5:00 pm in the time zone of the recipient, or, if transmission or delivery occurs on a non-business day or after such time, the first business day thereafter, or the first business day after deposit with an overnight express service or overnight mail delivery service; or (ii) the third calendar day after deposit in the United States mails, with proper first class postage prepaid, and shall be addressed to the party to be notified as follows:

If to Warrantholder:

**HERCULES TECHNOLOGY GROWTH CAPITAL, INC.**
Legal Department
Attention: Chief Legal Officer and Manuel Henriquez
400 Hamilton Avenue, Suite 310
Palo Alto, CA 94301
Facsimile: 650-473-9194
Telephone: 650-289-3060
E-mail: CFera@herculestech.com; Arora@herculestech.com; and legal@herculestech.com

If to the Company:

Melinta Therapeutics, Inc.
Attention: Chief Financial Officer
300 George Street, Suite 301
New Haven, Connecticut 06511
Telephone: 312-724-9407 (Paul Estrem)
203-848-6262 (Agnes Ryan)
E-mail: pestrem@melinta.com and Aryan@melinta.com

or to such other address as each party may designate for itself by like notice.

(h) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement and understanding of the parties hereto in respect of the subject matter hereof, and supersedes and replaces in its entirety any prior proposals, term sheets, letters, negotiations or other documents or agreements, whether written or oral, with respect to the subject matter hereof (including Lender's proposal letter dated November 6, 2014). None of the terms of this Agreement may be amended except by an instrument executed by each of the parties hereto.

(i) **Headings.** The various headings in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provisions hereof.

(j) **No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

(k) **No Waiver.** No omission or delay by any party at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the other party at any time designated, shall be a waiver of any such right or remedy to which such party is entitled, nor shall it in any way affect the right of such party to enforce such provisions thereafter.
(l) **Survival.** All agreements, representations and warranties contained in this Agreement, and the agreements set forth in Sections 9(e) and 10(h) shall survive the execution and delivery of this Agreement and the expiration or other termination of this Agreement.

(m) **Governing Law.** This Agreement has been negotiated and delivered to Warrantholder in the State of California, and shall have been accepted by Warrantholder in the State of California. Delivery of Preferred Stock to Warrantholder by the Company under this Agreement is due in the State of California. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

(n) **Consent to Jurisdiction and Venue.** All judicial proceedings arising in or under or related to this Agreement may be brought in any state or federal court of competent jurisdiction located in the State of Delaware. By execution and delivery of this Agreement, each party hereto generally and unconditionally: (a) consents to personal jurisdiction in the State of Delaware; (b) waives any objection as to jurisdiction or venue in the State of Delaware; (c) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (d) irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Service of process on any party hereto in any action arising out of or relating to this Agreement shall be effective if given in accordance with the requirements for notice set forth in Section 12(g), and shall be deemed effective and received as set forth in Section 12(g). Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of either party to bring proceedings in the courts of any other jurisdiction.

(o) **Mutual Waiver of Jury Trial.** Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. EACH OF THE COMPANY AND WARRANTHOLDER SPECIFICALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, “CLAIMS”) ASSERTED BY THE COMPANY AGAINST WARRANTHOLDER OR ITS ASSIGNEE OR BY WARRANTHOLDER OR ITS ASSIGNEE AGAINST THE COMPANY. This waiver extends to all such Claims, including Claims that involve Persons other than the Company and Warrantholder; Claims that arise out of or are in any way connected to the relationship between the Company and Warrantholder; and any Claims for damages, breach of contract, specific performance, or any equitable or legal relief of any kind, arising out of this Agreement.

(p) [Intentionally omitted]

(q) **Prejudgment Relief.** In the event Claims are to be resolved by arbitration, either party may seek from a court of competent jurisdiction identified in Section 12(n), any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by law notwithstanding that all Claims are otherwise subject to resolution by judicial reference.

(r) **Counterparts.** This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so delivered shall be deemed an original, but all of which counterparts shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF, the parties hereto have caused this Warrant Agreement to be executed by its officers thereunto duly authorized as of the Effective Date.

COMPANY: MELINTA THERAPEUTICS, INC.

By: /s/ Paul D. Estrem
Name: Paul D. Estrem
Title: CFO

WARRANTHOLDER: HERCULES TECHNOLOGY GROWTH CAPITAL, INC.

By: /s/ Ben Bang
Name: Ben Bang
Title: Associate General Counsel
EXHIBIT I
NOTICE OF EXERCISE

To: [______________]

(1) The undersigned Warrantholder hereby elects to purchase [_____] shares of the Series [_____] Preferred Stock of [____________], pursuant to the terms of the Agreement dated the [_____] day of [______], 2014 (the “Agreement”) between [____________] and the Warrantholder, and [CASH PAYMENT: tenders herewith payment of the Purchase Price in full, together with all applicable transfer taxes, if any.] [NET ISSUANCE: elects pursuant to Section 3(a) of the Agreement to effect a Net Issuance.]

(2) Please issue a certificate or certificates representing said shares of Series [_____] Preferred Stock in the name of the undersigned or in such other name as is specified below.

________________________________________
(Name)

________________________________________
(Address)

WARRANTHOLDER:

HERCULES TECHNOLOGY GROWTH CAPITAL, INC.

By:

______________________________
Name:

______________________________
Title:

______________________________
Date:

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ACKNOWLEDGMENT OF EXERCISE

The undersigned [___________], hereby acknowledge receipt of the “Notice of Exercise” from Hercules Technology Growth Capital, Inc., to purchase [___] shares of the Series [___] Preferred Stock of [_________], pursuant to the terms of the Agreement, and further acknowledges that [___] shares remain subject to purchase under the terms of the Agreement.

COMPANY: [__________________]

By: [______________________________]
Title: [______________________________]
Date: [______________________________]
EXHIBIT III
TRANSFER NOTICE

(To transfer or assign the foregoing Agreement execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Agreement and all rights evidenced thereby are hereby transferred and assigned to

(Please Print)
whose address is ________________________________

Dated: ________________________________

Holder’s Signature: ________________________________

Holder’s Address: ________________________________

Signature Guaranteed: ________________________________

NOTE: The signature to this Transfer Notice must correspond with the name as it appears on the face of the Agreement, without alteration or enlargement or any change whatever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Agreement.
AMENDMENT NO. 1 TO THE
CEMPRA, INC.
2011 EQUITY INCENTIVE PLAN

This Amendment No. 1 (this “Amendment”) to the Cempra, Inc. 2011 Equity Incentive Plan, as amended from time to time (the “Plan”), is made effective as of March 9, 2018.

WHEREAS, on November 3, 2017, Cempra, Inc., a Delaware corporation (the “Company”), completed its business combination with Melinta Therapeutics, Inc., a privately held Delaware corporation dedicated to the development and commercialization of novel antibiotics (“Melinta”), in accordance with the terms of an Agreement and Plan of Merger and Reorganization, dated as of August 8, 2017, as amended on each of September 6, 2017 and October 24, 2017 (as so amended, the “Merger Agreement”) by and among the Company, Melinta and Castle Acquisition Corp., a Delaware corporation and wholly owned subsidiary of the Company (“Merger Sub”);

WHEREAS, on November 3, 2017, pursuant to the Merger Agreement, Merger Sub merged with and into Melinta, with Melinta surviving the merger and becoming a wholly owned subsidiary of the Company (the “Merger”);

WHEREAS, concurrently with the effectiveness of the Merger, the Company changed its name to Melinta Therapeutics, Inc. and Melinta changed its name to Melinta Subsidiary Corp.;

WHEREAS, pursuant to Section 2(b)(vii) of the Plan, the Compensation Committee of the Company’s Board of Directors (the “Committee”) may, at any time and from time to time, amend the Plan; and

WHEREAS, the Committee desires to amend the name of the Plan to reflect the change to the Company’s name to Melinta Therapeutics, Inc.

NOW, THEREFORE, the Plan is hereby amended, as follows:

1. Capitalized Terms. Capitalized terms that are not defined in this Amendment shall have the meanings ascribed thereto in the Plan.

2. Amendment to the Plan. The name of the Plan and all references thereto in the Plan are hereby amended and restated in their entirety from the “Cempra, Inc. 2011 Equity Incentive Plan” to the “Melinta Therapeutics, Inc. 2011 Equity Incentive Plan.”

3. Ratification and Confirmation. Except as specifically amended by this Amendment, the Plan is hereby ratified and confirmed in all respects and remains valid and in full force and effect. Whenever the Plan is referred to in this Amendment or in any other agreement, document or instrument, such reference shall be deemed to be to the Plan, as amended by this Amendment, whether or not specific reference is made to this Amendment.

4. Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Delaware, without reference to the principles of conflicts of laws thereof.

5. Headings. Section headings are for convenience only and shall not be considered a part of this Amendment.

* * *
March 16, 2015

Mr. Paul Estrem
325 Clarewood Circle
Grayslake, IL 60030

Dear Paul,

OFFER OF EMPLOYMENT

As we have discussed, we are pleased to offer you continued employment at Melinta Therapeutics, Inc. ("Melinta") as its Chief Financial Officer ("CFO"), with the understanding that, at the discretion of Melinta, your title will change to that of Chief Operations Officer ("COO"). We are very enthusiastic about your continued employment with Melinta in this new capacity, and are confident of a mutually beneficial relationship.

Position and Compensation

As stated above, while at the present time, your position will remain CFO, it is expected that, at the request of Melinta, your duties will eventually transition to those of Melinta’s COO. During this transition period, you will be expected to perform duties normally associated with both positions, with the expectation that once Melinta hires a new CFO (or at some other time as Melinta may direct), your title would change to COO, and your duties will transition to those commensurate with someone in that position. For avoidance of doubt, until Melinta directs otherwise, you will be expected to (i) perform CFO duties (including, but not limited to an S1 filing), (ii) perform COO duties (including the responsibilities generally described in the job description Melinta has shared with you), and (iii) help transition CFO responsibilities to the new CFO once he or she is hired. For avoidance of doubt, Melinta will not ask you to perform two full jobs. Rather, as your CFO responsibilities decrease, your COO responsibilities will increase.

You will continue to report directly to Mary Szela, Chief Executive Officer of Melinta. During the course of your employment with Melinta, your position and duties are, of course, subject to change. As a Melinta employee, we expect that you will perform any and all duties and responsibilities normally associated with your position in a satisfactory manner and to the best of your abilities at all times. In addition, you agree to observe and comply with all the rules, regulations, policies and procedures established by Melinta from time to time. Your performance will be reviewed formally at the end of the calendar year, and on a periodic basis thereafter as long as you remain employed by Melinta.

Your base pay shall continue to be $13,164.84, payable semi-monthly (annualized to $315,956.25). During each fiscal year of your employment with Melinta, you will be eligible for an annual bonus of up to 30% of your base salary contingent upon the successful achievement of corporate and individual performance goals. Any bonus to be paid will be determined by the Compensation Committee of the Board of Directors of Melinta (the “Committee”) or its designee. Any annual bonus earned in respect of any year will be paid no later than 90 days following the end of such year. You must be employed by Melinta on the date any bonus is paid in order to receive it. Melinta will review your compensation periodically. Your compensation also is subject to change, as Melinta considers necessary or appropriate.
Benefits

**Stock Options and Equity Grants:** Your current Melinta stock options and/or equity grants awarded to you during your tenure as CFO shall continue to accrue and vest in accordance with the terms of the grant documents and the terms of the applicable plans. Stock options and equity grants may be offered from time to time in the sole discretion of the Board of Directors and/or Committee depending upon certain events, including for example the successful completion of corporate goals.

**Retention Payments:** In order to compensate you for your continuing efforts as Melinta hires and transitions to its next CFO, Melinta will pay you a Retention Payment consistent with the conditions set forth in the letter attached hereto as Exhibit A.

**Severance:** Melinta shall provide severance to you upon termination of your employment in accordance with the terms set forth in the Severance Agreement dated November 8, 2013. You hereby agree that (i) agreeing to continued employment under the terms of this letter, (ii) accepting the transition to the COO role, (iii) transitioning CFO duties to a new CFO, and (iv) having interim joint CFO/COO duties as described above, do not constitute a material adverse change to your primary responsibilities or duties (in connection with your employment under your original offer letter dated November 8, 2013), or any other event that would constitute Good Reason for you to terminate your employment with Melinta (or which would otherwise provide you with any other reason for which you would become entitled to severance or other payments) pursuant to the terms of the November 8, 2013 Severance Agreement. For avoidance of doubt, however, if Melinta terminates your employment during the period from the date of execution of this letter through December 31, 2015, the terms of the November 8, 2013 Severance Agreement shall apply.

**Other Benefits:** Melinta currently offers various benefits, including group medical and dental insurance, paid time off (vacation and sick time), a 401(k) plan, short-term disability, long-term disability, and other benefits. These benefits may be modified or changed from time to time at the discretion of Melinta. The present benefit structure and other important information about the benefits for which you may be eligible is described in other documents, which you either have already received, or will receive throughout the course of your employment. Where a particular benefit is subject to a formal plan (i.e., medical insurance or life insurance), eligibility to participate in and receive any particular benefit is governed solely by the applicable plan document. Should you have any questions regarding benefits, please see Human Resources for a copy of the applicable plan document.

**Expenses:** Melinta will reimburse you for all reasonable and necessary expenses you incur in connection with your employment with Melinta, subject to your presentation of appropriate documentation, in accordance with the published travel, meals and entertainment expense policies of Melinta.
Nature of Relationship

As an at-will employee of Melinta, you will be expected to devote all of your working time to the performance of your duties at Melinta throughout your employment with Melinta. Notwithstanding the foregoing, as long as it does not interfere, individually or in the aggregate, with the performance of your duties for Melinta or create a potential business or fiduciary conflict, you may serve as an officer, director or trustee of, or otherwise participate in the activities of, educational, welfare, social, religious and civic organizations. While this letter reflects our commitment to employ you and we look forward to a mutually rewarding relationship, this letter does not constitute a contract (express or implied) for a specific length of employment, and either party may choose to terminate the employment relationship upon written notice to the other at any time and for any reason. Notwithstanding the at-will nature of your employment with Melinta, you agree to give the Chief Executive Officer at least four weeks’ advance written notice if you decide to terminate your employment; provided, that Melinta may, in its sole and absolute discretion, by written notice accelerate such date of termination without changing the characterization of such termination.

Taxes

Melinta may withhold from any payments made to you all applicable taxes, including but not limited to income, employment, and social insurance taxes, as shall be required by law.

Noncompetition, Nondisclosure and Developments Agreement

By accepting this offer of continued employment with Melinta, and as a condition of your continued employment with Melinta, you hereby confirm your agreement to continue to comply with the terms and conditions of the Noncompetition, Nondisclosure and Developments Agreement you signed on November 11, 2013. Also, just as Melinta regards the protection of its trade secrets, and other confidential information as a matter of great importance, we also respect that you may have an obligation to your prior employers to safeguard the confidential information of those companies, and we expect you to honor them as well. To that end, we want to make it perfectly clear you should not bring with you to Melinta, or use in the performance of your responsibilities for Melinta any proprietary business or technical information, materials or documents of a former employer. Finally, you hereby confirm that you have provided Melinta with a copy of any agreements with a former employer or other party that could restrict your professional activities in any way on behalf of Melinta. By signing this letter, you represent and warrant to Melinta that you are under no contractual commitments inconsistent with your obligations to Melinta hereunder and that your acceptance of this offer of employment and your performance of the contemplated services hereunder does not and will not conflict with or result in any breach or default under any agreement, contract or arrangement to which you are a party to or violate any other legal restriction.
Background Check; Authorization to Work

Your initial offer of employment with Melinta was contingent on the acceptable results of a background check. As required by law, your employment with Melinta is also contingent upon your providing legal proof of your identity and authorization to work in the United States within three (3) business days of your joining Melinta. You hereby confirm that no circumstances have changed that would interfere with your ability to perform services on behalf of Melinta.

Entire Agreement

This letter and Exhibit A, the November 8, 2013 Severance Agreement and the Employee Noncompetition, Nondisclosure and Developments Agreement you signed on November 11, 2013 constitute our entire offer regarding the terms and conditions of your employment by Melinta. These supersede any prior agreements, or other promises or statements (whether oral or written) regarding the offered terms of employment, including, but not limited to, the offer letter you signed on November 11, 2013. The terms of your employment shall be governed by and construed under the laws of the State of New York, without giving effect to conflict of laws principles.

You may accept this offer of employment and the terms and conditions hereof by signing the enclosed additional copy of this letter. Your signature on the copy of this letter and your submission of the signed copy to me will evidence your agreement with the terms and conditions set forth in this letter. Please return a copy of the offer letter to me.

Sincerely,

/s/ Mary Szela
Mary Szela
Chief Executive Officer

Accepted and Agreed To:

/s/ Paul D. Estrem
Paul Estrem
3/16/15
Date
Pursuant to the terms set forth in your Offer of Employment dated March 11, 2015, Melinta Therapeutics, Inc. (“Melinta” or the “Company”) hereby extends to you the following retention package in connection with your continued employment with Melinta as its Chief Financial Officer (“CFO”), and eventually as its Chief Operations Officer (“COO”). Melinta very much appreciates your continued cooperation and support.

**Retention Payment**

In order to compensate you for your continuing efforts as the Company hires and transitions to its next CFO, Melinta will, consistent with the conditions set forth in this letter agreement (the “Agreement”), pay you a Retention Payment (as defined below).

So long as you have accepted continued employment with Melinta in accordance with the terms of the offer letter dated on or about March 11, 2015, and to the extent you remain employed through the applicable Retention Dates described below, Melinta will pay to you either one retention payment or a series of retention payments (in sum, the “Retention Payment”), as soon as practicable following the applicable retention date, but in no event shall each retention payment be paid later than thirty days following the applicable retention date. In order to be eligible to receive any portion of the Retention Payment, you must remain actively employed by Melinta on the applicable Retention Date, and continue to perform your work as required by Melinta through that date. For avoidance of doubt, if, prior to the applicable Retention Date, (i) your employment is terminated by Melinta for Cause (as defined below), or (ii) you terminate your employment with Melinta for any reason, you will not be eligible to receive the applicable Retention Payment(s) (or any portion thereof).

If on or prior to December 31, 2015, you have, in the sole discretion of Mary Szela, the Company’s CEO (the “CEO”), successfully performed your duties and responsibilities as directed by the CEO, including the achievement of the Milestones stated below, you shall be eligible to receive a Retention Payment of up to $200,000, less applicable withholdings and deductions. Such Retention Payment shall be paid to you within sixty days following December 31, 2015.

Notwithstanding this, up to $100,000 of that Retention Payment may be paid to you prior to December 31, 2015, but only if you successfully complete the milestones described below, in the discretion of the CEO.

1. **Milestone 1 (Audit):** If the Audited Financial Statement and Associated Audit Opinion are issued by Deloitte on or prior to April 15, 2015, you shall be eligible to receive a retention payment of $25,000 (the “Audit Retention Payment”) within thirty days following April 15, 2015 (the “Audit Retention Date”).
2. **Milestone 2 (Audit Controls Letter):** If you complete the Audit Controls Letter with no Material Weaknesses other than those cited for insufficient staffing, and you complete and deliver such Audit Controls Letter in a timely manner for Melinta to maintain a pre-July 2015 IPO schedule, a payment of $25,000 (the “Audit Controls Letter Retention Payment”) will be paid to you within thirty days following the Audit Controls Letter Retention Date, which shall be defined as the earlier of (i) the completed crossover of $20 million or more from new investors or (ii) an IPO completion.

3. **Milestone 3 ($20 Million Plus Raise):** If you satisfactorily support a crossover round resulting in a raise of at least $20 million from new investors, a payment of $25,000 (the “$20 Million Plus Raise Retention Payment”) will be paid to you within thirty days following the completed crossover of $20 million or more from new investors (the “$20 Million Plus Raise Retention Date”).

4. **Milestone 4 (Initial S1 Filing):** If you assist with Melinta’s successful filing of an initial S1 in the second quarter of 2015, a payment of $25,000 (the “Initial S1 Filing Retention Payment”) will be paid to you within thirty days following the earlier of (i) the completed crossover of $20 million or more from new investors or (ii) an IPO completion (the “Initial S1 Filing Retention Date”).

For avoidance of doubt, the total amount of the Retention Payment for which you may become eligible as of December 31, 2015 will be reduced by any other retention payment you have already received (or become eligible to receive) (e.g., the Audit Retention Payment, the Audit Controls Letter Retention Payment, the $20 Million Plus Raise Retention Payment, and/or the Initial S1 Filing Retention Payment), such that, for example, if you have received all four of the referenced $25,000 retention payments, the payment for which you could become eligible on December 31, 2015, would be a total of up to $100,000.

Finally, if Melinta terminates your employment prior to December 31, 2015 for any reason other than Cause (as defined below), you shall be entitled to the entire Retention Payment within sixty days following the termination of your employment, less any other retention payments previously received by you, as described above. If this occurs, the entire Retention Payment will be paid in addition to any severance for which you are eligible pursuant to the November 8, 2013 Severance Agreement.

**Changes or Reductions in Duties**

By accepting this Agreement, you agree that during the remainder of your employment with Melinta, Melinta retains the right to change your duties or responsibilities as an employee (including, but not limited to, reducing CFO-related duties and adding COO-related duties). It also includes our right to maintain (or not maintain) your CFO title until the filing of an S1 (or until some other date). We trust that you will accommodate our need for flexibility during this time. For example, it may be necessary for you to undertake certain additional or different duties and responsibilities appropriate for a COO here at Melinta. We are confident that you will accept any such additional or different duties and responsibilities with the same level of professionalism and capability that you have demonstrated in the past. Any changes in duties or responsibilities referenced in this paragraph will in no way affect your entitlement to receive Retention Payment(s), or the amount of such payment(s).
Taxes

Any payments made pursuant to this Agreement shall be subject to applicable tax or similar withholding requirements under applicable federal, state or local employment or income tax laws or similar statutes or other provisions of law then in effect. It is the Company’s intention that all payments under this Agreement are exempt from or comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended (“Section 409A”) and the regulations thereunder, including without limitation the six month delay for payments of deferred compensation to “key employees” upon separation from service pursuant to Section 409A(a)(2)(B)(i) of the Code, if applicable, and this Agreement shall be interpreted, administered and operated accordingly. To the extent that any provision in this Agreement is ambiguous as to its compliance with Section 409A, the provision shall be interpreted in a manner so that no payment due to you shall be deemed subject to an “additional tax” within the meaning of Section 409A(a)(1)(B) of the Code. Further, you shall not be considered to have terminated employment with the Company for purposes of this Agreement unless you have incurred a “termination of employment” from the Company within the meaning of Treasury Regulation §1.409A-1(h)(1)(ii) promulgated under Section 409A of the Code. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment. In no event may you, directly or indirectly, designate the calendar year of any payment under this Agreement. The Company does not guarantee the tax treatment of any payments under this Agreement, including without limitation under the Code, federal, state, local or foreign tax laws and regulations.

Additional Information

For purposes of this Agreement, “Cause” shall mean that you committed one or more acts or omissions constituting: (a) a felony; (b) theft, misappropriation or embezzlement of Melinta funds; (c) fraud or self-dealing committed in conjunction with your employment; (d) a violation of laws, rules or regulations applicable to companies in the biotech industry generally; (e) habitual intoxication or abuse of controlled substances; (f) unexplained absences from the office; (g) repeated and willful failure to follow supervisors’ reasonable instructions, or (h) your violation of any Company policies or confidentiality responsibilities applicable to you.

Notwithstanding any of the foregoing, you remain an employee-at-will at all times and either you or Melinta may terminate the employment relationship at any time.

This Agreement constitutes the entire agreement and understanding between Melinta and you relating to your eligibility to receive a Retention Payment, and supersedes and cancels any and all prior and contemporaneous written and oral agreements and understandings, if any, between Melinta and you relating thereto. For avoidance of doubt, this Agreement does not supersede the Offer of Employment dated March 16, 2015 or the November 8, 2013 Severance Agreement between Melinta and you.

This Agreement, the underlying facts and circumstances, the Retention Payment are confidential. If you disclose or discuss this Agreement, these facts/circumstances, or these payments or benefits with anyone other than direct family members, or legal or tax advisors, the Retention Payment may be forfeited.
Please feel free to contact me with any questions regarding this Agreement.

Very truly yours,

/s/ Mary Szela
Mary Szela
CEO
Melinta Therapeutics, Inc.

Accepted and agreed:

/s/ Paul D. Estrem
Paul Estrem

3/16/15
Date
August 29, 2017

Paul Estrem
13 N Lake Ave.
Third Lake, IL 60030

RE: Amended and Restated Severance Agreement

Dear Paul:

You are a key member of the senior management team of Melinta Therapeutics, Inc. (the “Company”). As a result, the Company is providing you with the following benefits in consideration of your continued employment with the Company.

I. **Definitions.** For the purposes of this Amended and Restated Severance Agreement (this “Agreement”), which is intended to amend and restate your prior Severance Agreement, dated August 23, 2015 (the “Prior Agreement”), capitalized terms shall have the following meanings:

1. **“Cause”** shall mean:
   
   (a) your conviction of or your plea of guilty to or confession of an act of fraud, misappropriation or embezzlement or any felony;
   
   (b) your willful refusal or failure to follow a lawful directive or instruction of the Company’s board of directors or the individual(s) to whom you report;
   
   (c) in carrying out your duties, you commit material dishonesty or you breach a fiduciary duty to the Company;
   
   (d) you engage in conduct which causes material injury to the Company, monetarily or otherwise;
   
   (e) you use illegal substances at any time; or
   
   (f) you materially breach any Company policies regarding confidentiality, insider trading, any employment agreement with the Company then in effect or your Employee Noncompetition, Nondisclosure and Developments Agreement.

2. **“Change in Control”** shall mean the date:

   (a) any “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the beneficial owner of our securities representing 50% or more of the total voting power of the Company’s then-outstanding voting securities, pursuant to a transaction which the Company’s board of directors does not approve;
the Company undergoes a merger, reorganization or other consolidation, including the sale of substantially all of the Company’s assets, in which the Company is not the surviving entity and in which the persons holding the Company’s outstanding equity immediately prior to such merger, reorganization or consolidation own less than 50% of the surviving entity’s voting power immediately after the transaction; or

(a) a change in the composition of the Company’s board of directors, as a result of which fewer than a majority of the directors are incumbent directors. Incumbent directors shall mean directors who either (A) were Company directors as of the date of this Agreement, or (B) are elected, or nominated for election, to the Company’s board of directors with the affirmative votes of at least a majority of the incumbent directors at the time of such election or nomination, but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of members to the Company’s board of directors.

And provided further that in each of the foregoing cases, the Change in Control also meets all of the requirements of a “change in the ownership of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(v), a “change in the effective control of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vi) or a “change in the ownership of a substantial portion of the corporation’s assets” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vii).


4. “Disability” shall mean a disability as determined under the Company’s long-term disability plan or program in effect at the time the disability first occurs, or if no such plan or program exists at the time of disability, then a “disability” as defined Section 22(e)(3) of the Code.

5. “Good Reason” shall mean one of the following events has occurred without your consent:

   (a) your annual base salary is decreased;

   (b) your principal place of employment is relocated to a place 35 or more miles away from one of the Company’s locations; or

   (c) the Company breaches the material terms of any employment agreement then in effect or you experience a material adverse change to your primary responsibilities or duties.

And provided further that Good Reason shall not exist unless and until within 90 days after the event giving rise to Good Reason under (a), (b) or (c) above has occurred, you deliver a written termination notice to the Company stating that an event giving rise to Good Reason has occurred and identifying with reasonable detail the event that you assert constitutes Good Reason under (a), (b) or (c) above and the Company fails or refuses to cure or eliminate the event giving rise to Good Reason on or within 30 days after receiving your notice. To avoid doubt, the termination of your employment would become effective at the close of business on the thirtieth day after the Company receives your termination notice, unless the Company cures or eliminates the event giving rise to Good Reason prior to such time.

6. “Termination Date” shall mean the last day of your employment with the Company.

II. Severance Benefits

1. Severance shall be paid to you if your employment is terminated by the Company (except for termination for Cause or due to death or a Disability) or if you, of your own initiative, terminate your employment for Good Reason (in accordance with the notice and cure provisions in this Agreement), provided that the termination of your employment also constitutes a “separation from service” as defined by Code Treasury Regulation § 1.409A-1(h).
2. In the event you are eligible for severance, the Company shall make a cash payment (the “Severance Payment”) to you in an amount equal to twelve months of your annual base salary (less applicable withholdings) on a payroll basis (provided, however, that if you terminate your employment for Good Reason based on a reduction in your annual base salary, then the annual base salary to be used in calculating the Severance Payment shall be your annual base salary in effect immediately prior to such reduction in annual base salary). If you are covered under the Company’s group medical and dental coverage as of the Termination Date, and if you are eligible to continue such coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), the Company will reimburse the employer portion of the premium costs (consistent with the Company’s policy for active employees) of such continuation coverage until the earlier of (i) the end of the twelfth month following the Termination Date; or (ii) the date that you become eligible for coverage under another group health plan.

3. The Severance Payment will only be made in exchange for a general release to be executed by you, which becomes enforceable and irrevocable within 60 days of your Termination Date, of all claims against the Company, its subsidiaries, and its and their officers, directors and representatives, in a form satisfactory to the Company. The Severance Payment shall begin within ten days after the execution by you of the general release and expiration without revocation of any applicable revocation periods under such general release, provided that, if the 60 day period during which the release is required to become effective and irrevocable begins in one calendar year and ends in another calendar year, the Severance Payment shall be made in the second calendar year.

4. You shall not be required to mitigate the amount of the Severance Payment or any other benefit provided under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Agreement be reduced (except as provided in this Agreement) by any compensation earned by you as the result of other employment, by retirement benefits, or be offset against any amount claimed to be owed by you to the Company or otherwise (except for any required withholding taxes); provided, that if the Company makes any other severance payments to you under any other program or agreement, such amounts shall be offset against the payments the Company is obligated to make pursuant to this Agreement.

III. Pro-Rated Bonus upon Change in Control

If, within six (6) months of the effective date of a Change in Control, you are terminated without Cause or you resign for Good Reason, you will be entitled to the pro-rata portion of the annual bonus for the year in which the termination of your employment occurs, based on the number of months of completed employment up to the Termination Date, payable no later than March 1 of the following year, in one lump-sum amount (less required withholdings).

IV. Miscellaneous.

1. Section 409A Compliance. The payments and benefits provided for in Section II of this Agreement constitute an involuntary separation plan pursuant to Treas. Reg. § 1.409A-1(n), and thus is not “non-qualified deferred compensation” subject to Section 409A of the Code. To the extent that any of the payments or benefits provided for in Section II are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the Code, however, the following interpretations apply: Any termination of your employment triggering payment of benefits under Section II must constitute a “separation from service” under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of your employment does not constitute a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by you to the Company or any of its parents, subsidiaries or affiliates at the time your employment terminates), any benefits payable under Section II that constitute deferred compensation under Section 409A of the Code shall be delayed until after the date of a subsequent event constituting a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h).
clarification, this Section shall not cause any forfeiture of benefits on your part, but shall only act as a delay until such time as a “separation from service” occurs. Further, if you are a “specified employee” (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date a separation from service becomes effective, any benefits payable under Section II that constitute non-qualified deferred compensation under Section 409A of the Code shall be delayed until the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) the date of your death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) your death, the Company shall pay you (or your estate) in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid you prior to that date under Section II of this Agreement. It is intended that each installment of the payments and benefits provided under Section II of this Agreement shall be treated as a separate “payment” for purposes of Section 409A of the Code. Neither the Company nor you shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

2. **Employee’s Obligations.** Upon the termination of employment, you shall promptly deliver to the Company all property of the Company and all material documents, data and other items which may be in your possession or under your control and which relate in a material way to the business or affairs of the Company or its subsidiaries, and no copies of any such documents or any part thereof shall be retained by you. Any post-employment obligations you may have pursuant to separate agreements supplement but do not supersede this Agreement and shall survive as provided for in such separate agreements.

3. **Entire Agreement.** This Agreement and any employment letter or confidentiality and non-competition and equity agreements previously executed by you covers the entire understanding of the parties as to the subject matter hereof, superseding all prior understandings and agreements related hereto, including, but not limited to, the Prior Agreement. No modification or amendment of the terms and conditions of this Agreement shall be effective unless in writing and signed by the parties or their respective duly authorized agents.

4. **Governing Law.** This Agreement shall be governed by the laws of the State of New York, without giving effect to any principles of conflicts of laws.

5. **Successors and Assigns.** This Agreement may be assigned by the Company upon a sale, transfer or reorganization of the Company. Upon a Change in Control, the Company shall require the successor to assume the Company’s rights and obligations under this Agreement. The Company’s failure to do so shall constitute a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, permitted assigns, legal representatives and heirs.

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Kindly indicate your acceptance of the foregoing by signing and dating this Agreement as noted below, and returning one fully executed original to my attention.

Very truly yours,

Melinta Therapeutics, Inc.
Dr. Eugene Sun
Chief Executive Officer

By: /s/ Dr. Eugene Sun

ACCEPTED AND AGREED:

Paul Estrem

/s/ Paul Estrem

[NAME]

9-1-17

DATE
EMPLOYEE NONCOMPETITION, NONDISCLOSURE AND DEVELOPMENTS AGREEMENT

This Employee Noncompetition, Nondisclosure and Developments Agreement (the “Agreement”) is entered into as of December 9, 2013 (the “Effective Date”) by and between Paul Estrem the undersigned employee and Melinta Therapeutics, Inc., its parents, affiliates and subsidiaries (the “Company”).

NOW THEREFORE, in consideration of my employment by the Company and of the covenants herein, my employment with the Company, and for other good and valuable consideration, I hereby covenant and agree as follows:

1. **Best Efforts**.

   During the period of my employment by the Company, I shall devote my full time and best efforts to the business of the Company, and I shall neither pursue any business opportunity outside the Company nor take any position with any organization other than the Company without the written approval of the Chief Executive Officer or his or her designee.

2. **Noncompetition**.

   During the period of my employment by the Company, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, engage in any business or activity that is in competition with the products or services being created, developed, manufactured, marketed, distributed or sold by the Company in (a) the State of Connecticut, (b) the States of New York, Massachusetts, Connecticut and Illinois, (c) the continental United States of America, (d) the United States and Europe or (e) worldwide. For one year following the termination of my employment, regardless of the reasons for my termination, I will refrain from management or participation in programs at or on behalf of any entity in areas related to antimicrobials or in areas related to specific chemical approaches or series the Company is engaged in during my employment or in which the Company is planning to engage or has in the past engaged. In the case of areas of business unrelated to antimicrobials, for one year following the termination of my employment, regardless of the reasons for my termination, I will refrain from management or participating in any such non-antimicrobial programs which are under prosecution at the Company, in which the Company is planning to engage or has in the past engaged in.

3. **Nonsolicitation of Customers**.

   During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, solicit or do business with any customer of the Company or any potential customer of the Company (i) with whom I have had contact or (ii) about whom I obtained information, or became familiar with through Confidential Information (as defined in Paragraph 5), during the course of my employment with the Company.

PE 11/11/13
Initial and Date
4. Nonsolicitation of Employees.
   (a) During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for the termination, I will not, in any manner, hire or engage, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to hire or engage, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of my termination.

   (b) During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for the termination, I will not, in any manner, solicit, recruit or induce, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to solicit, recruit or induce, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of my termination, to leave his or her employment, relationship or engagement with the Company.

5. Nondisclosure.
   I shall not at any time, whether during or after the termination of my employment, reveal to any person or entity any Confidential Information except to employees of the Company who need to know such Confidential Information for the purposes of their employment, or as otherwise authorized by the Company in writing. The term “Confidential Information” shall include any information concerning the organization, business or finances of the Company or of any third party which the Company is under an obligation to keep confidential that is maintained by the Company as confidential. Such Confidential Information shall include, but is not limited to, trade secrets or confidential information respecting inventions, products, designs, methods, know-how, techniques, systems, processes, specifications, blueprints, engineering data, software programs, works of authorship, customer lists, customer information, financial information, pricing information, personnel information, business plans, projects, plans and proposals. I shall keep confidential all matters entrusted to me and shall not use or attempt to use any Confidential Information except as may be required in the ordinary course of performing my duties as an employee of the Company, nor shall I use any Confidential Information in any manner which may injure or cause loss or may be calculated to injure or cause loss to the Company, whether directly or indirectly.

6. Assignment of Developments.
   (a) If at any time or times during my employment, I shall (either alone or with others) make, conceive, create, discover, invent or reduce to practice any Development that (i) relates to the business of the Company or any customer of the Company or any of the products or services being developed, manufactured or sold by the Company or which may be used in relation therewith; or (ii) results from tasks assigned to me by the Company; or (iii) results from the use of premises or personal property (whether tangible or intangible) owned, leased or contracted for by the Company, then all such Developments and the benefits thereof are
and shall immediately become the sole and absolute property of the Company and its assigns, as works made for hire or otherwise. The term “Development” shall mean any invention, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, trade secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright, trademark or similar statutes (including, but not limited to, the Semiconductor Chip Protection Act) or subject to analogous protection). I shall promptly disclose to the Company (or any persons designated by it) each such Development. I hereby assign all rights (including, but not limited to, rights to inventions, patentable subject matter, copyrights and trademarks) I may have or may acquire in the Developments and all benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without disclosing to others the same, all available information relating thereto (with all necessary plans and models) to the Company.

(b) Excluded Developments. I represent that the Developments identified in the Appendix, if any, attached hereto comprise all the Developments that I have made or conceived prior to my employment by the Company and that are owned or controlled by me, which Developments are excluded from this Agreement. I understand that it is only necessary to list the title of such Developments and the purpose thereof but not details of the Development itself. If no Developments are identified in the Appendix, it will be deemed that there are no such exclusions.

7. Further Assurances.

I shall, during my employment and at any time thereafter, at the request and cost of the Company, promptly sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized officers may reasonably require:

(a) to apply for, obtain, register and vest in the name of the Company alone (unless the Company otherwise directs) patents, copyrights, trademarks or other analogous protection in any country throughout the world relating to a Development and when so obtained or vested to renew and restore the same; and

(b) to defend any judicial, opposition or other proceedings in respect of such applications and any judicial, opposition or other proceeding, petition or application for revocation of any such patent, copyright, trademark or other analogous protection.

If the Company is unable, after reasonable effort, to secure my signature on any application for patent, copyright, trademark or other analogous protection or other documents regarding any legal protection relating to a Development, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright or trademark registrations or any other legal protection thereon with the same legal force and effect as if executed by me.
8. Employment At Will

I understand that this Agreement does not constitute an implied or written employment contract and that my employment with the Company is on an “at-will” basis. Accordingly, I understand that either the Company or I may terminate my employment at any time, for any or no reason.

9. Severability

I hereby agree that each provision and the subparts of each provision herein shall be treated as separate and independent clauses, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses of this Agreement. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear. I hereby further agree that the language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either of the parties.

10. Amendments; Waiver

Any amendment to or modification of this Agreement, or any waiver of any provision hereof, shall be in writing and signed by the Company. Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

11. Survival

This agreement shall be effective as of the Effective Date. My obligations under this Agreement shall survive the termination of my employment regardless of the manner of such termination and shall be binding upon my heirs, executors, administrators and legal representatives.

12. Assignment

The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. I may not assign this Agreement.

13. Representations

(a) I represent that my employment with the Company and my performance of all of the terms of this Agreement do not and will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I shall not enter into, any agreement either written or oral in conflict herewith. I agree that in the course of my employment with the Company, if the Company requests that I undertake activities that will cause me to use Confidential Information of my prior employer, I will inform the Company of that fact.
(b) I agree that the restrictions set forth in Paragraph 2 hereof are reasonable and necessary to protect specific business interests of the Company. I agree that any breach of this Agreement by me will cause irreparable damage to the Company and that in the event of such breach the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation of my obligations hereunder. The Company may apply for such injunctive relief in any court of competent jurisdiction without the necessity of posting any bond or other security.


This Agreement and any claims arising out of this Agreement (or any other claims arising out of the relationship between the parties) shall be governed by and construed in accordance with the laws of the State of New York and shall in all respects be interpreted, enforced and governed under the internal and domestic laws of such state, without giving effect to the principles of conflicts of laws of such state. Any claims or legal actions by one party against the other shall be commenced and maintained in any state or federal court located in such state, and I hereby submit to the jurisdiction and venue of any such court.

15. Entire Agreement.

This Agreement sets forth the complete, sole and entire agreement between the parties on the subject matter herein and supersedes any and all other agreements, negotiations, discussions, proposals, or understandings, whether oral or written, previously entered into, discussed or considered by the parties.

[Signature to appear on the following page.]

- 5 -
IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the Effective Date.

/s/ Paul D. Estrem
Paul Estrem
Address: 325 Clarewood Circle
Greyslake, IL 60030
Date: November 11, 2013
Ms. Sue Cammarata
630 North State St. Unit 1106
Chicago, IL 60654

Dear Sue,

We are very pleased to offer you employment at Melinta Therapeutics, Inc. ("Melinta"). Your start date will be effective as of November 18, 2013. We are very enthusiastic about your joining the Melinta team, and are confident of a mutually beneficial relationship.

Position and Compensation

Your initial position will be Chief Medical Officer of Melinta, reporting directly to Eugene Sun, Executive Vice President, Research and Development of Melinta. During the course of your employment with Melinta, your position and duties are, of course, subject to change; provided, however, that Melinta’s ability to change your position and duties will not limit your "good reason" rights under the enclosed Severance Agreement. As a Melinta employee, we expect that you will perform any and all duties and responsibilities normally associated with your position in a satisfactory manner and to the best of your abilities at all times. In addition, you agree to observe and comply with all the rules, regulations, policies and procedures established by Melinta from time to time. Your performance will be reviewed formally at the end of the calendar year, and on a periodic basis thereafter as long as you remain employed by Melinta.

Your initial base pay shall be $16,250, payable semi-monthly (annualized to $390,000). During each fiscal year of your employment with Melinta, you will be eligible for an annual bonus of no more than 30% of your base salary contingent upon the successful achievement of corporate and individual performance goals. Any bonus to be paid will be determined by the Compensation Committee of the Board of Directors of Melinta (the "Committee") or its designee; provided, however, that any annual bonus payable in respect of Melinta’s fiscal year ending December 31, 2013 shall be pro-rated to reflect the portion of time you are employed hereunder during 2013. Any annual bonus earned in respect of any year will be paid no later than 90 days following the end of such year. You must be employed by Melinta on the date any bonus is paid in order to receive it, except as otherwise provided in the enclosed Severance Agreement. Melinta will review your compensation periodically. Your compensation also is subject to change, as Melinta considers necessary or appropriate.
Signing Bonus

In addition, subject to your remaining employed with Melinta through May 18, 2014, you will receive a cash signing bonus in the amount of $100,000, payable on or about the first regularly scheduled payroll period following May 18, 2014; provided, however, if your employment is terminated by Melinta without Cause, by you with Good Reason or in connection with a Change in Control, each as defined in the enclosed Severance Agreement, prior to May 18, 2014, you will be entitled to immediate payment of your signing bonus subject to your execution and delivery of the release of claims contemplated in the Severance Agreement.

Benefits

Equity: Subject to approval by the Board of Directors (the "Board") and/or the Committee, you will be eligible to receive an initial equity grant of options to purchase 563,172 shares of Melinta common stock (the "Initial Grant"), at an exercise price equal to the fair market value of the common stock on the grant date. Subject to your continued employment with Melinta through each applicable vesting date, twenty-five percent (25%) of the stock options granted will vest on the first anniversary of the commencement of your employment and the remainder will vest in substantially equal monthly installments during the three (3) year period commencing on the first anniversary of the commencement of your employment. The Initial Grant shall be subject to the terms and conditions of Melinta’s stock option plan then in effect and standard form of stock option agreement. Additional stock options or other equity grants may also be offered from time to time in the sole discretion of the Board and/or Committee depending upon certain events, including for example the successful completion of corporate goals.

Severance: Melinta shall provide severance to you upon termination of your employment in certain circumstances pursuant to the terms set forth in the enclosed Severance Agreement.

Other Benefits: Melinta currently offers various benefits, including group medical and dental insurance, paid time off (vacation and sick time), a 401(k) plan, short-term disability, long-term disability, and other benefits. These benefits may be modified or changed from time to time at the discretion of Melinta. The present benefit structure and other important information about the benefits for which you may be eligible is described in other documents, which you will receive upon the commencement of your employment. Where a particular benefit is subject to a formal plan (i.e., medical insurance or life insurance), eligibility to participate in and receive any particular benefit is governed solely by the applicable plan document. Should you have any questions regarding benefits, please see Human Resources for a copy of the applicable plan document.

Expenses: Melinta will reimburse you for all reasonable and necessary expenses you incur in connection with your employment with Melinta, subject to your presentment of appropriate documentation, in accordance with the published travel, meals and entertainment expense policies of Melinta. In addition, Melinta will reimburse you for the reasonable cost incurred in moving your personal belongings to Chicago, Illinois, up to a maximum of $10,000, subject to your presentment of appropriate documentation.
Nature of Relationship
As a Melinta employee, you will be expected to devote all of your working time to the performance of your duties at Melinta throughout your employment with Melinta. Notwithstanding the foregoing, as long as it does not interfere, individually or in the aggregate, with the performance of your duties for Melinta or create a potential business or fiduciary conflict, you may serve as an officer, director or trustee of, or otherwise participate in the activities of, educational, welfare, social, religious and civic organizations. While this letter reflects our commitment to employ you and we look forward to a mutually rewarding relationship, this letter does not constitute a contract (express or implied) for a specific length of employment, and either party may choose to terminate the employment relationship upon written notice to the other at any time and for any reason. You agree to give the Executive Vice President, Research and Development at least four weeks’ advance written notice if you decide to terminate your employment; provided, that Melinta may, in its sole and absolute discretion, by written notice accelerate such date of termination and without changing the characterization of such termination provided that Melinta continues to pay you your base salary for the remainder of the four-week notice period.

Taxes
Melinta may withhold from any payments made to you all applicable taxes, including but not limited to income, employment, and social insurance taxes, as shall be required by law.

Noncompetition, Nondisclosure and Developments Agreement
As a condition of your employment and continued employment with Melinta, you are required to sign and comply with the terms and conditions of the enclosed Noncompetition, Nondisclosure and Developments Agreement. Also, just as Melinta regards the protection of its trade secrets, and other confidential information as a matter of great importance, we also respect that you may have an obligation to your present and/or prior employers to safeguard the confidential information of those companies, and we expect you to honor them as well. To that end, you should not take any documents or other confidential information from your employer if and when you depart. Further, we want to make it perfectly clear you should not bring with you to Melinta, or use in the performance of your responsibilities for Melinta any proprietary business or technical information, materials or documents of a former employer. Finally, you must provide Melinta with a copy of any agreements with a former employer or other party that could restrict your professional activities in any way on behalf of Melinta. By signing this letter, you represent and warrant to Melinta that you are under no contractual commitments inconsistent with your obligations to Melinta hereunder and that your acceptance of this offer of employment and your performance of the contemplated services hereunder does not and will not conflict with or result in any breach or default under any agreement, contract or arrangement to which you are a party to or violate any other legal restriction.
Background Check; Authorization to Work

This offer is contingent on the acceptable results of a background check. As required by law, your employment with Melinta is also contingent upon your providing legal proof of your identity and authorization to work in the United States within three (3) business days of your joining Melinta.

This letter, the enclosed Severance Agreement and the enclosed Employee Noncompetition, Nondisclosure and Developments Agreement constitute our entire offer regarding the terms and conditions of your employment by Melinta. These supersede any prior agreements, or other promises or statements (whether oral or written) regarding the offered terms of employment.

The terms of your employment shall be governed by and construed under the laws of the State of New York, without giving effect to conflict of laws principles.
You may accept this offer of employment and the terms and conditions hereof by signing the enclosed additional copy of this letter. Your signature on the copy of this letter and your submission of the signed copy to me will evidence your agreement with the terms and conditions set forth in this letter. Please return a copy of the offer letter to me in the addressed/stamped envelope provided.

Sincerely,

/s/ Eugene Sun
Eugene Sun
Executive Vice President, Research and Development

Accepted and Agreed To:

/s/ Sue Cammarata
Sue Cammarata

11/18/13
Date
RE: Amended and Restated Severance Agreement

Dear Sue:

You are a key member of the senior management team of Melinta Therapeutics, Inc. (the “Company”). As a result, the Company is providing you with the following benefits in consideration of your continued employment with the Company.

I. Definitions. For the purposes of this Amended and Restated Severance Agreement (this “Agreement”), which is intended to amend and restate your prior Severance Agreement, dated November 18, 2013 (the “Prior Agreement”), capitalized terms shall have the following meanings:

1. “Cause” shall mean:
   (a) your conviction of or your plea of guilty to or confession of an act of fraud, misappropriation or embezzlement or any felony;
   (b) your willful refusal or failure to follow a lawful directive or instruction of the Company’s board of directors or the individual(s) to whom you report;
   (c) in carrying out your duties, you commit material dishonesty or you breach a fiduciary duty to the Company;
   (d) you engage in conduct which causes material injury to the Company, monetarily or otherwise;
   (e) you use illegal substances at any time; or
   (f) you materially breach any Company policies regarding confidentiality, insider trading, any employment agreement with the Company then in effect or your Employee Noncompetition, Nondisclosure and Developments Agreement.

2. “Change in Control” shall mean the date:
   (a) any “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the beneficial owner of our securities representing 50% or more of the total voting power of the Company’s then-outstanding voting securities, pursuant to a transaction which the Company’s board of directors does not approve;
the Company undergoes a merger, reorganization or other consolidation, including the sale of substantially all of the Company’s assets, in which the Company is not the surviving entity and in which the persons holding the Company’s outstanding equity immediately prior to such merger, reorganization or consolidation own less than 50% of the surviving entity’s voting power immediately after the transaction; or

(c) a change in the composition of the Company’s board of directors, as a result of which fewer than a majority of the directors are incumbent directors. Incumbent directors shall mean directors who either (A) were Company directors as of the date of this Agreement, or (B) are elected, or nominated for election, to the Company’s board of directors with the affirmative votes of at least a majority of the incumbent directors at the time of such election or nomination, but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of members to the Company’s board of directors.

And provided further that in each of the foregoing cases, the Change in Control also meets all of the requirements of a “change in the ownership of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(v), a “change in the effective control of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vi) or a “change in the ownership of a substantial portion of the corporation’s assets” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vii).


4. “Disability” shall mean a disability as determined under the Company’s long-term disability plan or program in effect at the time the disability first occurs, or if no such plan or program exists at the time of disability, then a “disability” as defined Section 22(e)(3) of the Code.

5. “Good Reason” shall mean one of the following events has occurred without your consent:

(a) your annual base salary is decreased;

(b) your principal place of employment is relocated to a place 35 or more miles away from one of the Company’s locations; or

(c) the Company breaches the material terms of any employment agreement then in effect or you experience a material adverse change to your primary responsibilities or duties.

And provided further that Good Reason shall not exist unless and until within 90 days after the event giving rise to Good Reason under (a), (b) or (c) above has occurred, you deliver a written termination notice to the Company stating that an event giving rise to Good Reason has occurred and identifying with reasonable detail the event that you assert constitutes Good Reason under (a), (b) or (c) above and the Company fails or refuses to cure or eliminate the event giving rise to Good Reason on or within 30 days after receiving your notice. To avoid doubt, the termination of your employment would become effective at the close of business on the thirtieth day after the Company receives your termination notice, unless the Company cures or eliminates the event giving rise to Good Reason prior to such time.

6. “Termination Date” shall mean the last day of your employment with the Company.

II. Severance Benefits

1. Severance shall be paid to you if your employment is terminated by the Company (except for termination for Cause or due to death or a Disability) or if you, of your own initiative, terminate your employment for Good Reason (in accordance with the notice and cure provisions in this Agreement), provided that the termination of your employment also constitutes a “separation from service” as defined by Code Treasury Regulation § 1.409A-1(h).
2. In the event you are eligible for severance, the Company shall make a cash payment (the “Severance Payment”) to you in an amount equal to twelve months of your annual base salary (less applicable withholdings) on a payroll basis (provided, however, that if you terminate your employment for Good Reason based on a reduction in your annual base salary, then the annual base salary to be used in calculating the Severance Payment shall be your annual base salary in effect immediately prior to such reduction in annual base salary). If you are covered under the Company’s group medical and dental coverage as of the Termination Date, and if you are eligible to continue such coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), the Company will reimburse the employer portion of the premium costs (consistent with the Company’s policy for active employees) of such continuation coverage until the earlier of (i) the end of the twelfth month following the Termination Date; or (ii) the date that you become eligible for coverage under another group health plan.

3. The Severance Payment will only be made in exchange for a general release to be executed by you, which becomes enforceable and irrevocable within 60 days of your Termination Date, of all claims against the Company, its subsidiaries, and its and their officers, directors and representatives, in a form satisfactory to the Company. The Severance Payment shall begin within ten days after the execution by you of the general release and expiration without revocation of any applicable revocation periods under such general release, provided that, if the 60 day period during which the release is required to become effective and irrevocable begins in one calendar year and ends in another calendar year, the Severance Payment shall be made in the second calendar year.

4. You shall not be required to mitigate the amount of the Severance Payment or any other benefit provided under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Agreement be reduced (except as provided in this Agreement) by any compensation earned by you as the result of other employment, by retirement benefits, or be offset against any amount claimed to be owed by you to the Company or otherwise (except for any required withholding taxes); provided, that if the Company makes any other severance payments to you under any other program or agreement, such amounts shall be offset against the payments the Company is obligated to make pursuant to this Agreement.

III. Pro-Rated Bonus upon Change in Control

If, within six (6) months of the effective date of a Change in Control, you are terminated without Cause or you resign for Good Reason, you will be entitled to the pro-rata portion of the annual bonus for the year in which the termination of your employment occurs, based on the number of months of completed employment up to the Termination Date, payable no later than March 1 of the following year, in one lump-sum amount (less required withholdings).

IV. Miscellaneous.

1. Section 409A Compliance. The payments and benefits provided for in Section II of this Agreement constitute an involuntary separation plan pursuant to Treas. Reg. § 1.409A-1(n), and thus is not “non-qualified deferred compensation” subject to Section 409A of the Code. To the extent that any of the payments or benefits provided for in Section II are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the Code, however, the following interpretations apply: Any termination of your employment triggering payment of benefits under Section II must constitute a “separation from service” under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of your employment does not constitute a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by you to the Company or any of its parents, subsidiaries or affiliates at the time your employment terminates), any benefits payable under Section II that constitute deferred compensation under Section 409A of the Code shall be delayed until after the date of a subsequent event constituting a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h). For purposes of
clarification, this Section shall not cause any forfeiture of benefits on your part, but shall only act as a delay until such time as a “separation from service” occurs. Further, if you are a “specified employee” (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date a separation from service becomes effective, any benefits payable under Section II that constitute non-qualified deferred compensation under Section 409A of the Code shall be delayed until the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) the date of your death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) your death, the Company shall pay you (or your estate) in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid you prior to that date under Section II of this Agreement. It is intended that each installment of the payments and benefits provided under Section II of this Agreement shall be treated as a separate “payment” for purposes of Section 409A of the Code. Neither the Company nor you shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

2. Employee’s Obligations. Upon the termination of employment, you shall promptly deliver to the Company all property of the Company and all material documents, data and other items which may be in your possession or under your control and which relate in a material way to the business or affairs of the Company or its subsidiaries, and no copies of any such documents or any part thereof shall be retained by you. Any post-employment obligations you may have pursuant to separate agreements supplement but do not supersede this Agreement and shall survive as provided for in such separate agreements.

3. Entire Agreement. This Agreement and any employment letter or confidentiality and non-competition and equity agreements previously executed by you covers the entire understanding of the parties as to the subject matter hereof, superseding all prior understandings and agreements related hereto, including, but not limited to, the Prior Agreement. No modification or amendment of the terms and conditions of this Agreement shall be effective unless in writing and signed by the parties or their respective duly authorized agents.

4. Governing Law. This Agreement shall be governed by the laws of the State of New York, without giving effect to any principles of conflicts of laws.

5. Successors and Assigns. This Agreement may be assigned by the Company upon a sale, transfer or reorganization of the Company. Upon a Change in Control, the Company shall require the successor to assume the Company’s rights and obligations under this Agreement. The Company’s failure to do so shall constitute a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, permitted assigns, legal representatives and heirs.
Kindly indicate your acceptance of the foregoing by signing and dating this Agreement as noted below, and returning one fully executed original to my attention.

Very truly yours,

Melinta Therapeutics, Inc.
Dr. Eugene Sun

By: /s/ Dr. Eugene Sun

ACCEPTED AND AGREED:

Sue Cammarata

/s/ Sue Cammarata

[NAME]

5 Sept 17

DATE
This Employee Noncompetition, Nondisclosure and Developments Agreement (the “Agreement”) is entered into by and between Sue Cammarata and Melinta Therapeutics, Inc., its parents, affiliates and subsidiaries (the “Company”).

NOW THEREFORE, in consideration of my employment by the Company and of the covenants herein, my employment with the Company, and for other good and valuable consideration, I hereby covenant and agree as follows:

1. Best Efforts.

   During the period of my employment by the Company, I shall devote my full time and best efforts to the business of the Company, and I shall neither pursue any business opportunity outside the Company nor take any position with any organization other than the Company without the written approval of the Chief Executive Officer or her designee.

2. Noncompetition.

   During the period of my employment by the Company, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, engage in any business or activity that is in competition with the products or services being created, developed, manufactured, marketed, distributed or sold by the Company in (a) the State of Connecticut, (b) the States of New York, Massachusetts and Connecticut, (c) the continental United States of America, (d) the United States and Europe or (e) worldwide. For one year following the termination of my employment, regardless of the reasons for my termination, I will refrain from management of or participation in research programs at or on behalf of any entity in areas related to antimicrobials or in areas related to specific chemical approaches or series the Company is engaged in during my employment or in which the Company is planning to engage or has in the past engaged. In the case of areas of business unrelated to antimicrobials, for one year following the termination of my employment, regardless of the reasons for my termination, I will refrain from management of or participating in any such non-antimicrobial programs which are under prosecution at the Company, in which the Company is planning to engage or has in the past engaged in.


   During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, solicit or do business with any customer of the Company or any potential customer of the Company (i) with whom I have had contact or (ii) about whom I obtained information, or became familiar with through Confidential Information (as defined in Paragraph 5), during the course of my employment with the Company.

   Sue 11/18/13
   Initial and Date
4. Nonsolicitation of Employees

(a) During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for the termination, I will not, in any manner, hire or engage, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to hire or engage, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of my termination.

(b) During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for the termination, I will not, in any manner, solicit, recruit or induce, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to solicit, recruit or induce, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of my termination, to leave his or her employment, relationship or engagement with the Company.

5. Nondisclosure

I shall not at any time, whether during or after the termination of my employment, reveal to any person or entity any Confidential Information except to employees of the Company who need to know such Confidential Information for the purposes of their employment, or as otherwise authorized by the Company in writing. The term “Confidential Information” shall include any information concerning the organization, business or finances of the Company or of any third party which the Company is under an obligation to keep confidential that is maintained by the Company as confidential. Such Confidential Information shall include, but is not limited to, trade secrets or confidential information respecting inventions, products, designs, methods, know-how, techniques, systems, processes, specifications, blueprints, engineering data, software programs, works of authorship, customer lists, customer information, financial information, pricing information, personnel information, business plans, projects, plans and proposals. I shall keep confidential all matters entrusted to me and shall not use or attempt to use any Confidential Information except as may be required in the ordinary course of performing my duties as an employee of the Company, nor shall I use any Confidential Information in any manner which may injure or cause loss or may be calculated to injure or cause loss to the Company, whether directly or indirectly.

6. Assignment of Developments

(a) If at any time or times during my employment, I shall (either alone or with others) make, conceive, create, discover, invent or reduce to practice any Development that (i) relates to the business of the Company or any customer of or supplier to the Company or any of the products or services being developed, manufactured or sold by the Company or which may be used in relation therewith; or (ii) results from tasks assigned to me by the Company; or (iii) results from the use of premises or personal property (whether tangible or intangible) owned, leased or contracted for by the Company, then all such Developments and the benefits thereof are and shall immediately become the sole and absolute property of the Company and its assigns, as

Sue 11/18/13
Initial and Date
works made for hire or otherwise. The term “Development” shall mean any invention, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, trade secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright, trademark or similar statutes (including, but not limited to, the Semiconductor Chip Protection Act) or subject to analogous protection). I shall promptly disclose to the Company (or any persons designated by it) each such Development. I hereby assign all rights (including, but not limited to, rights to inventions, patentable subject matter, copyrights and trademarks) I may have or may acquire in the Developments and all benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without disclosing to others the same, all available information relating thereto (with all necessary plans and models) to the Company.

(b) Excluded Developments. I represent that the Developments identified in the Appendix, if any, attached hereto comprise all the Developments that I have made or conceived prior to my employment by the Company and that are owned or controlled by me, which Developments are excluded from this Agreement. I understand that it is only necessary to list the title of such Developments and the purpose thereof but not details of the Development itself. If no Developments are identified in the Appendix, it will be deemed that there are no such exclusions.

7. Further Assurances.

I shall, during my employment and at any time thereafter, at the request and cost of the Company, promptly sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized officers may reasonably require:

(a) to apply for, obtain, register and vest in the name of the Company alone (unless the Company otherwise directs) patents, copyrights, trademarks or other analogous protection in any country throughout the world relating to a Development and when so obtained or vested to renew and restore the same; and

(b) to defend any judicial, opposition or other proceedings in respect of such applications and any judicial, opposition or other proceeding, petition or application for revocation of any such patent, copyright, trademark or other analogous protection.

If the Company is unable, after reasonable effort, to secure my signature on any application for patent, copyright, trademark or other analogous protection or other documents regarding any legal protection relating to a Development, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright or trademark registrations or any other legal protection thereon with the same legal force and effect as if executed by me.

Sue 11/18/13
Initial and Date
8. Employment At Will.

I understand that this Agreement does not constitute an implied or written employment contract and that my employment with the Company is on an “at-will” basis. Accordingly, I understand that either the Company or I may terminate my employment at any time, for any or no reason, with or without prior notice.


I hereby agree that each provision and the subparts of each provision herein shall be treated as separate and independent clauses, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses of the Agreement. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear. I hereby further agree that the language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either of the parties.

10. Amendments; Waiver.

Any amendment to or modification of this Agreement, or any waiver of any provision hereof, shall be in writing and signed by the Company. Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

11. Survival.

This agreement shall be effective as of the date entered below. My obligations under this Agreement shall survive the termination of my employment regardless of the manner of such termination and shall be binding upon my heirs, executors, administrators and legal representatives.

12. Assignment.

The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. I may not assign this Agreement.

13. Representations.

(a) I represent that my employment with the Company and my performance of all of the terms of this Agreement do not and will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I shall not enter into, any agreement either written or oral in conflict herewith. I agree that in the course of my employment with the Company, if the Company requests that I undertake activities that will cause me to use Confidential Information of my prior employer, I will inform the Company of that fact.

Sue 11/18/13
Initial and Date

-4-
(b) I agree that the restrictions set forth in paragraph 2 hereof are reasonable and necessary to protect specific business interests of the Company. I agree that any breach of this Agreement by me will cause irreparable damage to the Company and that in the event of such breach the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation of my obligations hereunder. The Company may apply for such injunctive relief in any court of competent jurisdiction without the necessity of posting any bond or other security.


This Agreement and any claims arising out of this Agreement (or any other claims arising out of the relationship between the parties) shall be governed by and construed in accordance with the laws of the State of Connecticut and shall in all respects be interpreted, enforced and governed under the internal and domestic laws of such state, without giving effect to the principles of conflicts of laws of such state. Any claims or legal actions by one party against the other shall be commenced and maintained in any state or federal court located in such state, and I hereby submit to the jurisdiction and venue of any such court.

15. Entire Agreement.

This Agreement sets forth the complete, sole and entire agreement between the parties on the subject matter herein and supersedes any and all other agreements, negotiations, discussions, proposals, or understandings, whether oral or written, previously entered into, discussed or considered by the parties.

Sue 11/18/13
Initial and Date

-5-
IN WITNESS WHEREOF, the undersigned has executed this Agreement as a sealed instrument as of the date written below.

/s/ Sue Cammarata

Signature

Sue Cammarata

Name (Please Print)

Address: 630 N. State St. # 1106
Chicago IL

Date: 11/20/13

-6-
Dear Dr. Duffy,

Thank you for your interest in career opportunities at Rib-X Pharmaceuticals, Inc. (the “Company”). Since we believe your talent would be an asset to our young and dynamic team, we are pleased to offer you the position of Director of Structure Based Design. In this capacity, you will develop and lead the computational chemistry and crystallography groups. You would also establish and lead the information technology and data integration functions. I anticipate your experience and insights into the drug discovery process and your understanding of the power of the structure-based approach would stimulate the fundamental culture of the Rib-X organization. Therefore, to assure you play a substantial role in the formation of the Rib-X culture, you would also be asked to participate in the Rib-X Senior Management Team.

Your compensation will consist of an initial base salary of $10,000.00 (ten-thousand dollars) per month. Based upon your yearly performance, you will also be eligible for an annual bonus of up to 10% of your salary. Additional stock options may also be granted as a component of your annual bonus. You will be paid in accordance with the Company’s normal payroll practices as established or modified from time to time. Currently, salaries are paid on a semi-monthly basis.

You will be eligible to participate in benefits programs to the same extent as, and subject to the same terms, conditions and limitations applicable to, other employees of the Company of similar rank and tenure. These benefits currently include company-subsidized major medical and dental insurance plans, vacation and personal leave, a 401-K program, and an Employee Stock Option Plan (ESOP). The details of the ESOP, including number of options granted to you as a new employee and a vesting schedule, are subject to the approval of the Company’s Board of Directors and Executive Management, which will occur shortly after closing of our Series A round of financing.

The Company requires you to verify that the performance of your position at Rib-X does not and will not breach any agreement entered into by you prior to employment with the Company (i.e., you have not entered into any agreements with previous employers that are in conflict with your obligations to Rib-X). Please provide us with a copy of any such agreements. You will also be required to sign a Nondisclosure and Confidentiality Agreement as a condition of your employment with the Company. A copy of this agreement will be made available to you. Moreover, please provide us, for purposes of completing the I-9 form, sufficient documentation to demonstrate your eligibility to work in the United States.
The above terms are not contractual. They are a summary of our initial employment relationship and are subject to later modification by the Company. Your employment with Rib-X will be “at-will,” meaning that either you or the Company may terminate your employment relationship at any time, for any reason, with or without prior notice. The Company has found that an “at-will” relationship is in the best interests of both the Company and its employees.

Rib-X places great value on its people, and we demonstrate that by providing career growth opportunities in addition to the financial compensation package outlined above. In your case, we believe this position offers you the opportunity to build upon your scientific expertise and extend your expertise in synthetic organic chemistry (Or to the appropriate area) to a drug development process. You will be involved in one or more specific drug discovery projects, and you will interact with a wide range of scientists, technical associates, and executive officers of the company.

Please review the conditions of this job offer carefully. Feel free to call us with any questions you may have. We look forward to learning of your decision concerning this offer by date (usually within 2 weeks).

Sincerely,

/s/ Susan Froshauer, Ph.D.
Susan Froshauer, Ph.D.
CEO, Rib-X Pharmaceuticals
Dear Erin:

You are a key member of the senior management team of Melinta Therapeutics, Inc. (the “Company”). As a result, the Company is providing you with the following benefits in consideration of your continued employment with the Company.

I. Definitions. For the purposes of this Amended and Restated Severance Agreement (this “Agreement”), which is intended to amend and restate your prior Severance Agreement, dated December 1, 2011 (the “Prior Agreement”), capitalized terms shall have the following meanings:

1. “Cause” shall mean:
   (a) your conviction of or your plea of guilty to or confession of an act of fraud, misappropriation or embezzlement or any felony;
   (b) your willful refusal or failure to follow a lawful directive or instruction of the Company’s board of directors or the individual(s) to whom you report;
   (c) in carrying out your duties, you commit material dishonesty or you breach a fiduciary duty to the Company;
   (d) you engage in conduct which causes material injury to the Company, monetarily or otherwise;
   (e) you use illegal substances at any time; or
   (f) you materially breach any Company policies regarding confidentiality, insider trading, any employment agreement with the Company then in effect or your Employee Noncompetition, Nondisclosure and Developments Agreement.

2. “Change in Control” shall mean the date:
   (a) any “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the beneficial owner of our securities representing 50% or more of the total voting power of the Company’s then-outstanding voting securities, pursuant to a transaction which the Company’s board of directors does not approve;
(b) the Company undergoes a merger, reorganization or other consolidation, including the sale of substantially all of the Company’s assets, in which the Company is not the surviving entity and in which the persons holding the Company’s outstanding equity immediately prior to such merger, reorganization or consolidation own less than 50% of the surviving entity’s voting power immediately after the transaction; or

(c) a change in the composition of the Company’s board of directors, as a result of which fewer than a majority of the directors are incumbent directors. Incumbent directors shall mean directors who either (A) were Company directors as of the date of this Agreement, or (B) are elected, or nominated for election, to the Company’s board of directors with the affirmative votes of at least a majority of the incumbent directors at the time of such election or nomination, but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of members to the Company’s board of directors.

And provided further that in each of the foregoing cases, the Change in Control also meets all of the requirements of a “change in the ownership of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(v), a “change in the effective control of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vi) or a “change in the ownership of a substantial portion of the corporation’s assets” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vii).


4. “Disability” shall mean a disability as determined under the Company’s long-term disability plan or program in effect at the time the disability first occurs, or if no such plan or program exists at the time of disability, then a “disability” as defined Section 22(e)(3) of the Code.

5. “Good Reason” shall mean one of the following events has occurred without your consent:
   (a) your annual base salary is decreased;
   (b) your principal place of employment is relocated to a place 35 or more miles away from one of the Company’s locations; or
   (c) the Company breaches the material terms of any employment agreement then in effect or you experience a material adverse change to your primary responsibilities or duties.

And provided further that Good Reason shall not exist unless and until within 90 days after the event giving rise to Good Reason under (a), (b) or (c) above has occurred, you deliver a written termination notice to the Company stating that an event giving rise to Good Reason has occurred and identifying with reasonable detail the event that you assert constitutes Good Reason under (a), (b) or (c) above and the Company fails or refuses to cure or eliminate the event giving rise to Good Reason on or within 30 days after receiving your notice. To avoid doubt, the termination of your employment would become effective at the close of business on the thirtieth day after the Company receives your termination notice, unless the Company cures or eliminates the event giving rise to Good Reason prior to such time.

6. “Termination Date” shall mean the last day of your employment with the Company.

II. Severance Benefits

1. Severance shall be paid to you if your employment is terminated by the Company (except for termination for Cause or due to death or a Disability) or if you, of your own initiative, terminate your employment for Good Reason (in accordance with the notice and cure provisions in this Agreement), provided that the termination of your employment also constitutes a “separation from service” as defined by Code Treasury Regulation § 1.409A-1(b).
2. In the event you are eligible for severance, the Company shall make a cash payment (the “Severance Payment”) to you in an amount equal to twelve months of your annual base salary (less applicable withholdings) on a payroll basis (provided, however, that if you terminate your employment for Good Reason based on a reduction in your annual base salary, then the annual base salary to be used in calculating the Severance Payment shall be your annual base salary in effect immediately prior to such reduction in annual base salary). If you are covered under the Company’s group medical and dental coverage as of the Termination Date, and if you are eligible to continue such coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), the Company will reimburse the employer portion of the premium costs (consistent with the Company’s policy for active employees) of such continuation coverage until the earlier of (i) the end of the twelfth month following the Termination Date; or (ii) the date that you become eligible for coverage under another group health plan.

3. The Severance Payment will only be made in exchange for a general release to be executed by you, which becomes enforceable and irrevocable within 60 days of your Termination Date, of all claims against the Company, its subsidiaries, and its and their officers, directors and representatives, in a form satisfactory to the Company. The Severance Payment shall begin within ten days after the execution by you of the general release and expiration without revocation of any applicable revocation periods under such general release, provided that, if the 60 day period during which the release is required to become effective and irrevocable begins in one calendar year and ends in another calendar year, the Severance Payment shall be made in the second calendar year.

4. You shall not be required to mitigate the amount of the Severance Payment or any other benefit provided under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Agreement be reduced (except as provided in this Agreement) by any compensation earned by you as the result of other employment, by retirement benefits, or be offset against any amount claimed to be owed by you to the Company or otherwise (except for any required withholding taxes); provided, that if the Company makes any other severance payments to you under any other program or agreement, such amounts shall be offset against the payments the Company is obligated to make pursuant to this Agreement.

III. Pro-Rated Bonus upon Change in Control

If, within six (6) months of the effective date of a Change in Control, you are terminated without Cause or you resign for Good Reason, you will be entitled to the pro-rata portion of the annual bonus for the year in which the termination of your employment occurs, based on the number of months of completed employment up to the Termination Date, payable no later than March 1 of the following year, in one lump-sum amount (less required withholdings).

IV. Miscellaneous.

1. Section 409A Compliance. The payments and benefits provided for in Section II of this Agreement constitute an involuntary separation plan pursuant to Treas. Reg. § 1.409A-1(n), and thus is not “non-qualified deferred compensation” subject to Section 409A of the Code. To the extent that any of the payments or benefits provided for in Section II are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the Code, however, the following interpretations apply: Any termination of your employment triggering payment of benefits under Section II must constitute a “separation from service” under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of your employment does not constitute a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by you to the Company or any of its parents, subsidiaries or affiliates at the time your employment terminates), any benefits payable under Section II that constitute deferred compensation under Section 409A of the Code shall be delayed until after the date of a subsequent event constituting a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h). For purposes of
clarification, this Section shall not cause any forfeiture of benefits on your part, but shall only act as a delay until such time as a “separation from service” occurs. Further, if you are a “specified employee” (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date a separation from service becomes effective, any benefits payable under Section II that constitute non-qualified deferred compensation under Section 409A of the Code shall be delayed until the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) the date of your death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) your death, the Company shall pay you (or your estate) in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid you prior to that date under Section II of this Agreement. It is intended that each installment of the payments and benefits provided under Section II of this Agreement shall be treated as a separate “payment” for purposes of Section 409A of the Code. Neither the Company nor you shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

2. Employee’s Obligations. Upon the termination of employment, you shall promptly deliver to the Company all property of the Company and all material documents, data and other items which may be in your possession or under your control and which relate in a material way to the business or affairs of the Company or its subsidiaries, and no copies of any such documents or any part thereof shall be retained by you. Any post-employment obligations you may have pursuant to separate agreements supplement but do not supersede this Agreement and shall survive as provided for in such separate agreements.

3. Entire Agreement. This Agreement and any employment letter or confidentiality and noncompetition and equity agreements previously executed by you covers the entire understanding of the parties as to the subject matter hereof, superseding all prior understandings and agreements related hereto, including, but not limited to, the Prior Agreement. No modification or amendment of the terms and conditions of this Agreement shall be effective unless in writing and signed by the parties or their respective duly authorized agents.

4. Governing Law. This Agreement shall be governed by the laws of the State of New York, without giving effect to any principles of conflicts of laws.

5. Successors and Assigns. This Agreement may be assigned by the Company upon a sale, transfer or reorganization of the Company. Upon a Change in Control, the Company shall require the successor to assume the Company’s rights and obligations under this Agreement. The Company’s failure to do so shall constitute a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, permitted assigns, legal representatives and heirs.
Kindly indicate your acceptance of the foregoing by signing and dating this Agreement as noted below, and returning one fully executed original to my attention.

Very truly yours,

Melinta Therapeutics, Inc.

Dr. Eugene Sun
Chief Executive Officer

By: /s/ Dr. Eugene Sun

ACCEPTED AND AGREED:

Erin Duffy

/s/ Erin Duffy

[NAME]

SEPTEMBER 12, 2017

DATE
EMPLOYEE NONCOMPETITION, NONDISCLOSURE AND DEVELOPMENTS AGREEMENT

This Employee Noncompetition, Nondisclosure and Developments Agreement (the “Agreement”) is entered into by and between the undersigned employee and Rib-X Pharmaceuticals, Inc., its parents, affiliates and subsidiaries (the “Company”).

WHEREAS, the Company is in negotiations with investors to obtain critical financing, which is necessary for the continued operation of the Company;

WHEREAS, my execution of this Agreement is a condition of the investors’ provision of financing to the Company;

WHEREAS, in the absence of such financing, my employment with the Company, and my salary and benefits as a consequence thereof, would cease; and

WHEREAS, the Company agrees to provide me with two weeks’ notice prior to termination from employment and/or payment in lieu of such notice;

NOW THEREFORE, in consideration of the covenants herein, my continued employment with the Company, the Company’s provision of two weeks’ notice of termination, and for other good and valuable consideration, I hereby covenant and agree as follows:

1. Best Efforts. During the period of my employment by the Company, I shall devote my full time and best efforts to the business of the Company, and I shall neither pursue any business opportunity outside the Company nor take any position with any organization other than the Company without the written approval of the Chief Executive Officer or his/her designee.

2. Noncompetition. During the period of my employment by the Company, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, engage in any business or activity that is in competition with the products or services being created, developed, manufactured, marketed, distributed or sold by the Company in (a) the State of Connecticut, (b) the States of New York, Massachusetts and Connecticut, (c) the continental United States of America, (d) the United States and Europe or (e) worldwide. For one year following the termination of my employment, regardless of the reasons for my termination, I will refrain from management of or participating in research programs at or on behalf of any entity in areas related to antimicrobials targeted to the Ribosome and in areas related to specific chemical approaches or series the Company is engaged in during my employment or in which the Company is planning to engage. In the case of areas of business unrelated to antimicrobials, for one year following the termination of my employment, regardless of the reasons for my termination, I will refrain from management of or participating in any such non-antimicrobial programs which are under prosecution at the company or in which the Company is planning to engage.

3. Nonsolicitation of Customers. During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, solicit or do business with any customer of the Company or any potential customer of the Company (i) with whom I have had contact or (ii) about whom I obtained information, or became familiar with through Confidential Information (as defined in Paragraph 5), during the course of my employment with the Company.
4. **Nonsolicitation of Employees.**

   (a) During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for the termination, I will not, in any manner, hire or engage, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to hire or engage, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of my termination.

   (b) During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for the termination, I will not, in any manner, solicit, recruit or induce, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to solicit, recruit or induce, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of my termination, to leave his or her employment, relationship or engagement with the Company.

5. **Nondisclosure.** I shall not at any time, whether during or after the termination of my employment, reveal to any person or entity any Confidential Information except to employees of the Company who need to know such Confidential Information for the purposes of their employment, or as otherwise authorized by the Company in writing. The term “Confidential Information” shall include any information concerning the organization, business or finances of the Company or of any third party which the Company is under an obligation to keep confidential that is maintained by the Company as confidential. Such Confidential Information shall include, but is not limited to, trade secrets or confidential information respecting inventions, products, designs, methods, know-how, techniques, systems, processes, specifications, blueprints, engineering data, software programs, works of authorship, customer lists, customer information, financial information, pricing information, personnel information, business plans, projects, plans and proposals. I shall keep confidential all matters entrusted to me and shall not use or attempt to use any Confidential Information except as may be required in the ordinary course of performing my duties as an employee of the Company, nor shall I use any Confidential Information in any manner which may injure or cause loss or may be calculated to injure or cause loss to the Company, whether directly or indirectly.

6. **Assignment of Developments.**

   (a) If at any time or times during my employment, I shall (either alone or with others) make, conceive, create, discover, invent or reduce to practice any Development that (i) relates to the business of the Company or any customer of or supplier to the Company or any of the products or services being developed, manufactured or sold by the Company or which may be used in relation therewith; or (ii) results from tasks assigned to me by the Company; or (iii) results from the use of premises or personal property (whether tangible or intangible) owned,
leased or contracted for by the Company, then all such Developments and the benefits thereof are and shall immediately become the sole and absolute property of the Company and its assigns, as works made for hire or otherwise. The term “Development” shall mean any invention, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, trade secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright, trademark or similar statutes (including, but not limited to, the Semiconductor Chip Protection Act) or subject to analogous protection). I shall promptly disclose to the Company (or any persons designated by it) each such Development. I hereby assign all rights (including, but not limited to, rights to inventions, patentable subject matter, copyrights and trademarks) I may have or may acquire in the Developments and all benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without disclosing to others the same, all available information relating thereto (with all necessary plans and models) to the Company.

(b) Excluded Developments. I represent that the Developments identified in the Appendix, if any, attached hereto comprise all the Developments that I have made or conceived prior to my employment by the Company, which Developments are excluded from this Agreement. I understand that it is only necessary to list the title of such Developments and the purpose thereof but not details of the Development itself. IF THERE ARE ANY SUCH DEVELOPMENTS TO BE EXCLUDED, THE UNDERSIGNED SHOULD INITIAL HERE; OTHERWISE IT WILL BE DEEMED THAT THERE ARE NO SUCH EXCLUSIONS. /s/ EMD

7. Further Assurances. I shall, during my employment and at any time thereafter, at the request and cost of the Company, promptly sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized officers may reasonably require:

(a) to apply for, obtain, register and vest in the name of the Company alone (unless the Company otherwise directs) patents, copyrights, trademarks or other analogous protection in any country throughout the world relating to a Development and when so obtained or vested to renew and restore the same; and

(b) to defend any judicial, opposition or other proceedings in respect of such applications and any judicial, opposition or other proceeding, petition or application for revocation of any such patent, copyright, trademark or other analogous protection.

If the Company is unable, after reasonable effort, to secure my signature on any application for patent, copyright, trademark or other analogous protection or other documents regarding any legal protection relating to a Development, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright or trademark registrations or any other legal protection thereon with the same legal force and effect as if executed by me.

Erin Noncompete 1-8-02
8. **Employment At Will.** I understand that this Agreement does not constitute an implied or written employment contract and that my employment with the Company is on an “at-will” basis. Accordingly, I understand that either the Company or I may terminate my employment at any time, for any or no reason, with or without prior notice.

9. **Severability.** I hereby agree that each provision and the subparts of each provision herein shall be treated as separate and independent clauses, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses of the Agreement. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear. I hereby further agree that the language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either of the parties.

10. **Amendments; Waiver.** Any amendment to or modification of this Agreement, or any waiver of any provision hereof, shall be in writing and signed by the Company. Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

11. **Survival.** This agreement shall be effective as of the date entered below. My obligations under this Agreement shall survive the termination of my employment regardless of the manner of such termination and shall be binding upon my heirs, executors, administrators and legal representatives.

12. **Assignment.** The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. I may not assign this Agreement.

13. **Representations.**
   
   (a) I represent that my employment with the Company and my performance of all of the terms of this Agreement do not and will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I shall not enter into, any agreement either written or oral in conflict herewith.

   (b) I agree that the restrictions set forth in paragraph 2 hereof are reasonable and necessary to protect specific business interests of the Company. I agree that any breach of this Agreement by me will cause irreparable damage to the Company and that in the event of such breach the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation of my obligations hereunder. The Company may apply for such injunctive relief in any court of competent jurisdiction without the necessity of posting any bond or other security.

Erin Noncompete 1-8-02

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14. **Governing Law; Forum Selection Clause.** This Agreement and any claims arising out of this Agreement (or any other claims arising out of the relationship between the parties) shall be governed by and construed in accordance with the laws of the State of Connecticut and shall in all respects be interpreted, enforced and governed under the internal and domestic laws of such state, without giving effect to the principles of conflicts of laws of such state. Any claims or legal actions by one party against the other shall be commenced and maintained in any state or federal court located in such state, and I hereby submit to the jurisdiction and venue of any such court.

15. **Entire Agreement.** This Agreement sets forth the complete, sole and entire agreement between the parties on the subject matter herein and supersedes any and all other agreements, negotiations, discussions, proposals, or understandings, whether oral or written, previously entered into, discussed or considered by the parties.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as a sealed instrument as of the date first above written.

/s/ Erin M. Duffy
Signature

Erin M. Duffy
Name (Please Print)

Date: 01.09.2001

Address: 349 River Road
Deep River, CT 06417

Erin Noncompete 1-8-02
February 5, 2016

John Temperato
President and Chief Operating Officer
Melinta Therapeutics, Inc.

RE: Severance Agreement

Dear John:

Effective as of February 16, 2016, you will be a key member of the senior management team of Melinta Therapeutics, Inc. (the “Company”). As a result, the Company is providing you with the following benefits in consideration of your employment with the Company.

I. Definitions. For the purposes of this Severance Agreement (this “Agreement”), capitalized terms shall have the following meanings:

1. “Cause” shall mean:
   (a) your conviction of or your plea of guilty to or confession of an act of fraud, misappropriation or embezzlement or any felony;
   (b) your willful refusal or failure to follow a lawful directive or instruction of the Company’s board of directors or the individual(s) to whom you report;
   (c) in carrying out your duties, you commit material dishonesty or you breach a fiduciary duty to the Company;
   (d) you engage in conduct which causes material injury to the Company, monetarily or otherwise;
   (e) you use illegal substances at any time; or
   (f) you materially breach any Company policies regarding confidentiality, insider trading, any employment agreement with the Company then in effect or your Employee Noncompetition, Nondisclosure and Developments Agreement.

2. “Change in Control” shall mean the date:
   (a) any “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the beneficial owner of our securities representing 50% or more of the total voting power of the Company’s then-outstanding voting securities, pursuant to a transaction which the Company’s board of directors does not approve;
   (b) the Company undergoes a merger, reorganization or other consolidation, including the sale of substantially all of the Company’s assets, in which the Company is not the
surviving entity and in which the persons holding the Company’s outstanding equity immediately prior to such merger, reorganization or consolidation own less than 50% of the surviving entity’s voting power immediately after the transaction; or

(c) a change in the composition of the Company’s board of directors, as a result of which fewer than a majority of the directors are incumbent directors. Incumbent directors shall mean directors who either (A) were Company directors as of the date of this Agreement, or (B) are elected, or nominated for election, to the Company’s board of directors with the affirmative votes of at least a majority of the incumbent directors at the time of such election or nomination, but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of members to the Company’s board of directors.

And provided further that in each of the foregoing cases, the Change in Control also meets all of the requirements of a “change in the ownership of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(v), a “change in the effective control of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vi) or a “change in the ownership of a substantial portion of the corporation’s assets” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vii).


4. “Disability” shall mean a disability as determined under the Company’s long-term disability plan or program in effect at the time the disability first occurs, or if no such plan or program exists at the time of disability, then a “disability” as defined Section 22(e)(3) of the Code.

5. “Good Reason” shall mean one of the following events has occurred without your consent:

(a) your annual base salary is decreased;

(b) your principal place of employment is relocated to a place 35 or more miles away from one of the Company’s locations; or

(c) the Company breaches the material terms of any employment agreement then in effect or you experience a material adverse change to your primary responsibilities or duties.

And provided further that Good Reason shall not exist unless and until within 90 days after the event giving rise to Good Reason under (a), (b) or (c) above has occurred, you deliver a written termination notice to the Company stating that an event giving rise to Good Reason has occurred and identifying with reasonable detail the event that you assert constitutes Good Reason under (a), (b) or (c) above and the Company fails or refuses to cure or eliminate the event giving rise to Good Reason on or within 30 days after receiving your notice. To avoid doubt, the termination of your employment would become effective at the close of business on the thirtieth day after the Company receives your termination notice, unless the Company cures or eliminates the event giving rise to Good Reason prior to such time.

6. “Termination Date” shall mean the last day of your employment with the Company.

II. Severance Benefits

1. Severance shall be paid to you if your employment is terminated by the Company (except for termination for Cause or due to death or a Disability) or if you, of your own initiative, terminate your employment for Good Reason (in accordance with the notice and cure provisions in this Agreement), provided that the termination of your employment also constitutes a “separation from service” as defined by Code Treasury Regulation § 1.409A-1(h).
2. In the event you are eligible for severance, the Company shall make a cash payment (the "Severance Payment") to you in an amount equal to six months of your annual base salary (less applicable withholdings) on a payroll basis (provided, however, that if you terminate your employment for Good Reason based on a reduction in your annual base salary, then the annual base salary to be used in calculating the Severance Payment shall be your annual base salary in effect immediately prior to such reduction in annual base salary). If you are covered under the Company’s group medical and dental coverage as of the Termination Date, and if you are eligible to continue such coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), the Company will reimburse the employer portion of the premium costs (consistent with the Company’s policy for active employees) of such continuation coverage until the earlier of (i) the end of the sixth month following the Termination Date; or (ii) the date that you become eligible for coverage under another group health plan.

3. The Severance Payment will only be made in exchange for a general release to be executed by you, which becomes enforceable and irrevocable within 60 days of your Termination Date, of all claims against the Company, its subsidiaries, and its and their officers, directors and representatives, in a form satisfactory to the Company. The Severance Payment shall begin within ten days after the execution by you of the general release and expiration without revocation of any applicable revocation periods under such general release, provided that, if the 60 day period during which the release is required to become effective and irrevocable begins in one calendar year and ends in another calendar year, the Severance Payment shall be made in the second calendar year.

4. You shall not be required to mitigate the amount of the Severance Payment or any other benefit provided under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Agreement be reduced (except as provided in this Agreement) by any compensation earned by you as the result of other employment, by retirement benefits, or be offset against any amount claimed to be owed by you to the Company or otherwise (except for any required withholding taxes); provided, that if the Company makes any other severance payments to you under any other program or agreement, such amounts shall be offset against the payments the Company is obligated to make pursuant to this Agreement.

III. Pro-Rated Bonus upon Change in Control

If, within six (6) months of the effective date of a Change in Control, you are terminated without Cause or you resign for Good Reason, you will be entitled to the pro-rata portion of the annual bonus for the year in which the termination of your employment occurs, based on the number of months of completed employment up to the Termination Date, payable no later than March 1 of the following year, in one lump-sum amount (less required withholdings).

IV. Miscellaneous.

1. Section 409A Compliance. The payments and benefits provided for in Section II of this Agreement constitute an involuntary separation plan pursuant to Treas. Reg. § 1.409A-1(n), and thus is not "non-qualified deferred compensation" subject to Section 409A of the Code. To the extent that any of the payments or benefits provided for in Section II are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the Code, however, the following interpretations apply: Any termination of your employment triggering payment of benefits under Section II must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of your employment does not constitute a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by you to the Company or any of its parents, subsidiaries or affiliates at the time your employment terminates), any benefits payable under Section II that constitute deferred compensation under Section 409A of the Code shall be delayed until after the date of a subsequent event constituting a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h). For purposes of

Page 3 of 5
clarification, this Section shall not cause any forfeiture of benefits on your part, but shall only act as a delay until such time as a “separation from service” occurs. Further, if you are a “specified employee” (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date a separation from service becomes effective, any benefits payable under Section II that constitute non-qualified deferred compensation under Section 409A of the Code shall be delayed until the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) the date of your death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) your death, the Company shall pay you (or your estate) in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid you prior to that date under Section II of this Agreement. It is intended that each installment of the payments and benefits provided under Section II of this Agreement shall be treated as a separate “payment” for purposes of Section 409A of the Code. Neither the Company nor you shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

2. Employee’s Obligations. Upon the termination of employment, you shall promptly deliver to the Company all property of the Company and all material documents, data and other items which may be in your possession or under your control and which relate in a material way to the business or affairs of the Company or its subsidiaries, and no copies of any such documents or any part thereof shall be retained by you. Any post-employment obligations you may have pursuant to separate agreements supplement but do not supersede this Agreement and shall survive as provided for in such separate agreements.

3. Entire Agreement. This Agreement and any employment or confidentiality and non-competition and equity agreements previously executed by you covers the entire understanding of the parties as to the subject matter hereof, superseding all prior understandings and agreements related hereto. No modification or amendment of the terms and conditions of this Agreement shall be effective unless in writing and signed by the parties or their respective duly authorized agents.

4. Governing Law. This Agreement shall be governed by the laws of the State of New York, without giving effect to any principles of conflicts of laws.

5. Successors and Assigns. This Agreement may be assigned by the Company upon a sale, transfer or reorganization of the Company. Upon a Change in Control, the Company shall require the successor to assume the Company’s rights and obligations under this Agreement. The Company’s failure to do so shall constitute a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, permitted assigns, legal representatives and heirs.
Kindly indicate your acceptance of the foregoing by signing and dating this Agreement as noted below, and returning one fully executed original to my attention.

Very truly yours,

Melinta Therapeutics, Inc.

By: ________________________________

ACCEPTED AND AGREED:

[Signature]

JOHN TEMPERATO

2.9.2016

DATE
EMPLOYEE NONCOMPETITION,
NONDISCLOSURE AND DEVELOPMENTS AGREEMENT

This Employee Noncompetition, Nondisclosure and Developments Agreement (the “Agreement”) is entered into as of February 16, 2016 (the “Effective Date”) by and between John Temperato the undersigned employee and Melinta Therapeutics, Inc., its parents, affiliates and subsidiaries (the “Company”).

NOW THEREFORE, in consideration of my employment by the Company and of the covenants herein, my employment with the Company, and for other good and valuable consideration, I hereby covenant and agree as follows:

1. Best Efforts.

During the period of my employment by the Company, I shall devote my full time and best efforts to the business of the Company, and I shall neither pursue any business opportunity outside the Company nor take any position with any organization other than the Company without the written approval of the Chief Executive Officer or his or her designee.

2. Noncompetition.

During the period of my employment by the Company, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, engage in any business or activity that is in competition with the products or services being created, developed, manufactured, marketed, distributed or sold by the Company in (a) the State of Connecticut, (b) the States of New York, Massachusetts, Connecticut and Illinois, (c) the continental United States of America, (d) the United States and Europe or (e) worldwide. For one year following the termination of my employment, regardless of the reasons for my termination, I will refrain from management of or participation in programs at or on behalf of any entity in areas related to antimicrobials or in areas related to specific chemical approaches or series the Company is engaged in during my employment or in which the Company is planning to engage or has in the past engaged. In the case of areas of business unrelated to antimicrobials, for one year following the termination of my employment, regardless of the reasons for my termination, I will refrain from management of or participating in any such non-antimicrobial programs which are under prosecution at the Company, in which the Company is planning to engage or has in the past engaged in.


During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, solicit or do business with any customer of the Company or any potential customer of the Company (i) with whom I have had contact or (ii) about whom I obtained information, or became familiar with through Confidential Information (as defined in Paragraph 5), during the course of my employment with the Company.

Initial and Date

2.9.2016
4. Nonsolicitation of Employees.

(a) During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for the termination, I will not, in any manner, hire or engage, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to hire or engage, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of my termination.

(b) During the period of my employment by the Company and for one year following the termination of my employment, regardless of the reasons for the termination, I will not, in any manner, solicit, recruit or induce, or assist any company or business organization by which I am employed or which is directly or indirectly controlled by me to solicit, recruit or induce, any person who is or was employed by the Company (or is or was an agent, representative, contractor, project consultant or consultant of the Company) at the time of my termination, to leave his or her employment, relationship or engagement with the Company.

5. Nondisclosure.

I shall not at any time, whether during or after the termination of my employment, reveal to any person or entity any Confidential Information except to employees of the Company who need to know such Confidential Information for the purposes of their employment, or as otherwise authorized by the Company in writing. The term “Confidential Information” shall include any information concerning the organization, business or finances of the Company or of any third party which the Company is under an obligation to keep confidential that is maintained by the Company as confidential. Such Confidential Information shall include, but is not limited to, trade secrets or confidential information respecting inventions, products, designs, methods, know-how, techniques, systems, processes, specifications, blueprints, engineering data, software programs, works of authorship, customer lists, customer information, financial information, pricing information, personnel information, business plans, projects, plans and proposals. I shall keep confidential all matters entrusted to me and shall not use or attempt to use any Confidential Information except as may be required in the ordinary course of performing my duties as an employee of the Company, nor shall I use any Confidential Information in any manner which may injure or cause loss or may be calculated to injure or cause loss to the Company, whether directly or indirectly.

6. Assignment of Developments.

(a) If at any time or times during my employment, I shall (either alone or with others) make, conceive, create, discover, invent or reduce to practice any Development that (i) relates to the business of the Company or any customer of or supplier to the Company or any of the products or services being developed, manufactured or sold by the Company or which may be used in relation therewith; or (ii) results from tasks assigned to me by the Company; or (iii) results from the use of premises or personal property (whether tangible or intangible) owned, leased or contracted for by the Company, then all such Developments and the benefits thereof are
and shall immediately become the sole and absolute property of the Company and its assigns, as works made for hire or otherwise. The term “Development” shall mean any invention, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, trade secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright, trademark or similar statutes (including, but not limited to, the Semiconductor Chip Protection Act) or subject to analogous protection). I shall promptly disclose to the Company (or any persons designated by it) each such Development. I hereby assign all rights (including, but not limited to, rights to inventions, patentable subject matter, copyrights and trademarks) I may have or may acquire in the Developments and all benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without disclosing to others the same, all available information relating thereto (with all necessary plans and models) to the Company.

(b) Excluded Developments. I represent that the Developments identified in the Appendix, if any, attached hereto comprise all the Developments that I have made or conceived prior to my employment by the Company and that are owned or controlled by me, which Developments are excluded from this Agreement. I understand that it is only necessary to list the title of such Developments and the purpose thereof but not details of the Development itself. If no Developments are identified in the Appendix, it will be deemed that there are no such exclusions.

7. Further Assurances.

I shall, during my employment and at any time thereafter, at the request and cost of the Company, promptly sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized officers may reasonably require:

(a) to apply for, obtain, register and vest in the name of the Company alone (unless the Company otherwise directs) patents, copyrights, trademarks or other analogous protection in any country throughout the world relating to a Development and when so obtained or vested to renew and restore the same; and

(b) to defend any judicial, opposition or other proceedings in respect of such applications and any judicial, opposition or other proceeding, petition or application for revocation of any such patent, copyright, trademark or other analogous protection.

If the Company is unable, after reasonable effort, to secure my signature on any application for patent, copyright, trademark or other analogous protection or other documents regarding any legal protection relating to a Development, whether because of my physical or mental incapacity or for any other reason whatsoever, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and steady to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright or trademark registrations or any other legal protection thereon with the same legal force and effect as if executed by me.
8. **Employment At Will.**

I understand that this Agreement does not constitute an implied or written employment contract and that my employment with the Company is on an “at-will” basis. Accordingly, I understand that either the Company or I may terminate my employment at any time, for any or no reason.

9. **Severability.**

I hereby agree that each provision and the subparts of each provision herein shall be treated as separate and independent clauses, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses of this Agreement. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity, subject or otherwise so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear. I hereby further agree that the language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either of the parties.

10. **Amendments; Waiver.**

Any amendment to or modification of this Agreement, or any waiver of any provision hereof, shall be in writing and signed by the Company. Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

11. **Survival.**

This agreement shall be effective as of the Effective Date. My obligations under this Agreement shall survive the termination of my employment regardless of the manner of such termination and shall be binding upon my heirs, executors, administrators and legal representatives.

12. **Assignment.**

The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. I may not assign this Agreement.

13. **Representations.**

(a) I represent that my employment with the Company and my performance of all of the terms of this Agreement do not and will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I shall not enter into, any agreement either written or oral...
in conflict herewith. I agree that in the course of my employment with the Company, if the Company requests that I undertake activities that will cause me to use Confidential Information of my prior employer, I will inform the Company of that fact.

(b) I agree that the restrictions set forth in Paragraph 2 hereof are reasonable and necessary to protect specific business interests of the Company. I agree that any breach of this Agreement by me will cause irreparable damage to the Company and that in the event of such breach the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation of my obligations hereunder. The Company may apply for such injunctive relief in any court of competent jurisdiction without the necessity of posting any bond or other security.


This Agreement and any claims arising out of this Agreement (or any other claims arising out of the relationship between the parties) shall be governed by and construed in accordance with the laws of the State of Delaware and shall in all respects be interpreted, enforced and governed under the internal and domestic laws of such state, without giving effect to the principles of conflicts of laws of such state. Any claims or legal actions by one party against the other shall be commenced and maintained in any state or federal court located in such state, and I hereby submit to the jurisdiction and venue of any such court.

15. Entire Agreement.

This Agreement sets forth the complete, sole and entire agreement between the parties on the subject matter herein and supersedes any and all other agreements, negotiations, discussions, proposals, or understandings, whether oral or written, previously entered into, discussed or considered by the parties.

[Signature to appear on the following page.]
IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the Effective Date.

John Temperato
Address: 9900 Cape Scott Ct.
         Raleigh, NC 27614
Date: 2.9.2016
August 29, 2017

John Temporato
9900 Cape Scott Court
Raleigh, NC 27614

RE: Amended and Restated Severance Agreement

Dear John:

You are a key member of the senior management team of Melinta Therapeutics, Inc. (the “Company”). As a result, the Company is providing you with the following benefits in consideration of your continued employment with the Company.

1. Definitions. For the purposes of this Amended and Restated Severance Agreement (this “Agreement”), which is intended to amend and restate your prior Severance Agreement, dated February 5, 2016 (the “Prior Agreement”), capitalized terms shall have the following meanings:

   1. “Cause” shall mean:
      
      (a) your conviction of or your plea of guilty to or confession of an act of fraud, misappropriation or embezzlement or any felony;
      
      (b) your willful refusal or failure to follow a lawful directive or instruction of the Company’s board of directors or the individual(s) to whom you report;
      
      (c) in carrying out your duties, you commit material dishonesty or you breach a fiduciary duty to the Company;
      
      (d) you engage in conduct which causes material injury to the Company, monetarily or otherwise;
      
      (e) you use illegal substances at any time; or
      
      (f) you materially breach any Company policies regarding confidentiality, insider trading, any employment agreement with the Company then in effect or your Employee Noncompetition, Nondisclosure and Developments Agreement.

   2. “Change in Control” shall mean the date:

      (a) any “person” or “group” (as such terms are used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the beneficial owner of our securities representing 50% or more of the total voting power of the Company’s then-outstanding voting securities, pursuant to a transaction which the Company’s board of directors does not approve;
the Company undergoes a merger, reorganization or other consolidation, including the sale of substantially all of the Company’s assets, in which the Company is not the surviving entity and in which the persons holding the Company’s outstanding equity immediately prior to such merger, reorganization or consolidation own less than 50% of the surviving entity’s voting power immediately after the transaction; or

(c) a change in the composition of the Company’s board of directors, as a result of which fewer than a majority of the directors are incumbent directors. Incumbent directors shall mean directors who either (A) were Company directors as of the date of this Agreement, or (B) are elected, or nominated for election, to the Company’s board of directors with the affirmative votes of at least a majority of the incumbent directors at the time of such election or nomination, but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of members to the Company’s board of directors.

And provided further that in each of the foregoing cases, the Change in Control also meets all of the requirements of a “change in the ownership of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(v), a “change in the effective control of a corporation” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vi) or a “change in the ownership of a substantial portion of the corporation’s assets” within the meaning of Treasury Regulation § 1.409A-3(i)(5)(vii).


4. “Disability” shall mean a disability as determined under the Company’s long-term disability plan or program in effect at the time the disability first occurs, or if no such plan or program exists at the time of disability, then a “disability” as defined Section 22(e)(3) of the Code.

5. “Good Reason” shall mean one of the following events has occurred without your consent:

(a) your annual base salary is decreased;

(b) your principal place of employment is relocated to a place 35 or more miles away from one of the Company’s locations; or

(c) the Company breaches the material terms of any employment agreement then in effect or you experience a material adverse change to your primary responsibilities or duties.

And provided further that Good Reason shall not exist unless and until within 90 days after the event giving rise to Good Reason under (a), (b) or (c) above has occurred, you deliver a written termination notice to the Company stating that an event giving rise to Good Reason has occurred and identifying with reasonable detail the event that you assert constitutes Good Reason under (a), (b) or (c) above and the Company fails or refuses to cure or eliminate the event giving rise to Good Reason on or within 30 days after receiving your notice. To avoid doubt, the termination of your employment would become effective at the close of business on the thirtieth day after the Company receives your termination notice, unless the Company cures or eliminates the event giving rise to Good Reason prior to such time.

6. “Termination Date” shall mean the last day of your employment with the Company.

II. Severance Benefits

1. Severance shall be paid to you if your employment is terminated by the Company (except for termination for Cause or due to death or a Disability) or if you, of your own initiative, terminate your employment for Good Reason (in accordance with the notice and cure provisions in this Agreement), provided that the termination of your employment also constitutes a “separation from service” as defined by Code Treasury Regulation § 1.409A-1(h).
2. In the event you are eligible for severance, the Company shall make a cash payment (the “Severance Payment”) to you in an amount equal to twelve months of your annual base salary (less applicable withholdings) on a payroll basis (provided, however, that if you terminate your employment for Good Reason based on a reduction in your annual base salary, then the annual base salary to be used in calculating the Severance Payment shall be your annual base salary in effect immediately prior to such reduction in annual base salary). If you are covered under the Company’s group medical and dental coverage as of the Termination Date, and if you are eligible to continue such coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), the Company will reimburse the employer portion of the premium costs (consistent with the Company’s policy for active employees) of such continuation coverage until the earlier of (i) the end of the twelfth month following the Termination Date; or (ii) the date that you become eligible for coverage under another group health plan.

3. The Severance Payment will only be made in exchange for a general release to be executed by you, which becomes enforceable and irrevocable within 60 days of your Termination Date, of all claims against the Company, its subsidiaries, and its and their officers, directors and representatives, in a form satisfactory to the Company. The Severance Payment shall begin within ten days after the execution by you of the general release and expiration without revocation of any applicable revocation periods under such general release, provided that, if the 60 day period during which the release is required to become effective and irrevocable begins in one calendar year and ends in another calendar year, the Severance Payment shall be made in the second calendar year.

4. You shall not be required to mitigate the amount of the Severance Payment or any other benefit provided under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment or benefit provided for in this Agreement be reduced (except as provided in this Agreement) by any compensation earned by you as the result of other employment, by retirement benefits, or be offset against any amount claimed to be owed by you to the Company or otherwise (except for any required withholding taxes); provided, that if the Company makes any other severance payments to you under any other program or agreement, such amounts shall be offset against the payments the Company is obligated to make pursuant to this Agreement.

III. Pro-Rated Bonus upon Change in Control

If, within six (6) months of the effective date of a Change in Control, you are terminated without Cause or you resign for Good Reason, you will be entitled to the pro-rata portion of the annual bonus for the year in which the termination of your employment occurs, based on the number of months of completed employment up to the Termination Date, payable no later than March 1 of the following year, in one lump-sum amount (less required withholdings).

IV. Miscellaneous.

1. Section 409A Compliance. The payments and benefits provided for in Section II of this Agreement constitute an involuntary separation plan pursuant to Treas. Reg. § 1.409A-1(n), and thus is not “non-qualified deferred compensation” subject to Section 409A of the Code. To the extent that any of the payments or benefits provided for in Section II are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the Code, however, the following interpretations apply: Any termination of your employment triggering payment of benefits under Section II must constitute a “separation from service” under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of your employment does not constitute a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h) (as the result of further services that are reasonably anticipated to be provided by you to the Company or any of its parents, subsidiaries or affiliates at the time your employment terminates), any benefits payable under Section II that constitute deferred compensation under Section 409A of the Code shall be delayed until after the date of a subsequent event constituting a separation of service under Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation § 1.409A-1(h). For purposes of
clarification, this Section shall not cause any forfeiture of benefits on your part, but shall only act as a delay until such time as a “separation from service” occurs. Further, if you are a “specified employee” (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date a separation from service becomes effective, any benefits payable under Section II that constitute non-qualified deferred compensation under Section 409A of the Code shall be delayed until the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) the date of your death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (i) the business day following the six-month anniversary of the date your separation from service becomes effective, and (ii) your death, the Company shall pay you (or your estate) in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid you prior to that date under Section II of this Agreement. It is intended that each installment of the payments and benefits provided under Section II of this Agreement shall be treated as a separate “payment” for purposes of Section 409A of the Code. Neither the Company nor you shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

2. Employee’s Obligations. Upon the termination of employment, you shall promptly deliver to the Company all property of the Company and all material documents, data and other items which may be in your possession or under your control and which relate in a material way to the business or affairs of the Company or its subsidiaries, and no copies of any such documents or any part thereof shall be retained by you. Any post-employment obligations you may have pursuant to separate agreements supplement but do not supersede this Agreement and shall survive as provided for in such separate agreements.

3. Entire Agreement. This Agreement and any employment letter or confidentiality and noncompetition and equity agreements previously executed by you covers the entire understanding of the parties as to the subject matter hereof, superseding all prior understandings and agreements related hereto, including, but not limited to, the Prior Agreement. No modification or amendment of the terms and conditions of this Agreement shall be effective unless in writing and signed by the parties or their respective duly authorized agents.

4. Governing Law. This Agreement shall be governed by the laws of the State of New York, without giving effect to any principles of conflicts of laws.

5. Successors and Assigns. This Agreement may be assigned by the Company upon a sale, transfer or reorganization of the Company. Upon a Change in Control, the Company shall require the successor to assume the Company’s rights and obligations under this Agreement. The Company’s failure to do so shall constitute a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors, permitted assigns, legal representatives and heirs.
Kindly indicate your acceptance of the foregoing by signing and dating this Agreement as noted below, and returning one fully executed original to my attention.

Very truly yours,

Melinta Therapeutics, Inc.

Eugene Sun

By: /s/ Eugene Sun

ACCEPTED AND AGREED:

John Temporato

/s/ John Temporato

[NAME]

9.5.2017

DATE
EXHIBIT 10.14

AMENDED AND RESTATED LICENSE AGREEMENT

This Amended and Restated License Agreement (this “Agreement”) is made this first of May, 2017 (the “Amendment Effective Date”), by and between Wakunaga Pharmaceutical Co., Ltd. (hereinafter referred to as “WAKUNAGA”), a corporation duly organized and existing under the laws of Japan and having its principal office at 5-36, Miyahara 4-chome, Yodogawa-Ku, Osaka, Japan and Melinta Therapeutics, Inc. (formerly known as Rib-X Pharmaceuticals, Inc. and hereinafter referred to as “MELINTA”), a corporation duly organized and existing under the laws of Delaware, U.S.A. and having its principal office at 300 George Street, Suite 301, New Haven, Conn., 06511 U.S.A., and amends and restates in its entirety the License Agreement dated May 12, 2006 by and between WAKUNAGA and MELINTA, as previously amended (the “2006 Agreement”).

WHEREAS, WAKUNAGA has developed the Compound as hereinafter defined and owns or has rights to certain patents, technologies, trade secrets including know-how and other valuable proprietary information relating thereto, and

WHEREAS, WAKUNAGA and Abbott Laboratories (hereinafter referred to as “Abbott”), an Illinois corporation having its principal place of business at 100 Abbott Park Road, Abbott Park, IL. 60064-3500, U.S.A., for the causes from changing Abbott’s business policy with respect to the pharmaceutical field, terminated the license agreement dated 1st December, 1999, under which Abbott was granted by WAKUNAGA the exclusive license to develop, make, use, sell and import the Compound and pharmaceutical products containing such Compound in a certain territory under WAKUNAGA’s patents and proprietary information; and

WHEREAS, Abbott has transferred to WAKUNAGA certain technical information including governmental permits for the Compound and related pharmaceutical product candidates, accompanied by documentation, data and other information related to the Compound and the pharmaceutical product candidates, which have been developed, acquired and/or used by Abbott during the term of the Abbott Agreement and Abbott has granted to WAKUNAGA a perpetual and exclusive license, with a right for WAKUNAGA to sublicense to any third party, to all technologies and intellectual property of Abbott relevant to the Compound and related Products, and

WHEREAS, MELINTA has, under the Option Agreement executed between WAKUNAGA and MELINTA on October 31, 2005, gained access to patents, trade secrets and proprietary information, which are owned and/or licensed by WAKUNAGA and/or Abbott, for studying the possibility of the development and manufacture of the Compound and the development, manufacture and sale of certain pharmaceutical products containing the Compound, and

WHEREAS, MELINTA has exercised its option right and obtained from WAKUNAGA the exclusive licenses and rights in the Territory as hereinafter defined under certain patents and other proprietary rights for the purpose of developing and commercializing the Compound and the Products as hereinafter defined pursuant to the 2006 Agreement, and

WHEREAS, subject to all the terms and conditions of the 2006 Agreement, WAKUNAGA granted to MELINTA the exclusive licenses and rights with respect to the Compound, patents, technologies, trade secrets, data and other proprietary information relating thereto for the research, development, manufacture, use and sale of the Compound and the Products, and
WHEREAS, AbbVie Inc. ("AbbVie"), having its principal place of business at 1 North Waukegan Road, North Chicago, IL 60064 is the successor-in-interest to Abbott’s rights and obligations with respect to the Abbott Patents and Abbott Proprietary Information, and

WHEREAS, the Parties desire to amend and restate the 2006 Agreement in its entirety and to enter into this Agreement, pursuant to which the rights and obligations of the Parties shall be set forth and agreed upon as of the date hereof.

Now, therefore, it is agreed as follows:

**Article 1. Definitions**

For the purposes of this License Agreement the following definitions shall apply:

1.1 Abbott Agreement: shall mean the license agreement between WAKUNAGA and Abbott regarding the license of the development, manufacture, use, sale and import of the Compound and the pharmaceutical preparations containing the Compound, effective as of 1st December, 1999, as amended by the parties and as terminated as of January 27, 2006 pursuant to the Termination Agreement.

1.2 Abbott Patents: shall mean Abbott’s patents and/or patent applications (including without limitation, patents or patent applications constituting divisions, continuations, continuations-in-part, reissues, reexaminations, substitutions, extensions or renewals of the patents or applications aforesaid or additions or supplementary protection certificates with respect thereto, and any and all foreign counterparts of any of the foregoing) only to the extent that such patents cover the Compound and/or Product as hereinafter defined, as to which Abbott has granted to WAKUNAGA a license (or similar rights), with the right to grant sublicenses, to research, have researched, develop, have developed, make, have made, use, have used, import, have imported, market, have marketed, offer for sale, sell and have sold the Compound and/or Products in any countries of the world. The Abbott Patents filed by Abbott as of the Effective Date are listed and attached hereto as Appendix 1 hereof, which Appendix 1 shall be updated and/or corrected by WAKUNAGA from time to time, as appropriate, and provided to MELINTA. Abbott Patents shall not include the scope of any such patent right that extends beyond the Compounds or Products.

1.3 Abbott Proprietary Information: shall mean technical know-how and regulatory documents including but not limited to any Abbott Permits, specifically acquired or developed by Abbott for use solely with the Compound and/or Products generated by or available at Abbott (but which does not include any Abbott Proprietary Information that, in Abbott’s sole determination, has application outside the Compound or Products), and as to which Abbott has granted to WAKUNAGA a license (or similar rights), with the right to grant sublicenses, to research, have researched, develop, have developed, make, have made, use, have used, import, have imported, market, have marketed, offer for sale, sell and have sold the Compound and/or Products in any countries of the world.
1.4  **Additional Wakunaga Patents:** shall mean all patents and/or patent applications other than Wakunaga Patents (including without limitation, patents or patent applications constituting divisions, continuations, continuations-in-part, reissues, reexaminations, substitutions, extensions or renewals of the patents or applications aforesaid or additions or supplementary protection certificates with respect thereto, and any and all foreign counterparts of any of the foregoing) acquired or owned by WAKUNAGA before or during the term of this Agreement that include subject matter necessary for the development or commercialization of the Compound and/or Products contemplated in the license grant provided in Section 2.1. The Additional Wakunaga Patents as of the Effective Date are listed and attached hereto as Appendix 3, which Appendix 3 will be updated and/or corrected from time to time by WAKUNAGA, as appropriate, and provided to MELINTA.

1.5  **Affiliate:** shall mean (a) any Person which directly or indirectly owns, is owned by or is under common ownership with a Party to the extent of at least fifty percent (50%) of the equity (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction or such lesser percentage provided the operational control is held by such Party) having the power to vote on or direct the affairs of the relevant Party or Person, and (b) any Person actually controlled by, controlling or under common control with a Party. For the avoidance of doubt, neither of the Parties shall be deemed to be an Affiliate of the other.

1.6  **Cost of Goods Sold or COGS:** shall mean, with respect to any Product, the fully burdened cost of all resources and operations carried out by or on behalf of MELINTA, including internal and external costs, in order to manufacture, distribute, handle and process such Product, fully packaged and labeled for sale in the applicable country within the Territory, such cost to be established in accordance with generally accepted accounting principles as applied by MELINTA on a consistent basis. For clarity, with respect to any Product or component thereof purchased by MELINTA from a Third Party, “Cost of Goods Sold” or “COGS” for such Product or component shall be the amount actually paid therefor by MELINTA to such Third Party.

1.7  **Commercially Reasonable Efforts:** shall mean, with respect to a Party, the efforts and resources which would be used by that Party consistent with its normal business practices, which shall be at least equivalent to the practices of the pharmaceutical industry for companies of similar size and scope as such Party, in each case with respect to a product or potential product at a similar stage in its development or product life and of similar market potential, taking into account efficacy, safety, the anticipated Regulatory Authority approved labeling, the competitiveness of alternative products in the market place or under development, the patent and other proprietary position of the product, the likelihood of Regulatory Approval, the commercial value of the product and other relevant factors.

1.8  **Compound:** shall mean the quinolone compound, designated by WAKUNAGA’s code name as WQ-3034, designated by Abbott’s code name as ABT-492, and which is known by the chemical name, including inter alia, 1-(6-amino-3,5-difluoro-2-pyridinyl)-8-chloro-6-fluoro-1,4-dihydro-7-(3-hydroxy-1-azetidinyl)-4-oxo-3-quinolinecarboxylic acid, including any salts, hydrates, prodrugs, polymorphs, solvates and other forms thereof.
1.9 Confidential Information: shall mean all secret, confidential or proprietary information or data, whether provided in written, oral, graphic, video, computer or other four’, provided by or on behalf of one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) pursuant to this Agreement or generated pursuant to this Agreement, including information relating to the Disclosing Party’s existing or proposed research, development efforts, patent applications, business or products, the terms of this Agreement and any other materials that have not been made available by the Disclosing Party to the general public. Notwithstanding the foregoing sentence, Confidential Information shall not include any information or materials that:

(a) were already known to the Receiving Party (other than under an obligation of confidentiality), at the time of disclosure by the Disclosing Party to the extent such Receiving Party has documentary evidence to that effect;

(b) were generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure or development, as the case may be, and other than through any act or omission of the Receiving Party in breach of such Receiving Party’s confidentiality obligations under this Agreement;

(d) were subsequently lawfully disclosed to the Receiving Party by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others;

(e) were independently discovered or developed by or on behalf of the Receiving Party without the use of the Confidential Information belonging to the other Party and the Receiving Party has documentary evidence to that effect; or

(f) is approved for release by the Disclosing Party in writing.

1.10 Drug Sales Revenue: shall mean, with respect to any Product purchased from MELINTA by a Sublicensee, (i) the aggregate purchase price received by MELINTA from such Sublicensee for such Product minus (ii) MELINTA’s Cost of Goods Sold of manufacturing, distributing, handling and processing such Product for such Sublicensee.

1.11 Effective Date: shall mean May 12, 2006.

1.12 FDA: shall mean the United States Food and Drug Administration, or any successor agency thereof.

1.13 First Commercial Sale: shall mean the first sale by MELINTA or its Affiliates or Sublicensees of a Product to a Third Party for end use or consumption of such Product in a country in the Territory after the relevant Regulatory Authorities in such country have granted Regulatory Approval of such Product.
1.14 Force Majeure: shall mean any occurrence beyond the reasonable control of a Party that prevents or substantially interferes with the performance by the Party of any of its obligations hereunder, if such occurs by reason of any act of God, flood, fire, explosion, earthquake, strike, lockout, labor dispute, casualty or accident; or war, revolution, civil commotion, acts of public enemies, terrorist attack, blockage or embargo; or any injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government (to the extent such government has ruling authority over such Party) or of any subdivision, authority or representative of any such government; or other similar event, beyond the reasonable control of such Party, if and only if the Party affected shall have used reasonable efforts to avoid such occurrence.

1.15 Indications: shall mean indications for the human and/or veterinary uses of the Products.

1.16 Menarini Territory: shall mean Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Moldova, Monaco, Montenegro, the Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Romania, Russia, San Marin Republic, Serbia, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, Tajikistan, Thailand, Turkey, Turkmenistan, Ukraine, United Kingdom, Uzbekistan, Vatican City and Vietnam, as their boundaries are defined as of the Effective Date, and any successors thereto.

1.17 NDA: shall mean a New Drug Application pursuant to Section 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. Section 355) submitted to the FDA, or any successor application or procedure required for Regulatory Approval to commence sale of a Product.

1.18 Net Sales: shall mean the respective gross amounts invoiced by MELINTA, including its Affiliates or Subcontractors, or Sublicensees on account of respective sales of Products by MELINTA or such Sublicensees, less the total of:
   (a) trade, cash and/or quantity discounts actually allowed or accrued which are not already reflected in the amount invoiced;
   (b) excise, sales, value-added and other consumption taxes, tariffs and custom duties to the extent included in the invoice price and to the extent such taxes are remitted to the applicable taxing authority;
   (c) freight, insurance and other transportation charges to the extent included in the invoice price and separately identified on the invoice or other documentation maintained in the ordinary course of business;

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(d) amounts repaid, credited or accrued by reason of returns, rejections, defects or recalls or because of chargebacks, retroactive price reductions, refunds or billing errors; and

(e) amounts equal to actual write-offs for relevant uncollectible accounts.

1.19 Permits: shall mean any and all permits, approvals and licenses from the appropriate authorities, including but not limited to the U.S. FDA, related to the Compound and/or Products and held by Abbott, including, but not limited to, any registration dossiers developed, acquired and/or used by Abbott as of the Effective Date.

1.20 Person or person: shall mean any individual, firm, corporation, partnership, limited liability company, trust, unincorporated organization or other entity or a government agency or political subdivision thereto, and shall include any successor (by merger or otherwise) of such Person.

1.21 Phase I Clinical Trial: shall mean a controlled clinical trial designed to determine metabolism and pharmacologic actions of the Products in humans, the side effects associated with increasing dosage and early evidence of effectiveness, as more fully described in 21 C.F.R. §312.21(a).

1.22 Phase II Clinical Trial: shall mean a controlled clinical trial designed to evaluate clinical efficacy and safety of the Products as well as to obtain an indication of the dosage regimen required, as more fully described in 21 C.F.R. §312.21(b).

1.23 Phase III Clinical Trial: shall mean a controlled or uncontrolled clinical trial intended to gather the considerable information about effectiveness and safety of the Products in order to evaluate the overall benefit-risk relationship of the Products and to provide an adequate basis for physician labeling, as more fully described in 21 C.F.R. §312.21(c).

1.24 Product or Products: shall mean one or more pharmaceutical preparations for the Indications containing the Compound.

1.25 Proprietary Information: shall mean Wakunaga Proprietary Information and/or Abbott Proprietary Information.

1.26 Prosecution: shall mean the preparation, filing, prosecution, issuance and maintenance (including interference, opposition and similar Third Party proceedings before the relevant patent office) of any patent applications and patents.

1.27 Regulatory Approval: shall mean the technical, medical, scientific and other licenses, registrations, authorizations and approvals (including approvals of NDAs, and foreign equivalents, supplements and amendments, pre- and post-approvals, pricing and Third Party reimbursement approvals, and labeling approvals) of any national, supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity in the Territory, necessary for the development (including the conduct of clinical trials), manufacture, distribution, marketing, promotion, offer for sale, use, import, reimbursement, export and sale of the Products in a regulatory jurisdiction.
1.28 Regulatory Authority: shall mean any national (e.g., the FDA), supra-national, regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity involved in the granting of Regulatory Approval in any country in the Territory.

1.29 Rest of World Territory or ROW Territory: shall mean all countries in the Territory other than: (a) the U.S.; and (b) the Menarini Territory.

1.30 Melinta Proprietary Information: shall mean any information developed by MELINTA or acquired by MELINTA from a Third Party after the Effective Date, in either case, in the course of developing or commercializing Compounds and/or Products pursuant to the licenses granted to MELINTA by WAKUNAGA hereunder and to the extent relating specifically to the Compound or Products and/or development and commercialization plans associated with the same.

1.31 Royalties: shall mean the royalties including running royalties, initial payments, milestone payments or other payments similar thereto, to be paid by MELINTA and received by WAKUNAGA under this Agreement regarding the Wakunaga Patents, the Abbott Patents and/or the Proprietary Information, based upon MELINTA’s and/or Sublicensee’s sales of the Products and in consideration for the grant of the license to MELINTA hereunder.

1.32 Subcontractor: shall mean a Person doing the activities contemplated herein on behalf of a Party, at full cost, account and responsibility of such Party.

1.33 Sublicense: shall mean an agreement by which MELINTA sublicenses all or any part of its rights under the license granted in this Agreement to a Party who is not a Subcontractor.

1.34 Sublicense Agreement: shall mean an agreement by which MELINTA grants a Sublicense to a Third Party (a “Sublicensee”) under the license to the Wakunaga Patents, Additional Wakunaga Patents and/or Abbott Patents granted to MELINTA by WAKUNAGA herein.

1.35 Sublicensee: shall mean any Third Party to which MELINTA grants a Sublicense.

1.36 Sublicense Income: shall mean all payments received by MELINTA from a Sublicensee as consideration for the grant or exercise of rights under a Sublicense of the rights granted to MELINTA under this Agreement, including upfront payments, down payments, initial payments, milestone payments and other payments similar thereto for Sublicenses but excluding the running royalties and sponsored research payments, amounts paid in reimbursement of research and development costs (including without limitation, patent expenses and fees) incurred by MELINTA, and amounts paid by such Sublicensee for equity in MELINTA.
1.37 Termination Agreement: shall mean the written agreement dated as of January 27, 2006 between Abbott and WAKUNAGA terminating the Abbott Agreement.

1.38 Territory: shall mean all countries in the world.

1.39 Third Party: shall mean any Person other than WAKUNAGA, MELINTA and their respective Affiliates.

1.40 Valid Claim shall mean a claim in any unexpired, issued patent which has not been irrevocably abandoned or held to be invalid or unenforceable by a non-appealed or unappealable decision of a court or other authority of competent jurisdiction, and which is not admitted to be invalid through disclaimer or dedication to the public.

1.41 Wakunaga Patents: shall mean all patents and/or patent applications (including without limitation, patents or patent applications constituting divisions, continuations, continuations-in-part, reissues, reexaminations, substitutions, extensions or renewals of the patents or applications aforesaid or additions or supplementary protection certificates with respect thereto, and any and all foreign counterparts of any of the foregoing) acquired or owned by WAKUNAGA before or during the term of this Agreement relating to the Compound and/or the Products. The Wakunaga Patents as of the Effective Date are listed and attached hereto as Appendix 2, which Appendix 2 shall be updated and/or corrected by WAKUNAGA from time to time, as appropriate, and provided to MELINTA.

1.42 Wakunaga Proprietary Information: shall mean (i) the technologies, trade secrets including know-how, and (ii) data and documentation relating to the Compound and/or the Products, which WAKUNAGA acquired, owned and/or possessed prior to or during the term of this Agreement.

**Article 2. Grant of License**

2.1 Exclusive Right and License

As of the Effective Date, WAKUNAGA hereby grants to MELINTA an exclusive right and license, with the right to grant Sublicenses (subject to Section 2.5.) under the Wakunaga Patents and the Wakunaga Proprietary Information to research, have researched, develop, have developed, make, have made, use, have used, import, have imported, export, have exported, market, have marketed, offer for sale, sell and have sold the Compound and/or the Products for the Indications throughout the Territory.

2.2 Non-exclusive Right and License

As of the Effective Date, WAKUNAGA hereby grants to MELINTA a non-exclusive right and license with the right to grant Sublicenses (subject to Section 2.5.) to the Additional Wakunaga Patents to the extent they include subject matter necessary for the development or commercialization of the Compound and/or the Products contemplated in the license described above in Section 2.1, and only within the scope of the license relating to the Compound and/or the Products granted to MELINTA in Section 2.1. This
non-exclusive license shall include the right to research, have researched, develop, have developed, make, have made, use, have used, import, have imported, export, have exported, market, have marketed, offer for sale, sell, and have sold the Compound and/or the Products for the Indications throughout the Territory.

2.3 License to Abbott Patents and Abbott Proprietary Information

As of the Effective Date, WAKUNAGA hereby grants to MELINTA an exclusive right and license, with the right to grant Sublicenses (subject to Section 2.5.) under the Abbott Patents and the Abbott Proprietary Information, within the scope that Abbott, under the Termination Agreement, grants a right and license to WAKUNAGA, to research, have researched, have developed, make, have made, use, have used, import, have imported, market, have marketed, offer for sale, sell and have sold the Compound and/or the Products for the Indications throughout the Territory. As soon as possible following the Effective Date, WAKUNAGA shall transmit all appropriate letters to the FDA and other Regulatory Authorities in the Territory advising of the grant of rights herein, which have been transferred, on an as is basis, by Abbott to WAKUNAGA.

2.4 Use of Sublicensees and Subcontractors

The licenses granted under Sections 2.1, 2.2 and 2.3 shall be deemed to include the right of MELINTA to use its Subcontractors in exercising such rights and in carrying out its obligations under this Agreement and to sublicense such rights, in whole or in part, to one or more Third Parties; provided, that MELINTA shall not grant a Sublicense to market or sell the Compound and/or the Products before MELINTA starts the first Phase III Clinical Trial without the consent of WAKUNAGA, which consent shall not be unreasonably withheld or delayed. MELINTA acknowledges that the grant of a Sublicense shall not relieve MELINTA from its obligations under this Agreement.

2.5 Sublicense by MELINTA

MELINTA has, within the scope of the licenses granted by WAKUNAGA as set forth in Sections 2.1., 2.2. and 2.3., an exclusive right to grant to any Third Party a Sublicense to develop, make, use, sell, export, import and market the Compound and/or Products, under the Wakunaga Patents, Abbott Patents, Proprietary Information and other technical and/or proprietary information, provided that MELINTA shall notify WAKUNAGA and AbbVie of the material aspects of such proposed Sublicense Agreement prior to or promptly after the execution of such Sublicense Agreement. In any Sublicense granted pursuant to this Section 2.5., MELINTA shall further require that the Sublicensee shall notify WAKUNAGA and AbbVie of the material aspects of any proposed Sublicense Agreement prior to or promptly after the execution of such Sublicense Agreement.

Article 3. Technology Transfer

3.1 WAKUNAGA shall transfer as promptly after the Effective Date as possible to MELINTA on an “as is” basis (i) complete copies of all of its files relating to the Wakunaga Patents, (ii) copies of written documentation relating to the Wakunaga Proprietary Information that is reasonably necessary or useful for MELINTA to perform its obligations or exercise its rights under this Agreement, and, to the extent that Abbott transfers same to WAKUNAGA with the right to disclose to MELINTA, (iii) copies of all files relating to the Abbott Patents, and (iv) copies of all Abbott Proprietary Information received pursuant to the Termination Agreement.
3.2 WAKUNAGA shall, to the extent within the scope of the Wakunaga Patents, Wakunaga Proprietary Information, Abbott Patents and/or Abbott Proprietary Information, provide MELINTA with technical support during the term of this Agreement under the conditions set forth in this Section 3.2. WAKUNAGA personnel shall not be required to provide MELINTA or any Sublicensee of MELINTA in excess of ten (10) days of support with respect to the subject matter of this Agreement which may occur at any time following the Effective Date. In the event that, subject to WAKUNAGA’s prior consent after negotiation between the Parties, which consent shall not be unreasonably withheld, WAKUNAGA will provide support in excess of ten (10) days of support, MELINTA hereby agrees to pay or have MELINTA Sublicensee pay WAKUNAGA at the rate of [***] (or such other reasonable rate as notified by WAKUNAGA upon thirty (30) days’ prior written notice) for time spent by WAKUNAGA personnel in connection with any support services requested by MELINTA or any MELINTA Sublicensee. WAKUNAGA personnel for the foregoing technical support may include up to forty (40) hours of time of AbbVie personnel at WAKUNAGA’s sole discretion, or such other amount as agreed by AbbVie, and all such personnel shall sign reasonable and customary confidentiality agreements as reasonably agreed by the Parties.

3.3 WAKUNAGA shall, and shall use reasonable efforts to cause AbbVie to, take all commercially reasonable steps necessary to provide declarations, consents and signatures, as well as perform all other activities reasonably required for the transfer of Proprietary Information as per Sections 3.1 and 3.2 above. The Parties recognize that WAKUNAGA cannot assure MELINTA that AbbVie will comply with all such requests.

Article 4. Coordination of Communications

4.1 Contact Persons

        Promptly, but in no event later than sixty (60) days, following the Effective Date, each of MELINTA and WAKUNAGA shall appoint a person who shall act as a representative (and each Party may replace or temporarily substitute such representative at its sole discretion) who possesses a general understanding of the project contemplated herein and who shall act as its contact person (a “Contact Person”) hereunder. Each Contact Person shall be charged with serving as a contact point for the other Party and coordinating and maintaining a collaborative work environment within and among the Parties to the extent required by this Agreement.

4.2 During the Term of this Agreement, MELINTA and WAKUNAGA may hold joint scientific meetings as described in Section 4.3 for the purpose of exchanging opinions, explanation of current states of the Parties and discussion on technical results, progress, and arrangement of matters regarding MELINTA’s development of Products hereunder.
4.3 Meetings

Both or either of the Contact Persons may call meetings for the purpose set forth in Section 4.2., as reasonably requested by one of the Parties but no more frequently than once every six (6) months unless otherwise mutually agreed. Meetings may be held in person, by telephone or by video conference call, and the location of each meeting shall be as agreed to by the Parties. Each Party is entitled, subject to advance notice to the other Party and no reasonable objection by such Party, to invite a reasonable number of representatives and/or consultants reasonably acceptable to the other Party to attend meetings where appropriate, subject to written agreement by such Persons to be bound by the confidentiality provisions of this Agreement. Each Party shall be responsible for all travel and related costs and expenses for its representatives to participate in or attend meetings pursuant to this Section 4.3.

Article 5. Development

5.1 MELINTA Responsibilities

MELINTA shall be solely responsible for, and shall use Commercially Reasonable Efforts in conducting, all research, pre-clinical and clinical studies, and other development and commercialization activities for the Compound and/or the Products in the Territory. MELINTA shall have sole discretion in determining which Products it will submit for Regulatory Approval, in which countries it will file for Regulatory Approvals of the Products and in which countries it will commercialize such Products.

5.2 Reports

During the Term of this Agreement, every six (6) months following the Effective Date, MELINTA shall provide WAKUNAGA with a written report describing in reasonable detail the current development status of the Compound and the Products, including a summary of all significant new clinical trial results since that last such report and a timetable of anticipated future development activities and milestones which has been or will be conducted by MELINTA, its Affiliates and its Sublicensees.

5.3 Regulatory Matters

5.3.1 All Regulatory Approvals with respect to the Products in the Territory shall be in MELINTA’s, its Affiliate’s or Sublicensee’s name; provided, however, that MELINTA may have Sublicensees obtain all or any of such Regulatory Approvals with respect to the Products pursuant to valid Sublicense Agreements, but MELINTA shall be responsible for any Sublicensee’s activities regarding application for and obtainment of such Regulatory Approvals. MELINTA shall have exclusive control over, and authority and responsibility for, the regulatory strategies relating to the development and commercialization of all Products in the Territory, including: (a) the preparation of all documents submitted to Regulatory

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Authorities and the filing of all submissions relating to Regulatory Approval of Products; and (b) all regulatory actions, communications and meetings with any Regulatory Authority with respect to any Product. Upon the request of MELINTA, WAKUNAGA shall provide to MELINTA such information in its possession relating to the Compound as may be required for the foregoing regulatory activities. Such information shall be provided by WAKUNAGA on an “as is” basis to MELINTA and WAKUNAGA is not responsible for the use of such information by MELINTA, which shall be in MELINTA’s sole discretion.

5.3.2 MELINTA shall be responsible for interfacing, corresponding and meeting with all Regulatory Authorities in the Territory with respect to all Products. Except as required by applicable law, WAKUNAGA shall not communicate directly with the FDA or any other Regulatory Authority or governmental entity in the Territory relating to any Product without the prior written consent of MELINTA. In furtherance thereof; WAKUNAGA shall refer all FDA and other Regulatory Authority and governmental entity communications relating to any Product in the Territory to MELINTA. WAKUNAGA shall cooperate with MELINTA to provide all reasonable assistance and take all actions reasonably requested by MELINTA that are necessary to comply with any law applicable to any Product, including reporting of adverse drug experience reports (and serious adverse drug experiences) to Regulatory Authorities in the Territory.

Article 6. Procurement of Compound

If WAKUNAGA and MELINTA agree that WAKUNAGA will supply Compound, MELINTA will purchase such Compound from WAKUNAGA under terms of a supply agreement that will be negotiated by the Parties in good faith.

Article 7. Consideration

7.1 Milestone Payments. In consideration of the rights, licenses, Wakunaga Patents, Abbott Patents, Proprietary Information, assistance and service to be granted and provided by WAKUNAGA to MELINTA hereunder, MELINTA shall pay the following milestone payments (the “Milestone Payments”) within ten (10) calendar days following the first occurrence, and only the first occurrence of the specified event (whether the applicable milestone is achieved by MELINTA or any of its Sublicensees). For avoidance of doubt, each of the following Milestone Payments shall only be payable one time:

7.1.1 Intentionally Omitted.
7.1.2 Intentionally Omitted.
7.1.3 Intentionally Omitted.
7.1.4 Intentionally Omitted.
7.1.5 Approval of the first Product: [***] upon MELINTA’s or its Sublicensees’ receipt of the Regulatory Approval for First Commercial Sale of the first Product as follows:

(a) Regulatory Approval in the U.S. [***] payable as follows:

<table>
<thead>
<tr>
<th>Event #</th>
<th>Event</th>
<th>Milestone Payment</th>
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<tr>
<td>1</td>
<td>[***] upon which Event 1 occurred</td>
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<td>2</td>
<td>The date [***] upon which Event 1 occurred</td>
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<td>3</td>
<td>The date [***] upon which Event 1 occurred</td>
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(b) Regulatory Approval in the first country other than U.S. [***]

7.1.6 Sales Milestones:

(a) First time attainment of sales greater than or equal to [***]: one-time payment of [***] to be paid when aggregate annual worldwide Net Sales of such Products, for a calendar year, by MELINTA and/or by its Sublicensees are first greater than or equal to [***].

(b) First time attainment of sales greater than or equal to [***]: one-time payment of [***] to be paid when aggregate annual worldwide Net Sales of such Products, for a calendar year, by MELINTA and/or by its Sublicensees are first greater than or equal to [***].

(c) First time attainment of sales greater than or equal to [***]: one-time payment of [***] to be paid when aggregate annual worldwide Net Sales of such Products, for a calendar year, by MELINTA and/or by its Sublicensees are first greater than or equal to [***].
7.2 Running Royalties

In consideration of the rights, licenses, Proprietary Information, assistance and services to be granted and provided by WAKUNAGA to MELINTA hereunder, MELINTA shall, in addition to the Milestone Payments set forth in Section 7.1., pay to WAKUNAGA the following:

7.2.1 U.S and Rest of World Territory

A. During the period that the manufacture, use or sale of a Product in a country is covered by a Valid Claim within any of the Wakunaga Patents or Abbott Patents in such country: Running royalties (a) at the rate of *** of the aggregate annual Net Sales of such Products by MELINTA and/or Sublicensees in the U.S.; and (b) *** of the aggregate annual Net Sales of such Products by MELINTA and/or Sublicensees in the ROW Territory, in each case, calculated on a calendar year basis.

B. On and after the expiration of the last Valid Claim of the Wakunaga Patents and the Abbott Patents in the U.S. or a country within the ROW Territory covering the manufacture, use or sale of a Product in such country, until *** following the date of the First Commercial Sale in such country: Running royalties at the rate of *** of the relevant percentages set forth in Section 7.2.1A of Net Sales of the relevant Products sold in such country.

7.2.2 Menarini Territory

A. In the case where MELINTA (and not a Sublicensee) is selling a Product in a country in the Menarini Territory:

(ii) During the period that the manufacture, use or sale of a Product in a country in the Menarini Territory is covered by a Valid Claim within any of the Wakunaga Patents or Abbott Patents in such country: Running royalties at the rate of *** of the aggregate annual Net Sales of such Product by MELINTA in such country, in each case, calculated on a calendar year basis.

(iii) On and after the expiration of the last Valid Claim of the Wakunaga Patents and the Abbott Patents in a country in the Menarini Territory covering the manufacture, use or sale of a Product in such country, until *** following the date of the First Commercial Sale in such country: Running royalties at the rate of *** of the relevant percentage set forth in Section 7.2.2A(i) of Net Sales of the relevant Products sold in such country.
B. In the case where a Sublicensee is selling a Product in a country in the Menarini Territory:

Running royalties at the rate of [***] of the aggregate annual Net Sales of such Product by such Sublicensee in such country, provided, that in the event that the sum of Drug Sales Revenue and running royalties paid by such Sublicensee to MELINTA in respect of sales of such Product in such country (“Menarini Country Income”) is less than [***] of the aggregate annual Net Sales of such Product in such country, in lieu of running royalties, MELINTA shall pay WAKUNAGA [***] of the Menarini Country Income received with respect to such country, in each case, calculated on a calendar year basis. This Section 7.2.2B shall apply on a country-by-country basis in the Menarini Territory [***], irrespective of whether there is a Valid Claim of the Wakunaga Patents or Abbott Patents in such country.

7.3 Sublicense Income Sharing

MELINTA shall pay to WAKUNAGA the greater of [***] of the Sublicense Income it receives during the term of this Agreement relevant to a given Sublicense Agreement or the cumulative relevant Milestone Payments due under Section 7.1.5 with respect to the subject matter of such Sublicense Agreement. MELINTA shall make payments to WAKUNAGA of such percentage of the Sublicense Income within [***] after MELINTA receives the Sublicense Income, and MELINTA shall pay such relevant Milestone Payments as and when provided under Section 7.1.5 as applicable, unless in either case such amount is not due because it is already covered by a credit resulting from the prior payment of a sufficient amount under this Section 7.3 to satisfy the obligations hereunder. An Example of this calculation is attached as Appendix 4.

Article 8. Payments and Report

8.1 Accounting period

The accounting period for determining running royalty and Menarini Country Income, if any, payments due hereunder shall be every calendar quarter and each such accounting period shall be closed at the end of each March, June, September and December, and within forty (40) days after the end of each accounting period, MELINTA shall pay WAKUNAGA such amounts together with an English language report thereon as provided in Section 8.2 below.

8.2 Statements and Payment

MELINTA shall deliver to WAKUNAGA, within forty (40) days after the end of each calendar quarter, the report setting forth for such calendar quarter the following information for the Products: (i) the Net Sales and, if applicable, Menarini Country Income of such Products on a country-by-country basis; (ii) the basis for any adjustments to the running royalties due to WAKUNAGA on account of the Net Sales of such
Products in any country; (iii) the running royalties and portion, if applicable, of Menarini Country Income due to WAKUNAGA on account of the Net Sales of such Products; and (iv) the exchange rates used in calculating any of the foregoing. The total running royalties and portion, if applicable, of Menarini Country Income due to WAKUNAGA in respect of such calendar quarter, less the amount payable to AbbVie as provided below, shall be remitted at the time such report is made. MELINTA shall make all payments due to WAKUNAGA hereunder by telegraphic transfer in U.S. dollars to the credit of such bank account as WAKUNAGA shall designate to MELINTA in writing at least ten (10) days in advance of any payment. WAKUNAGA acknowledges and agrees that [***] of the running royalties and portion, if applicable, of Menarini Country Income due to WAKUNAGA hereunder are payable to AbbVie pursuant to the Abbott Agreement and hereby authorizes that such payments be paid directly by MELINTA to AbbVie pursuant to a direction letter from AbbVie, by telegraphic transfer in U.S. dollars to the credit of such bank account as AbbVie shall designate to MELINTA in such direction letter at least ten (10) days in advance of any such payment. WAKUNAGA further acknowledges and agrees that, upon MELINTA’s payment of such amount to AbbVie in accordance with such direction letter from AbbVie, MELINTA shall have no further obligation to WAKUNAGA for such amount hereunder and shall be released from any and all liability or other obligation hereunder with respect thereto.

8.3 Taxes and Withholding

Any payments made by MELINTA to WAKUNAGA under this Agreement shall be reduced by the amount required to be paid or withheld pursuant to any applicable law, including United States federal, state or local tax law ("Withholding Taxes"). Any such Withholding Taxes shall be borne solely by WAKUNAGA. MELINTA, as applicable, shall submit to WAKUNAGA reasonable proof of payment of the Withholding Taxes, together with an accounting of the calculations of such taxes, within thirty (30) days after such Withholding Taxes are remitted to the proper authority. The Parties will cooperate reasonably (i) in completing and filing documents required under the provisions of any applicable tax laws or under any other applicable law in connection with the making of any required tax payment or withholding payment, (ii) in connection with any claim to a refund of or credit for any such payment and (iii) in connection with working with tax authorities to avoid or minimize, to the extent legally possible under applicable tax laws, regulations, treaties and the like, any double taxation.

8.4 Currency Exchange

With respect to the Net Sales invoiced or expenses incurred in U.S. Dollars, the Net Sales or expense amounts and the amounts due to WAKUNAGA hereunder shall be expressed in U.S. Dollars. With respect to the Net Sales invoiced or expenses incurred in a currency other than U.S. Dollars, the Net Sales or expense shall be expressed in the domestic currency of the Person making the sale or incurring the expense, together with the U.S. Dollar equivalent, calculated using the official rate of exchange of the currency of such country as quoted by The Wall Street Journal, New York edition, for the last day of the calendar quarter for which the payment is made. If the transfer or the conversion into U.S.
Dollars in any such instance is not lawful or possible, the payment of such part of the royalties as is necessary shall be made by the deposit thereof, in whatever currency is allowable and acceptable by WAKUNAGA, to the credit and account of WAKUNAGA or its nominees in any commercial bank or trust company of its choice located in that country. Prompt notice of any such deposit shall be given by MELINTA to WAKUNAGA.

Article 9. Maintenance of Records

9.1 Maintenance

During the term of this Agreement and for a period of five (5) years thereafter, MELINTA shall maintain, and shall require its respective Affiliates and Sublicensees to maintain, complete and accurate books and records in connection with the sale of the Products for a period of five (5) years from the date of any relevant transaction, as necessary to allow the accurate calculation of the amounts due to WAKUNAGA hereunder, including any records required to calculate any adjustments hereunder. WAKUNAGA shall have the right, no more than once in any calendar year, to engage an independent accounting firm reasonably acceptable to MELINTA and/or the Sublicensee, which shall have the right to examine in confidence the relevant MELINTA and/or Sublicensee records as may be reasonably necessary to determine and/or verify the payments of the Royalties due to WAKUNAGA hereunder as further provided below.

9.2 Audit

Any examination permitted under Section 9.1 shall be conducted by WAKUNAGA or any designee (including AbbVie) reasonably acceptable to MELINTA, and MELINTA and Sublicensees shall make their records available, during normal business hours, after at least fifteen (15) days’ prior written notice to MELINTA or the Sublicensee, as applicable, and such examination shall take place at the facility where such records are maintained. Each such examination shall be limited to pertinent books and records for a period of five (5) years prior to the date of the audit request. Before permitting any independent accounting firm or party other than WAKUNAGA to have access to such books and records, MELINTA may require such independent accounting firm and its personnel involved in such audit to sign a confidentiality agreement (in form and substance reasonably acceptable to MELINTA) as to any confidential information which is to be provided to such accounting firm or to which such accounting firm will have access while conducting the audit under this Section 9.2. The reviewing independent accounting firm will prepare and provide to MELINTA a written report stating whether the reports submitted, if applicable, and amounts paid or charged, as the case may be, are correct or incorrect. WAKUNAGA agrees to hold in strict confidence all information disclosed to it pursuant to this Section 9.2., except to the extent necessary for WAKUNAGA to enforce its rights under this Agreement or if disclosure is required by law. In the event there was an underpayment by MELINTA, hereunder, then MELINTA shall promptly (but in no event later than thirty (30) days after MELINTA’s receipt of the independent auditor’s report so correctly concluding) make payment to WAKUNAGA of any shortfall. WAKUNAGA shall bear the full cost of such audit unless such audit
discloses an underreporting by MELINTA, or an overcharge by WAKUNAGA of more than three percent (3%) of the aggregate amount due WAKUNAGA or charged to MELINTA, respectively, in any twelve (12) month period, and which aggregate incorrect amount is not less than fifty thousand U.S. dollars (US$50,000), in which case, MELINTA shall bear the full cost of such audit.

9.3 Interest on Late Payments

Any failure by a Party to make a payment of any undisputed amount when due hereunder shall obligate such Party to pay interest to the other Party at a rate equal to [***] per month (or the maximum allowed by law, if less), calculated on the basis of a three hundred sixty (360) day year, the interest period commencing on the due date and ending on the payment date.

Article 10. Representations, Warranties and Covenants

10.1 Mutual Representations and Warranties

Each Party hereby represents, warrants and covenants to the other Party as of the Effective Date that:

10.1.1 such Party is a corporation or entity duly organized, validly existing and in good standing under the laws of the country (or applicable subdivision thereof) of incorporation and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof;

10.1.2 such Party is duly authorized, by all requisite corporate action, to execute and deliver this Agreement and the execution, delivery and performance of this Agreement by such Party does not require any shareholder action or approval, and the Person executing this Agreement on behalf of such Party is duly authorized to do so by all requisite corporate action;

10.1.3 no consent, approval, order or authorization of; or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or any Third Party is required on the part of such Party in connection with the valid execution, delivery and performance of this Agreement, except where the failure to obtain any of the foregoing would not have a material adverse impact on the ability of such Party to fulfill its obligations hereunder;

10.1.4 this Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms except as enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights and (ii) equitable principles, in each case of general applicability;
10.1.5 the execution, delivery and performance by such Party of this Agreement and its compliance with the terms and provisions of this Agreement does not and will not conflict with or result in a breach of any of the terms or provisions of (i) any contractual or other obligations of such Party, (ii) the provisions of its charter, bylaws or other organizational documents, or (iii) any order, writ, injunction or decree of any court or governmental authority entered against it or by which it or any of its property is bound, except where such breach or conflict would not have a material adverse impact on the ability of such Party to fulfill its obligations hereunder; and

10.1.6 such Party shall comply in all material respects with all laws, rules and regulations applicable to its performance under this Agreement.

10.2 Additional WAKUNAGA representations, Warranties and Covenants

WAKUNAGA additionally represents, warrants and covenants to MELINTA as of the Effective Date that:

10.2.1 WAKUNAGA has the full right, power and authority to grant, and is not prohibited by the terms of any agreement to which it is a party from granting, the licenses granted to MELINTA under Article 2. hereof;

10.2.2 the Termination Agreement is in full force and effect as of the Effective Date and WAKUNAGA shall not take any action or fail to take any action which would cause such agreement to be modified in any manner that would adversely affect MELINTA's rights hereunder; and MELINTA shall have no liability to make any payments or perform any acts other than as expressly set forth herein as a result of any obligations of WAKUNAGA under the Abbott Agreement or the Termination Agreement;

10.2.3 WAKUNAGA has not granted and will not grant any rights inconsistent with the rights and licenses granted herein;

10.2.4 to the best of WAKUNAGA’s knowledge, as of the Effective Date, the Wakunaga Patents, Additional Wakunaga Patents and Abbott Patents are valid and enforceable;

10.2.5 to the best of WAKUNAGA’s knowledge, as of the Effective Date, WAKUNAGA holds good title to and is the legal and beneficial owner of the Wakunaga Patents, the Additional Wakunaga Patents and the Wakunaga Proprietary Information, free and clear of all liens, security interests, charges and other encumbrances of any kind, and no Third Party has any right, title or interest in the Wakunaga Patents or the Wakunaga Proprietary Information;

10.2.6 to the best of WAKUNAGA’s knowledge, as of the Effective Date, there are no pending claims, judgments or settlements against or owed by WAKUNAGA pending with respect to the Wakunaga Patents, Additional Wakunaga Patents or the Wakunaga Proprietary Information, and, WAKUNAGA has not received written notice of any threatened claims or litigation seeking to invalidate or render unenforceable any of the Wakunaga Patents. During the Term, WAKUNAGA shall promptly notify MELINTA in writing upon learning of any such actual or threatened claim, judgment or settlement;
10.2.7 to the best of WAKUNAGA’s knowledge, as of the Effective Date, there are no inquiries, actions or other proceedings pending before or, threatened by any Regulatory Authority or other government agency with respect to the Wakunaga Proprietary Information or the Compound or any Product, and WAKUNAGA has not received written notice threatening any such inquiry, action or other proceeding; and

10.2.8 as of the Effective Date, WAKUNAGA has no knowledge that the exercise of the licenses granted herein would infringe the patent rights of any Third Party, nor does it have knowledge that any Third Party is infringing any of the Wakunaga Patents or the Abbott Patents.

10.2A As of the Amendment Effective Date, WAKUNAGA has received from AbbVie all consents and approvals necessary to execute this Agreement.

10.3 Additional MELINTA representations, Warranties and Covenants

MELINTA additionally represents, warrants and covenants to WAKUNAGA as of the Effective Date that:

10.3.1 MELINTA has the full right, power and authority to be granted, and is not prohibited by the terms of any agreement to which it is a party from being granted the licenses and rights granted by WAKUNAGA hereunder;

10.3.2 MELINTA has not been previously granted and will not grant any rights inconsistent with the rights and licenses granted by WAKUNAGA to MELINTA herein;

10.3.3 to the best of MELINTA’s knowledge as of the Effective Date, MELINTA has not made any commitment or undertaken any obligation which is reasonably expected to interfere with the full and complete performance of its obligations hereunder, and will not make any such commitment or undertake any such obligation during the term hereof;

10.3.4 as of the Effective Date, there is not any claim or litigation pending or, to the best of MELINTA’s knowledge, threatened against MELINTA, or any lien or encumbrance of any kind that would reasonably be expected to interfere with MELINTA’s complete enjoyment of the rights in the business contemplated herein and under this Agreement;

10.3.5 MELINTA will use Commercially Reasonable Efforts to procure and keep adequate funding so as to fully perform its contractual obligations set forth herein.
10.4 No-Warranty

In no event shall WAKUNAGA be deemed to represent or warrant to MELINTA that approvals or registrations for a Product will be obtained in all or any part of the Territory or that a Product may be commercially or legally marketed in the future.

10.5 Disclaimer of Warranties

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, CONCERNING THE SUCCESS OR POTENTIAL SUCCESS OF THE DEVELOPMENT, COMMERCIALIZATION, MARKETING OR SALE OF ANY PRODUCT. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Article 11. Intellectual Property

11.1 WAKUNAGA’s Intellectual Property

WAKUNAGA shall solely own the Wakunaga Patents, the Additional Wakunaga Patents and the Wakunaga Proprietary Information. WAKUNAGA shall use reasonable efforts to prosecute and maintain the Additional Wakunaga Patents.

11.2 MELINTA’s Intellectual Property

MELINTA shall solely own all right, title and interest in the Melinta Proprietary Information, together with all patent rights and other intellectual property rights therein and, subject only to any express provisions of this Agreement granting rights therein to WAKUNAGA, shall have the right to freely exploit, transfer, license, or encumber its rights thereto.

11.3 Abbott’s Intellectual Property

Both WAKUNAGA and MELINTA hereby confirm that AbbVie shall solely own the Abbott Patents and the Abbott Proprietary Information. WAKUNAGA shall use Commercially Reasonable Efforts to obtain information from AbbVie regarding the status of the prosecution and maintenance of the Abbott Patents and shall provide any such information it receives to MELINTA in a timely manner.

11.4 Prosecution of Wakunaga Patents

In the Territory, MELINTA shall have the right to Prosecute, at its own cost, the Wakunaga Patents, through patent counsel selected by MELINTA and reasonably acceptable to WAKUNAGA. MELINTA shall have the right to credit maintenance fees for such Wakunaga Patents against any fees due WAKUNAGA hereunder. WAKUNAGA and MELINTA shall consult and cooperate with each other regarding the Prosecution of the Wakunaga Patents. If MELINTA does not elect to assume such responsibility, WAKUNAGA shall have the right to continue Prosecution of the Wakunaga Patents at WAKUNAGA’s expense, with input from MELINTA as provided in Sections 11.5 and 11.6, mutatis mutandis.
11.5 Right to Consult

During the Term of this Agreement, in the case of the Prosecution of the Wakunaga Patents by MELINTA, MELINTA shall copy WAKUNAGA, or have WAKUNAGA copied, on all substantive documents relating to Wakunaga Patents received from or to be filed in any patent office in the Territory, within fifteen (15) days of receipt from the patent office and at least fifteen (15) days prior to filing with the patent office, respectively, including copies of each patent application, official action, response to official action, declaration, information disclosure statement, request for terminal disclaimer, request for patent term extension, and request for reexamination. WAKUNAGA may comment on the Prosecution of the Wakunaga Patents and provide such comments to MELINTA patent counsel, and MELINTA shall require its patent counsel to consider in good faith such comments from WAKUNAGA. If WAKUNAGA does not provide its comments with respect to the Prosecution of a patent application and/or patent within the Wakunaga Patents within ten (10) days of receipt of the relevant documents and in no event later than fifteen (15) days prior to the deadline for filing or otherwise responding to the relevant paper in the relevant patent office, MELINTA shall be free to act without consideration of WAKUNAGA’s comments but in good faith.

11.6 Abandonment of Prosecution by MELINTA

In the event that the Wakunaga Patents are being Prosecuted by MELINTA, MELINTA shall notify WAKUNAGA in the event it is unable or unwilling for any reason to Prosecute all or any of the Wakunaga Patents pursuant to Section 11.5. Such notification shall be given within a reasonable period (i.e., with sufficient time for WAKUNAGA to take whatever action may be necessary or desired) prior to the date on which such patent application(s) or patent(s) will lapse or go abandoned, and, in such event, WAKUNAGA shall have the right, but not the obligation, to Prosecute at its own cost the patent rights within such Wakunaga Patents, through patent counsel selected by WAKUNAGA and reasonably acceptable to MELINTA, to the extent such Wakunaga Patents are being Prosecuted in the United States and/or such other countries as the Parties may agree in writing. In the event WAKUNAGA is Prosecuting any Wakunaga Patents pursuant to this Section 11.6, the provisions of Section 11.5 shall apply in favor of MELINTA, mutatis mutandis.

11.7 Patent Term Extensions

To the extent that MELINTA is then Prosecuting the relevant Wakunaga Patents, WAKUNAGA shall have the right to request that MELINTA shall (at WAKUNAGA’s cost and expense and with WAKUNAGA’s cooperation) file all applications and take actions necessary to obtain patent extension pursuant to 35 U.S.C. §156 or like foreign statutes for the Wakunaga Patents in the Territory, which extensions shall be owned by WAKUNAGA. MELINTA shall also have the right to initiate any such action, at
WAKUNAGA’s cost and expense and with WAKUNAGA’s cooperation. If MELINTA declines to pursue such patent extensions, then WAKUNAGA may file all such applications and take all such actions necessary to obtain such patent extensions. MELINTA agrees to sign such further documents and take such further actions as may be requested by WAKUNAGA in this regard.

11.8 Suits for Infringement of the Wakunaga Patents

If WAKUNAGA or MELINTA becomes aware of infringement of any patent included in the Wakunaga Patents by a Third Party in the Territory, such Party shall promptly notify the other Party in writing to that effect and provide a summary of the relevant facts and circumstances known to such Party relating to such infringement ("Infringement Notice"). MELINTA shall have the right, at its sole discretion, to institute, prosecute and control any action or proceeding to restrain infringement of any Wakunaga Patents in the Territory. WAKUNAGA shall have the right, but not the obligation, to be joined as a party plaintiff if necessary to prosecute the action or proceeding and shall provide all reasonable cooperation, including any necessary use of its name, required to prosecute such litigation. MELINTA shall have sole control of any such suit and all negotiations for its settlement or compromise; provided, that MELINTA shall not settle or compromise any such suit or enter into any consent order for the settlement or compromise thereof without the prior written consent of WAKUNAGA, which consent shall not be unreasonably withheld or delayed.

11.9 Step-In Right for WAKUNAGA

If, prior to the expiration of six (6) months from said Infringement Notice, MELINTA is not engaged in active negotiations with such Third Party or has not obtained a discontinuance of an alleged infringement by a Third Party or brought an infringement action or proceeding or otherwise taken appropriate action to abate such infringement, or if MELINTA shall notify WAKUNAGA at any time prior thereto of its intention not to bring suit against an alleged infringer and such infringement is relevant to the Compound and/or the Product in the Territory, then, and in those events only, WAKUNAGA shall have the right, but not be obligated, to institute, prosecute and control any action or proceeding to restrain such infringement. MELINTA agrees to be joined as a party plaintiff if necessary to prosecute the action or proceeding and shall provide all reasonable cooperation, including any necessary use of its name, required to prosecute such litigation. WAKUNAGA shall have sole control of any such suit and all negotiations for its settlement or compromise; provided, that WAKUNAGA shall not settle or compromise any such suit or enter into any consent order for the settlement or compromise thereof without the prior written consent of MELINTA, which consent shall not be unreasonably withheld or delayed.
11.10 Costs and Recoveries from Infringement Action

Each Party shall assume and pay all of its own out-of-pocket costs incurred in connection with any litigation or proceedings described in Sections 11.8. and 11.9., including the fees and expenses of that Party’s counsel. Any recovery obtained by any Party as a result of any proceeding described in Sections 11.8. and 11.9., by settlement or otherwise, shall be applied in the following order of priority: (i) first, to reimburse the instituting Party for all litigation costs in connection with such proceeding paid by that Party and not otherwise recovered; (ii) second, to reimburse the other Party for all litigation costs in connection with such proceeding paid by that Party and not otherwise recovered; and (iii) third, the remainder of the recovery shall be shared 85% to the instituting Party and 15% to the other Party.

11.11 Infringement of Third Party Rights

With respect to any and all Third Party Claims instituted against MELINTA or WAKUNAGA or any of their respective Affiliates or Sublicensees for patent infringement involving the use, sale, license or marketing of the Products in the Territory by MELINTA, its Affiliates or Sublicensees during the Term, MELINTA shall defend and control any action or proceeding with respect to such claim. WAKUNAGA may be represented by its own counsel in any such action and WAKUNAGA may be joined as a party if necessary to defend the action or proceeding and shall provide all reasonable cooperation, including any necessary use of its name, required to defend such litigation. MELINTA shall act as the party in any such suit and all negotiations for its settlement or compromise; provided, that MELINTA shall not settle or compromise any such suit or enter into any consent order for the settlement or compromise thereof without the prior written consent of WAKUNAGA, which consent shall not be unreasonably withheld or delayed.

11.12 Costs and Expenses from Defending an Infringement Action

All out-of-pocket costs and expenses incurred in connection with any litigation or proceedings described in Section 11.11., including the fees and expenses of counsel, shall be borne by the Party taking the action.

11.13 No Warranty by WAKUNAGA

EXCEPT AS EXPRESSLY SET FORTH HEREIN, NOTHING CONTAINED IN THIS AGREEMENT SHALL BE CONSTRUED AS A WARRANTY OR REPRESENTATION BY WAKUNAGA AS TO THE VALIDITY OR SCOPE OF ANY WAKUNAGA PATENTS OR WAKUNAGA PROPRIETARY INFORMATION.

11.14 Abbott Property

With respect to Abbott properties such as Abbott Patents and/or Abbott Proprietary Information, whenever anything in relation to this Agreement occurs, both Parties shall discuss any matter with AbbVie in good faith and find a proper solution so as to reach the satisfaction of AbbVie, MELINTA and WAKUNAGA.
Article 12. Indemnification

12.1 Indemnification by WAKUNAGA

WAKUNAGA shall defend, indemnify and hold harmless MELINTA and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all claims of Third Parties (a “Third Party Claim”), and all associated losses, to the extent arising out of (i) WAKUNAGA’s negligence or willful misconduct in performing any of its obligations under this Agreement, (ii) a breach by WAKUNAGA of any of its representations, warranties, covenants or agreements under this Agreement, or (iii) any claim by AbbVie or its Affiliates for any unpaid running royalties or other amounts due to AbbVie hereunder, to the extent that MELINTA shall have paid such amounts to AbbVie pursuant to a direction letter from AbbVie in accordance with Section 8.2 above; provided, that in all cases referred to in this Section 12.1, WAKUNAGA shall have no liability to MELINTA for any losses of MELINTA to the extent that such losses are caused by (a) the negligence or willful misconduct of MELINTA or its Affiliates or (b) any breach by MELINTA of its representations, warranties, covenants or agreements hereunder, including without limitation as provided in Section 12.2 below.

12.2 Indemnification by MELINTA

MELINTA shall defend, indemnify and hold harmless WAKUNAGA and its Affiliates and each of their officers, directors, shareholders, employees, successors and assigns from and against all Third Party Claims, and all associated losses, to the extent arising out of (i) MELINTA’s and/or its Sublicensee’s negligence or willful misconduct in performing any of its obligations under this Agreement, (ii) a breach by MELINTA of any of its representations, warranties, covenants or agreements under this Agreement, or (iii) the development, commercialization, manufacture, sale and any other disposition of the Products by MELINTA, its Affiliates, Subcontractors or its Sublicensees; provided, that in all cases referred to in this Section 12.2, MELINTA shall have no liability to WAKUNAGA for any losses of WAKUNAGA to the extent such losses were caused by (a) the negligence or willful misconduct of WAKUNAGA or its Affiliates or (b) any breach by WAKUNAGA of its representations, warranties, covenants or agreements hereunder.

12.3 Procedure for Indemnification

Each Party will notify promptly the other if it becomes aware of a Third Party Claim for which indemnification may be sought hereunder and will give such information with respect thereto as the other Party shall reasonably request and as is reasonably available to such Party. If any proceeding (including any governmental investigation) is instituted involving any Party regarding which indemnity may be sought pursuant to Section 12.1 or 12.2, such Party (the “Indemnified Party”) shall not make any admission concerning such claim, but shall promptly notify the other Party (the “Indemnifying Party”) in writing and the Indemnifying Party and Indemnified Party shall meet to discuss how to respond to any claims that are the subject matter of such proceeding. The Indemnifying Party shall not be obligated to indemnify the Indemnified Party to the extent any admission made by the Indemnified Party or any failure by such Party to notify the Indemnifying Party of the Third Party Claim materially prejudices the defense of such claim.
12.4 Defense of Claim

If the Indemnifying Party elects to defend a claim from Third Party, it shall give notice to the Indemnified Party within thirty (30) days after the receipt of the notice from the Indemnified Party of the potential indemnifiable claim which involves (and continues to involve) solely monetary damages; provided, that the Indemnifying Party expressly agrees in such notice that, as between the Indemnifying Party and the Indemnified Party, the Indemnifying Party shall be solely obligated to satisfy and discharge the Third Party claim, subject to the terms, conditions and limitations of this Agreement (the “Litigation Conditions”). Subject to compliance with the Litigation Conditions, the Indemnifying Party shall retain counsel reasonably satisfactory to the Indemnified Party to represent the Indemnified Party and shall pay the fees and expenses of such counsel related to such proceeding. In any such proceeding, the Indemnified Party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless: (i) the Indemnifying Party and the Indemnified Party shall have agreed to the retention of such counsel, or (ii) the named parties to any such proceeding include both the Indemnifying Party and the Indemnified Party and representation of both Parties by the same counsel would be inappropriate due to actual or potential differing interests between them. All such fees and expenses shall be reimbursed as they are incurred. If the litigation conditions are not satisfied within thirty (30) days after notice of the Third Party claim was provided to the Indemnifying Party, then the Indemnified Party shall have the right to control the defense of such Third Party claim and the Indemnifying Party shall have the right to participate in such defense at the Indemnifying Party’s own expense. The Indemnified Party shall not settle any claim for which it is seeking indemnification without the prior consent of the Indemnifying Party which consent shall not be unreasonably withheld. The Indemnified Party shall, if requested by the Indemnifying Party, cooperate in all reasonable respects in the defense of such claim that is being managed and controlled by the Indemnifying Party. The Indemnifying Party shall not, without the written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), effect any settlement of any pending or threatened proceeding in respect of which the Indemnified Party is a Party and indemnity could have been sought hereunder by the Indemnified Party, unless such settlement includes an unconditional release of the Indemnified Party from all liability on claims that are the subject matter of such proceeding.

Article 13. Insurance

13.1 Insurance to be Effected by MELINTA

Immediately upon commencing a clinical trial for any Product during the Term and thereafter for (i) a period of five (5) years after the termination or expiration of this Agreement or (ii) for so long as sales of Product are continuing, whichever is longer, MELINTA shall obtain and/or maintain, respectively, at its sole cost and expense, product liability insurance (including any self-insured arrangements) covering all Third Party claims with respect to the Product developed, manufactured and sold by MELINTA, its Affiliates, Sublicensees and/or Subcontractors, in amounts which are reasonable and customary in the United States pharmaceutical and biotechnology industry for companies of comparable size and activities at the place of business of MELINTA. MELINTA shall provide written proof of the existence of such insurance to WAKUNAGA upon reasonable request.
13.2 Insurance to be Effected by Sublicensees

MELINTA shall cause its Sublicensees, if any, to obtain and maintain product liability insurance with the same manner and effect as set forth in Section 13.1., as applicable.

13.3 Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OF ITS AFFILIATES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY SUCH OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH A BREACH OR ALLEGED BREACH OF THIS AGREEMENT. THE FOREGOING SENTENCE SHALL NOT LIMIT THE OBLIGATIONS OF EITHER PARTY TO INDEMNIFY THE OTHER PARTY FROM AND AGAINST THIRD PARTY CLAIMS UNDER ARTICLE 12.

Article 14. Confidentiality, Publication and Public Announcements

14.1 Confidentiality

Except to the extent expressly authorized by this Agreement or otherwise expressly agreed in writing, MELINTA and WAKUNAGA agree that, until the later of (a) the termination or expiration of this Agreement or (b) five (5) years after the date of disclosure, each of MELINTA or WAKUNAGA, upon receiving or learning of any Confidential Information of the Disclosing Party, shall keep such Confidential Information confidential and otherwise shall not disclose or use such Confidential Information for any purpose other than as provided for in this Agreement. The Receiving Party shall advise its employees and consultants who might have access to the Disclosing Party’s Confidential Information of the confidential nature thereof and agrees that its employees and consultants shall be bound by the terms of this Agreement. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party to any employee who does not have a reasonable need for such information.

14.2 Authorized Disclosure

Notwithstanding the foregoing, each of MELINTA and WAKUNAGA may disclose Confidential Information of the Disclosing Party to a Third Party to the extent such disclosure is reasonably necessary to exercise the rights granted to or retained by it under this Agreement, or to conduct clinical trials as permitted hereunder with respect to Products or in prosecuting patent applications, or prosecuting or defending litigation, or to the extent required to comply with applicable governmental regulations, the requirements of a tax authority, Regulatory Authority or other governmental entity; provided, that if a Party is required by law to make any such disclosure of the Disclosing Party’s Confidential Information, to the extent it may legally do so, it will give
reasonable (under the circumstances) advance notice to the Disclosing Party of such disclosure so as to permit the Disclosing Party to secure, if it so desires, confidential treatment of such Confidential Information prior to its disclosure (whether through protective orders or otherwise). If the Disclosing Party has not filed a patent application with respect to such Confidential Information, it may require the Receiving Party to delay the proposed disclosure (to the extent the Disclosing Party may legally do so), for up to ninety (90) days, to allow for the filing of such an application; provided, that if a disclosure is required by law or order and such a delay is not possible, the Parties shall cooperate to restrict or delay disclosure to the extent possible in order to allow for the filing of such an application or the securing of other protection for such Confidential Information. Further, WAKUNAGA retains a right to disclose to AbbVie any part of Confidential Information including contents of this Agreement, but within and to the extent of necessity to obtain AbbVie’s consent as set forth in Section 2.5 hereof or as otherwise required by the Termination Agreement, subject to AbbVie’s agreement to maintain such information as confidential, and provided that MELINTA shall be given prior notice of the nature and content of any such disclosure to AbbVie.

14.3 Return of Confidential Information

Except as otherwise set forth herein, upon termination (but not expiration) of this Agreement, the Receiving Party shall promptly return all of the Disclosing Party’s Confidential Information, including all reproductions and copies thereof in any medium, except that the Receiving Party may retain one copy for its legal files.

14.4 Unauthorized Use

If a Receiving Party becomes aware or has knowledge of any unauthorized use or disclosure of the Disclosing Party’s Confidential Information, it shall promptly notify the Disclosing Party of such unauthorized use or disclosure.

14.5 Public Announcements

Except as required by applicable laws, treaties and agreements (including securities laws), the Parties agree that the material terms of this Agreement will be considered Confidential Information of both Parties. Notwithstanding the foregoing, (a) either Party may disclose such terms as are required to be disclosed in any publicly-filed financial statements or other public statements, pursuant to applicable laws, regulations and stock exchange rules (e.g., the rules of the U.S. Securities and Exchange Commission, NASDAQ, NYSE or any other stock exchange on which securities issued by either party may be listed); provided, such Party shall provide the other Party with a copy of the proposed text of such statements or disclosure (including any exhibits containing this Agreement) sufficiently in advance of the scheduled release or publication thereof to afford such other Party a reasonable opportunity to review and comment upon the proposed text (including redacted versions of this Agreement), (b) either Party shall have the further right to disclose the material financial terms of this Agreement under a confidentiality obligation no less protective than as set forth in this Agreement, to any potential acquirer, merger partner or potential providers of financing and their advisors,
(c) either Party shall have the further right to disclose the material terms of this Agreement to institutional investors, investment bankers, industry analysts and other providers of financing, provided that such Party shall use all reasonable efforts to protect the confidentiality of such terms, and (d) MELINTA shall have the right to disclose information regarding the development or commercialization status of Products in the Territory to the extent such disclosure is deemed reasonably necessary or desirable by MELINTA or required by applicable laws or stock exchange rules. Neither Party shall make any other statement to the public regarding the execution or any other aspect of the subject matter of this Agreement, except: (i) where a Party reasonably believes disclosure is required under applicable laws or ethical commercial practice, (ii) either Party may use the text of a statement previously approved by the other Party and (iii) except as provided above, neither Party may make statements pertaining to this Agreement and the subject matter hereof including without limitation information on development or commercialization status of Products without the prior review and consent of the CEO or president of the other Party or an individual designated by such person.

The Parties shall discuss and agree (such agreement not to be unreasonably withheld, conditioned or delayed) upon the content and timing of a press release announcing the execution of this Agreement, and neither Party shall issue a press release until such time as the Parties have agreed to such content and timing.

Article 15. Term and Termination

15.1 Term

This Agreement shall become effective on the Effective Date and, unless earlier terminated by mutual agreement of the Parties in writing or pursuant to the relative provisions of this Article, this Agreement shall continue in full force and effect on a country-by-country and product-by-product basis from the Effective Date until the expiration or termination of any obligation of MELINTA to pay any royalties to WAKUNAGA pursuant to Section 7.2 hereof (the “Term”). After any such date in any country, MELINTA shall have a perpetual, fully paid-up license to the relevant rights granted hereunder in such country.

15.2 Acquisition of MELINTA

In the event (a) of a transfer or sale of all or substantially all of MELINTA’s business (whether by asset sale, merger, consolidation, or similar transaction) and (b) the successor or potential successor requires MELINTA to terminate a substantial part of development or commercialization activities hereunder, then WAKUNAGA may terminate this Agreement in its entirety upon ten (10) business days’ advance written notice to MELINTA if MELINTA, its successor or potential successor does not cure such failure within sixty (60) days following such notice.
15.3 Material Breach

Upon a material breach of this Agreement by MELINTA on the one hand, or WAKUNAGA on the other hand (in such capacity, the “Breaching Party”), the other Party (in such capacity, the “Non-Breaching Party”) may provide written notice (a “Breach Notice”) to the Breaching Party specifying the material breach. If (a) such breach is capable of cure and the Breaching Party fails to cure such material breach during the ninety (90) day period (or, if applicable, such longer period, but not to exceed one hundred and eighty (180) days, as would be reasonably necessary for a diligent party to cure such material breach, provided the Breaching Party has commenced and continues its diligent efforts to cure during the initial ninety (90) day period following the date on which the Breach Notice is provided), or (b) if such breach is not capable of cure, then upon expiration of a period of ninety (90) days after the Breach Notice, in such event the Non-Breaching Party may terminate this Agreement on a Product-by-Product and country-by-country basis with respect to the Product and country to which the breach relates. For the purposes of this Section 15.3., material breach shall mean a breach which materially adversely affects the rights under this Agreement of the other Party with respect to the applicable Products and in the applicable country taken in their entirety.

15.4 Bankruptcy

Either Party may, subject to the provisions set forth herein, terminate this Agreement without further action by such Party if, at any time, the other Party shall: (a) file in any court pursuant to any statute a petition for bankruptcy or insolvency, or for reorganization in bankruptcy, or for an arrangement or for the appointment of a receiver, trustee or administrator of the other Party or of its assets; (b) be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof; (c) propose or be a party to any dissolution; or (d) make an assignment for the benefit of its creditors.

15.5 Termination with cause by MELINTA

MELINTA shall have the right to terminate this Agreement on a country-by-country basis and/or Product-by-Product basis or in its entirety at any time upon six (6) months prior written notice to WAKUNAGA with reasonable cause based upon scientific, medical, regulatory or commercial feasibility reasons such as inadequate medical efficacy, safety concerns, restrictions in approved labeling or insufficient price reimbursement, as specifically described by MELINTA in such notice. Notwithstanding any provision of this Agreement to the contrary, in the event that an irrevocable notice of termination of this Agreement, in its entirety, is given by MELINTA to WAKUNAGA pursuant to this Section 15.5, within either the six (6) week period referenced in Section 7.1.2 or the eight (8) month period referenced in Section 7.1.3, MELINTA may tentatively suspend the relevant milestone payment regardless of the effective date of such termination, provided that MELINTA shall not suspend the milestone payment unless WAKUNAGA agrees in writing to the justification of termination by MELINTA at which time, such payments shall no longer be due by MELINTA to WAKUNAGA.
15.6 Continuing Rights of Sublicensees

Upon any termination of this Agreement, each Sublicense previously granted by MELINTA or any of its Affiliates to any Sublicensee shall, at WAKUNAGA’s option, remain in effect and shall become a direct license or sublicense, as the case may be, of such rights by WAKUNAGA to such Sublicensee, subject to the Sublicensee agreeing in writing to assume MELINTA’s terms, conditions and obligations to WAKUNAGA under this Agreement as they pertain to the sublicensed rights, including the payment of the Sublicense Income and/or the Royalties, if any, to WAKUNAGA in respect of Net Sales for sales of Products by such Sublicensee anywhere in the Territory. For avoidance of doubt, in the event this Agreement is terminated and any such Sublicense is assumed by WAKUNAGA, MELINTA shall be deemed to waive the right to receive Sublicense Income from such Sublicensee solely to the extent directly related to the Wakunaga Patents, Additional Wakunaga Patents, Wakunaga Proprietary Information, Abbott Patents and/or Proprietary Information and to transfer or revert such right to WAKUNAGA, and WAKUNAGA shall be entitled to succeed to such right.

15.7 Effect of Expiration or Termination

Upon the expiration of this Agreement or the termination of this Agreement (or relevant portion thereof, if termination is only as to a certain Product and/or country) as provided above:

15.7.1 Expiration

Where the Agreement expires in accordance with Section 15.1., then, in addition to any obligations expressly set forth elsewhere in this Agreement, the licenses granted to MELINTA by WAKUNAGA hereunder shall become fully paid-up, royalty-free, perpetual and irrevocable.

15.7.2 Breach by, Acquisition of or Insolvency of MELINTA or Termination by MELINTA

Where termination is by WAKUNAGA pursuant to Section 15.2., 15.3. or 15.4., or by MELINTA pursuant to Section 15.5., then, in addition to any obligations expressly set forth elsewhere in this Agreement:

(a) the licenses granted to MELINTA by WAKUNAGA hereunder shall terminate;

(b) MELINTA and its Sublicensees may, for a period of six (6) months following termination, continue to sell existing inventory of Products provided that royalties on such Products are paid to WAKUNAGA as provided herein;

(c) MELINTA shall pay any Milestone Payments due for events which are achieved prior to the effective date of termination;

(d) MELINTA shall transfer to WAKUNAGA without any payment all governmental approvals and licenses for the Compound and the Products, including any Regulatory Approvals, and the registration dossiers developed, acquired and/or used by MELINTA in the Territory during the Term of this Agreement, and
MELINTA shall take all necessary procedures, including preparation of official documents, for such transfer at governmental authorities in the Territory by itself or its Sublicensees together with WAKUNAGA or WAKUNAGA’s designee. Such transfer shall be accompanied by documentation, data and information related to the Compound and the Products that can be transferred by MELINTA; and

(e) MELINTA shall grant WAKUNAGA a perpetual, non-royalty bearing, exclusive license, with the right to grant sublicenses, to all Melinta Proprietary Information reasonably necessary for WAKUNAGA, alone or in conjunction with a Third Party to develop and commercialize the Compound and the Products.

15.7.3 Breach by or Insolvency of WAKUNAGA

Where termination is by MELINTA pursuant to Section 15.3. or 15.4., then, in addition to any obligations expressly set forth elsewhere in this Agreement, the licenses granted by WAKUNAGA to MELINTA shall become fully-paid, royalty-free, perpetual and irrevocable; and MELINTA shall be entitled to retain copies of all Wakunaga Proprietary Information and Abbott Proprietary Information as is necessary for MELINTA to exercise its rights hereunder.

15.7.4 Accrued Rights

Expiration or termination of this Agreement pursuant to Article 15 shall not (i) relieve a Party of any obligation accruing to such Party prior to such termination, including without limitation any obligation to make payment, or (ii) result in the waiver of any right or remedy by a Party accruing to such Party prior to such termination.

15.7.5 Confidential Information

Upon any termination or expiration of this Agreement each Party shall promptly return and/or destroy all Confidential Information of the other Party in its possession; provided that each Party shall be entitled to retain any such Confidential Information reasonably necessary to practice any surviving rights hereunder, and that one copy of any such Confidential Information may be retained in the recipient’s legal files for purposes of determining such Party’s obligations hereunder.

Article 16. Miscellaneous

16.1 Assignment

This Agreement may not be assigned or otherwise transferred (in whole or in part, whether voluntarily, by operation of law or otherwise) by either Party without the prior written consent of the other Party (which consent shall not be unreasonably withheld); provided, however, that either Party may assign this Agreement to any Affiliate or to any successor of all or substantially all of its business to which this Agreement relates without such prior written consent, provided further that such successor has existing expertise in the development and/or commercialization of pharmaceutical products. This Agreement shall be binding upon the permitted successors and assigns of the Parties.
16.2 Further Actions

Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

16.3 Force Majeure

Neither Party shall be liable to the other Party for loss or damages, or shall have any right to terminate this Agreement for any default or delay attributable to any Force Majeure; provided, that the Party affected gives prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder for so long as it is thereby disabled from performing such obligations; provided, that such affected Party promptly commences and continues to use its Commercially Reasonable Efforts to cure such disablement as soon as practicable.

16.4 Notices

Notices to WAKUNAGA shall be addressed to:

Wakunaga Pharmaceutical Co., Ltd.
Address: 1624 Shimokotachi, Akitakata, Hiroshima 739-1195, Japan
Attention: Senior Vice President, Head of Research and Development Division
Facsimile No.: +81-826-45-2334
Email: wakunaga_h@wakunaga.co.jp

Notices to MELINTA shall be addressed to:

Melinta Therapeutics, Inc.
Address: 300 George Street, Suite 301, New Haven, Conn., 06511 U.S.A.
Attention: CEO
Facsimile No.: 203 624-5627

Notices to AbbVie pursuant to Section 2.5 shall be addressed to:

AbbVie Inc.
Address: 1 North Waukegan Road, North Chicago, IL 60064, U.S.A.
Attention: Vice President, Legal

Either Party may change the address to which notices shall be sent by giving notice to the other Party in the manner herein provided. WAKUNAGA shall be responsible for notifying MELINTA of any changes to the AbbVie notice address, and shall hold MELINTA harmless from any failure to do so. Any notice required or provided for by the
terms of this Agreement shall be in writing and shall be (a) sent by registered or certified mail, return receipt requested, postage prepaid, (b) sent via a reputable overnight courier service providing evidence, of receipt, or (c) sent by facsimile or email transmission if receipt is confirmed in writing by the recipient, in each case properly addressed in accordance with the paragraphs above. The effective date of any notice shall be the actual date of receipt by the Party receiving the same.

16.5 Amendment

No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party.

16.6 Waiver

No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by a duly authorized officer of the waiving Party.

16.7 Counterparts

This Agreement may be executed in counterparts and such counterparts taken together shall constitute one and the same agreement.

16.8 Descriptive Headings; Certain Conventions

The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement. Unless otherwise expressly provided herein or the context of this Agreement otherwise requires, (a) words of any gender include each other gender, (b) words such as “herein”, “hereof”, and “hereunder” refer to this Agreement as a whole and not merely to the particular provision in which such words appear, (c) words using the singular shall include the plural, and vice versa, (d) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “but not limited to”, “without limitation”, “inter alia” or words of similar import, (e) the word “or” shall be deemed to include the word “and” (e.g., “and/or”), (f) the words “Party” and “Parties” shall mean either singularly or collectively WAKUNAGA and/or MELINTA, the use of these words being a convenience of drafting and their intent and meaning being apparent from their context; and (g) references to “Article,” “Section,” or other subdivision, or to an Appendix, without reference to a document are to the specified provision, Appendix of this Agreement.

16.9 Choice of Law and Jurisdiction

16.9.1 This Agreement shall be interpreted, construed and governed by the laws of the country or the state where arbitration is to be held pursuant to Section 16.9.2.
16.9.2 All disputes or discords which may arise from or in connection with this Agreement which cannot be settled amicably shall be finally settled by arbitration by three arbitrators. One arbitrator shall be appointed by MELINTA, one by WAKUNAGA and together such two arbitrators shall appoint a third arbitrator. If the defendant in such dispute or discord is WAKUNAGA, the arbitration shall take place in Tokyo, Japan in accordance with the Commercial Arbitration Rules of The Japan Commercial Arbitration Association. If the defendant is MELINTA, in Hartford, Conn., U.S.A. in accordance with the Commercial Arbitration Rules of American Arbitration Association. The decision of such arbitration shall be conclusive and binding on both Parties. The language to be used in the arbitral proceedings shall be English and Japanese. The costs of such arbitration shall be borne equally by the Parties.

16.9.3 Notwithstanding the foregoing, both Parties shall be entitled to petition a competent court of Japan or of U.S.A for interim or interlocutory relief; such as temporary restraining orders and preliminary injunctions to protect its right hereunder, then the other Party shall be entitled to file an action, in a competent court of Japan or of the U.S.A., for equitable relief; including without limitation, for specific enforcement of this Agreement, to protect its rights hereunder.

16.10 Severability

If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, the Parties hereto shall substitute, by mutual consent, valid provisions for such invalid, illegal or unenforceable provisions which valid provisions in their economic effect are sufficiently similar to the invalid, illegal or unenforceable provisions that it can be reasonably assumed that the Parties would have entered into this Agreement with such valid provisions. In case such valid provisions cannot be agreed upon, the invalid, illegal or unenforceable provisions of this Agreement shall not affect the validity of this Agreement as a whole, unless the invalid, illegal or unenforceable provisions are of such essential importance to this Agreement that it is to be reasonably assumed that the Parties would not have entered into this Agreement without the invalid, illegal or unenforceable provisions.

16.11 Entire Agreement of the Parties

This Agreement, together with the Appendices hereto, constitutes and contains the complete, final and exclusive understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, understandings and agreements whether oral or written, between the Parties respecting the subject matter hereof.

16.12 Construction

The Parties have participated jointly in the negotiation and drafting of this Agreement in the English language in consultation with advisors proficient in English. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.
16.13 Independent Contractors
The relationship between the Parties created by this Agreement is one of independent contractors and neither Party shall have the power or authority to bind or obligate the other except as expressly set forth in this Agreement.

16.14 Accrued Rights; Surviving Obligations
Unless explicitly provided otherwise in this Agreement, termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights, which shall have accrued to the benefit to any Party prior to such termination, relinquishment or expiration, including damages arising from any breach hereunder. Such termination, relinquishment or expiration shall not relieve any Party from obligations which are expressly indicated to survive termination or expiration of the Agreement, including those obligations set forth in Articles 1., 8., 9., 12., 13., 14. and 16., and Sections 15.6. and 15.7.

16.15 Rights in Bankruptcy
All rights and licenses granted under or pursuant to this Agreement are, and will otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses of rights to “intellectual property” as defined under Section 101 of the United States Bankruptcy Code. The Parties agree that the Parties, as licensees of such rights under this Agreement, will retain and may fully exercise all of their rights and elections under the United States Bankruptcy Code. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against a Party under the United States Bankruptcy Code, the Party hereto that is not a Party to such proceeding will be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, which, if not already in the non-subject Party’s possession, will be promptly delivered to it (a) upon any such commencement of a bankruptcy proceeding upon the non-subject Party’s written request therefor, unless the Party subject to such proceeding elects to continue to perform all of its obligations under this Agreement or (b) if not delivered under clause (a) above, following the rejection of this Agreement by or on behalf of the Party subject to such proceeding upon written request therefor by the non-subject Party.

16.16 Compliance with Export Regulations
None of the Parties shall export any technology licensed to it by the other Party under this Agreement, except in compliance with Japanese or United States, as applicable, export laws and regulations.
16.17 Expenses

Unless otherwise provided herein, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party which shall have incurred the same and the other Party shall have no liability relating thereto.
IN WITNESS WHEREOF, each Party hereto has caused this Agreement in English and in duplicate to be executed by its duly authorized officers or representatives as of the date first above written.

WAKUNAGA: Wakunaga Pharmaceutical Co., Ltd.
Signature: /s/ Kanji Wakunaga
Name: Kanji Wakunaga
Title: President

MELINTA: MELINTA Pharmaceuticals, Inc.
Signature: /s/ Eugene Sun, MD
Name: Eugene Sun, MD
Title: Chief Executive Officer
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MASTER MANUFACTURING SERVICES AGREEMENT

THIS MASTER MANUFACTURING SERVICES AGREEMENT (the “Agreement”) is made as of 1st July 2016 (the “Effective Date”) BETWEEN:

PATHEON UK LIMITED,
a corporation with company number 03764421 existing under the laws of England
of Kingfisher Drive, Covingham, Swindon, SN3 5BZ
(“Patheon”),

- and -

MELINTA THERAPEUTICS, INC.,
a corporation existing under the laws of Connecticut
of 300 George Street, Suite 301, New Haven, CT 06511-6663, USA
(“Client”).

each a “party” and together the “parties”.

THIS AGREEMENT WITNESSES THAT in consideration of the rights conferred and the obligations assumed herein, and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party), and intending to be legally bound the parties agree as follows:

ARTICLE 1
STRUCTURE OF AGREEMENT AND INTERPRETATION

1.1 Master Agreement.

This Agreement establishes the general terms and conditions under which Patheon or any Affiliate of Patheon may perform Manufacturing Services for Client or any Affiliate of Client, at the Manufacturing Site where the Affiliate of Patheon resides. This “master” form of agreement is intended to allow the parties, or any of their Affiliates, to contract for the Manufacture of multiple Products through Patheon’s global network of Manufacturing Sites through the issuance of site specific Product Agreements without having to re-negotiate the basic terms and conditions contained herein.

1.2 Product Agreements.

This Agreement is structured so that a Product Agreement may be entered into by the parties for the Manufacture of a particular Product or multiple Products at a Patheon Manufacturing Site. Each Product Agreement will be governed by the terms and conditions of this Agreement unless the parties to the Product Agreement expressly modify the terms and conditions of this Agreement in the Product Agreement. Unless otherwise agreed by the parties, each Product Agreement will be in the general form and contain the information set forth in Appendix 1 hereto, save that, in the event that it is not possible to enter into a Product Agreement for a particular Territory in the form set forth in Appendix 1 due to the
requirements of Applicable Law or a Regulatory Authority or a local customs office, the parties shall use Commercially Reasonable Endeavours to ensure that the Product Agreement entered into for that Territory adheres as closely as possible to that set forth in Appendix 1 and gives effect to the transactions contemplated by this Agreement.

1.3 Definitions

The following terms will, unless the context otherwise requires, have the respective meanings set out below and grammatical variations of these terms will have corresponding meanings:

“Active Materials” or “API” means the active pharmaceutical ingredients, as well as other excipients or substances (if any), as listed in the Product Agreement on Schedule D;

“Active Materials Credit Value” means the value of the Active Materials for certain purposes of this Agreement, as set forth in a Product Agreement on Schedule D;

“Actual Annual Yield” or “AAY” has the meaning specified in Section 2.2(a);

“Actual Yearly Volume” or “AYV” has the meaning specified in Section 4.2.1;

“Affiliate” means:

(a) a business entity which owns, directly or indirectly, a controlling interest in a party to this Agreement, by stock ownership or otherwise;

or

(b) a business entity which is controlled by a party to this Agreement, either directly or indirectly, by stock ownership or otherwise;

or

(c) a business entity, the controlling interest of which is directly or indirectly common to the majority ownership of a party to this Agreement;

For this definition, “control” means the ownership of shares carrying at least a majority of the votes for the election of the directors of a corporation;

“Annual Product Review Report” means the annual product review report prepared by Patheon or an Affiliate of Patheon as described in Title 21 of the United States Code of Federal Regulations, Section 211.180(e), or any other equivalent report, record, register or publication required to be prepared by Patheon by a Regulatory Authority as set forth in the relevant Product Agreement;

“Annual Report” means the annual report to the FDA which is required to be prepared and filed by Client regarding the Product as described in Title 21 of the United States Code of Federal Regulations, Section 314.81(b)(2), or any other equivalent report, record, register or publication regarding the Product required to be filed by Client by a Regulatory Authority as set forth in the relevant Product Agreement;

“Annual Volume” means the minimum volume of Product to be Manufactured by Patheon or its Affiliates in any Year of this Agreement as set forth in Schedule B;

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“ANVISA” means the national health surveillance agency of Brazil responsible for the regulation and approval of pharmaceutical drugs, sanitary standards and regulation of the food industry in that country;

“Applicable Laws” means (i) for Patheon, in respect of the Manufacture of Products Manufactured at the Manufacturing Sites, the Applicable Laws shall be the Laws of the jurisdiction where the Manufacturing Site is located or such other Laws as are set out in the Product Agreement from time to time, or as are agreed in writing by the parties; and (ii) for Client in respect of the sale, marketing and distribution of the Products, the Applicable Laws shall be the Laws in all jurisdictions where the Products are distributed, sold and marketed or such other Laws as are set out in the Product Agreement from time to time, or as are agreed in writing by the parties;

“Authority” means any governmental or regulatory authority, department, body or agency or any court, tribunal, bureau, commission or other similar body, whether federal, state, provincial, county or municipal;

“Bill Back Items” means the expenses for all third party supplier fees for the purchase or use of columns, standards, tooling, non-standard pallets, PAPR or PPE suits (where applicable), contracted testing services and other project-specific items necessary for Patheon to perform the Manufacturing Services, and which are not included as Components;

“Breach Notice” has the meaning specified in Section 8.2(a);

“Business Day” means a day other than a Saturday, Sunday or a day that is a statutory holiday in the United Kingdom, Italy or the USA;

“Capital Equipment Agreement” means a separate agreement that the parties may enter into that will address responsibility for the purchase of capital equipment and facility modifications that may be required to perform the Manufacturing Services under a particular Product Agreement;

“Certificate of Analysis” means a certificate that meets all applicable requirements of cGMP and the applicable Quality Agreement and is signed by a qualified person pursuant to the Quality Agreement confirming that the Products to which it relates meet the applicable Specifications.

“cGMPs” means, as applicable, all current good Manufacturing practices and standards relating to the manufacture of chemicals, intermediates, bulk products and finished pharmaceutical or biologic products for human use (as appropriate) as required by:

(a) Parts 210 and 211 of Title 21 of the United States’ Code of Federal Regulations;

(b) EC Directive 2003/94/EC together with guidance in Volume 4 (“Guidelines for good manufacturing practices for medicinal products for human and veterinary use”) of the “Rules Governing Medicinal Products in the European Union) (as the same may be amended from time to time);

(c) Division 2 of Part C of the Food and Drug Regulations (Canada);

(d) Law 9782 of 26th January 1999 and subsequent resolutions. (Brazil); and

(e) The equivalent Law in any other relevant country,
together with the latest Health Canada, FDA and EMA guidance documents pertaining to Manufacturing and quality control practice, all as updated, amended and revised from time to time and, in each case, as applicable to the relevant Manufacturing Site or the Product or both in accordance with the relevant Product Agreement;

“Client Intellectual Property” means Intellectual Property generated or derived by Client or its Affiliates before entering into this Agreement, or by Patheon while performing any Manufacturing Services or otherwise generated or derived by Patheon in its business which Intellectual Property is specific to, or dependent upon, Client’s Active Material or Product;

“Client Property” has the meaning specified in Section 8.3(a)(vi);

“Client-Supplied Components” means those Components to be supplied by Client or that have been supplied by Client;

“Commercially Reasonable Endeavours” means, with respect to the endeavours (including financial spend) to be expended by a Party to achieve any objective, all reasonable, diligent commercial efforts to accomplish such objective that a person with operations of a similar scale and standing in the pharmaceutical industry would normally use when conducting an on-going business for its own benefit to accomplish a similar objective under similar circumstances;

“Components” means, collectively, all packaging components, raw materials, ingredients, tangible biological materials, cells, reference standards, assays and media, intermediates, excipients, processing aids and other materials (including labels, product inserts and other labelling for the Products) required to Manufacture the Products in accordance with the Specifications, other than any Active Materials;

“Confidential Information” has the meaning specified in Section 11.1;

“Conforming Product” means Product that complies in all respects, at the time of Delivery to the Client in accordance with this Agreement with the applicable Specifications; cGMPs; Firm Order(s); Manufacturing Licences; Marketing Authorisations or INDs, the quality requirements set out in the Quality Agreement; Applicable Laws, and all other representations and warranties regarding the Product and the Manufacturing Services in this Agreement;

“Conversion Fee” means the Price for performing the Manufacturing Services excluding the cost of Components (including any Client Supplied Components) and the cost of Active Materials;

“CTD” has the meaning specified in Section 7.8(c);

“C-TPAT” has the meaning specified in Section 2.1(f);

“Defective Product” means Product that is not Conforming Product.

“Deficient” or “Defective” means with respect to a Product, that such Product did not, at the time of Delivery, meet the quality requirements set out in this Agreement, the Quality Agreement, the Specifications, the cGMPs or Applicable Laws, and “Defect” shall be construed accordingly.
“Deficiencies” have the meaning specified in Section 7.8(d);

“Deficiency Notice” has the meaning specified in Section 6.1(a);

“Delivery Terms” means (i) in respect of Active Materials and any other Client-Supplied Components Delivered by or on behalf of Client to Patheon’s Manufacturing Site, DDP (Manufacturing Site) Incoterms 2010; and (ii) in respect of each Product, EXW (Manufacturing Site) Incoterms 2010 or such other delivery terms as are set out with respect to such Product in a Product Agreement or as the parties may otherwise agree from time to time, and “Deliver”, “Delivery” and “Delivered” shall be construed accordingly as applicable.

“Delivery Date” means the date scheduled for shipment of Product under a Firm Order as set forth in Section 5.1(d);

“Disclosing Party” has the meaning specified in Section 11.1;

“EMA” means the European Medicines Agency, or any successor agency thereto;

“FDA” means the United States Food and Drug Administration, or any successor agency thereto;

“Firm Orders” have the meaning specified in Section 5.1(c);

“Force Majeure Event” has the meaning specified in Section 13.7;

“GST” has the meaning specified in Section 13.16(a)(iii);

“Health Canada” means the section of the Canadian Government known as Health Canada and includes, among other departments, the Therapeutic Products Directorate and the Health Products and Food Branch Inspectorate;

“Initial Product Term” has the meaning specified in Section 8.1(b);

“Initial Term” has the meaning specified in Section 8.1(a);

“Intellectual Property” includes, without limitation, rights in patents, patent applications, formulae, trademarks, trademark applications, trade-names, Inventions, copyrights, industrial designs, trade secrets, and know how whether registered or unregistered and all rights or forms of protection, anywhere in the world, having equivalent or similar effect to such rights;

“Invention” means information about any innovation, improvement, development, discovery, computer program, device, trade secret, method, know-how, process, technique or the like, whether or not written or otherwise fixed in any form or medium, regardless of the media on which it is contained and whether or not patentable or copyrightable;

“Inventory” means all inventories of Components and work-in-process produced or held by Patheon for the Manufacture of the Products but, for greater certainty, does not include the Active Materials;

“Laws” means to the extent applicable to the parties or their activities under this Agreement, any supra-national, European Union, federal, national, state, municipal or local statute, law,
ordinance, regulation, rule, code, order (whether executive, legislative, judicial or otherwise), judgment, injunction, notice, decree, or other
requirement or rule of law or legal process (including common law), or any other order of, or agreement issued, promulgated or entered into by, any
Regulatory Authority, any applicable codes of conduct, or any rule or requirement of cGMP, each as may be amended from time to time;

“LIBOR” means the London interbank offered rate, being the interest rate offered in the London inter-bank market for three month US dollar
deposits.

“Long Term Forecast” has the meaning specified in Section 5.1(a);

“Marketing Authorisation(s)” means, in respect of a Product, such marketing authorisation, approval, licence, registration or other authorisations
issued by a Regulatory Authority from time to time in connection with the placing of that Product on the market in the relevant Territory (or, as
applicable, a finished product manufactured using that Product), and “Marketing Authorisation” shall be construed accordingly;

“Manufacturing Licence(s)” means any certificates, permits, licences and approvals issued by any relevant Regulatory Authority in connection
with the Manufacturing Services by or on behalf of Patheon or its Affiliates at the Manufacturing Sites;

“Manufacturing Services”, Manufacture” or “Manufacturing” means the manufacturing, planning, purchasing, processing, quality control,
quality assurance, stability testing, and testing, compounding, holding, packaging, storing, waste disposal, releasing and sample retention and
related services, as set forth in this Agreement, required to Manufacture Product or Products using the Active Materials, Components, and Bill Back
Items;

“Manufacturing Site(s)” means the facility (or facilities, as applicable) owned and operated by Patheon or an Affiliate of Patheon where the
Manufacturing Services will be performed as identified in a Product Agreement;

“Materials” means Components and Bill Back Items to the extent required to Manufacture the Products in accordance with the Specifications,
other than the Active Materials;

“Maximum Credit Value” means the maximum value of Active Materials that may be credited by Patheon under this Agreement, as set forth in a
Product Agreement on Schedule D;

“Minimum Order Quantity” means the minimum number of batches of a Product to be produced during the same cycle of Manufacturing as set
forth in a Product Agreement on Schedule B;

“Obsolete Stock” has the meaning specified in Section 5.2(b);

“Patheon Competitor” means a business that derives greater than 50% of its revenues from performing contract pharmaceutical development or
commercial Manufacturing services for third parties which activity is the primary focus of their business;

“Patheon Intellectual Property” means Intellectual Property generated or derived by Patheon before performing any Manufacturing Services,
developed by Patheon while performing the Manufacturing Services, or otherwise generated or derived by Patheon in its business to the extent such
Intellectual Property is not specific to, or dependent upon, Client’s Active Material or
Product including, without limitation, Inventions and Intellectual Property which may apply to Manufacturing processes or the formulation or development of drug products, drug product dosage forms or drug delivery systems unrelated to the specific requirements of the Product(s);

“Price” means the fees to be charged by Patheon for performing the Manufacturing Services, and includes the cost of Components (other than Client-Supplied Components and Active Materials), certain cost items as set forth in a Product Agreement on Schedule B, and annual stability testing fees as set forth in a Product Agreement on Schedule C;

“Product(s)” means the product(s) listed in a Product Agreement on Schedule A;

“Product Agreement” means the agreement between Patheon and Client issued under this Agreement in the form set forth in Appendix 1 (including Schedules A to D) under which Patheon will perform Manufacturing Services at a particular Manufacturing Site;

“Product Claims” have the meaning specified in Section 6.3(c);

“Quality Agreement” means the agreement between the parties entering into a Product Agreement, or between the applicable Affiliate of Patheon and Client if the Manufacturing Services are subcontracted to such Affiliate by Patheon, that sets out the quality assurance standards for the Manufacturing Services to be performed by Patheon for Client;

“Recall” has the meaning specified in Section 6.2(a);

“Recipient” has the meaning specified in Section 11.1;

“Regulatory Approval” means any certificates, permits, licences, registrations or approvals issued by any Regulatory Authority from time to time in respect of the Products including but not limited to licences and approvals for the Manufacture by or on behalf of Patheon at the Manufacturing Sites and for the marketing and sale of the Product in the relevant jurisdictions;

“Regulatory Authority” means any supra-national, European Union, federal, national, state, county, municipal or other governmental, regulatory or administrative agency, authority or other body or any court, arbitral or tribunal with competent jurisdiction, including any responsible for approving, licensing or monitoring the Manufacture, development, marketing, distribution or sale of the Products, including (as applicable), the FDA, EMA, and Health Canada and any other regulatory agencies competent to grant marketing approvals for pharmaceutical products including the Products in the Territory and any successor agency thereto;

“Remediation Period” has the meaning specified in Section 8.2(a);

“Representatives” means a party’s or its Affiliate’s directors, officers, employees, advisers, agents, consultants, subcontractors, service partners, professional advisors, or representatives;

“Resident Jurisdiction” has the meaning specified in Section 13.16(a)(i);

“Shortfall” has the meaning specified in Section 2.2(b);
“Specifications” means the file, for each Product, which is given by Client to Patheon in accordance with the procedures listed in a Product Agreement on Schedule A and which contains documents relating to each Product, including, without limitation:

(a) specifications for Active Materials and Components;

(b) Manufacturing specifications, directions, and process instructions (including Patheon’s standard operating processes and procedures for manufacturing);

(c) storage requirements;

(d) all environmental, health and safety information for each Product including material safety data sheets; and

(e) the finished Product specifications, packaging specifications and shipping requirements for each Product;

all as updated, amended and revised from time to time by Client in accordance with the terms of this Agreement, the Quality Agreement, and the terms of any Regulatory Approvals, including any Manufacturing Licence and any Marketing Authorisation;

“Surplus” has the meaning specified in Section 2.2(c);

“Target Yield” has the meaning specified in Section 2.2(a);

“Target Yield Determination Batches” has the meaning specified in Section 2.2(a);

“Tax” or “Taxes” have the meaning specified in Section 13.16(a);

“Technical Dispute” has the meaning specified in Section 12.2;

“Term” means (i) in respect of this Agreement means the Initial Term and, if applicable, any Continuation Term of this Agreement and (ii) in respect of a Product Agreement means the Initial Product Term and, if applicable any Continuation Product Term;

“Territory” means United States of America and Brazil on the Effective Date and the geographic area described in each Product Agreement from time to time where Products Manufactured by Patheon will be distributed by Client or its designee;

“Third Party Rights” means the Intellectual Property of any third party;

“VAT” has the meaning specified in Section 13.16(d);

“Year” means in the first year of this Agreement or in the first year of a Product Agreement, the period from the Effective Date up to and including December 31 of the same calendar year, and thereafter will mean a calendar year.

“Yearly Forecast Volume” or “YFV” has the meaning specified in Section 4.2.1; and

“Zero Forecast Period” has the meaning specified in Section 5.1(f).
1.4 **Currency.**

Unless otherwise agreed in a Product Agreement, all monetary amounts expressed in this Agreement are in EUROS.

1.5 **Sections and Headings.**

The division of this Agreement into Articles, Sections, Subsections, an Appendix, Schedules and Exhibits and the insertion of headings are for convenience of reference only and will not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to a Section, Appendix, Schedule or Exhibit refers to the specified Section, Appendix, Schedule or Exhibit to this Agreement. In this Agreement, the terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement as a whole and not to any particular part, Section, Appendix, Schedule or Exhibit of this Agreement.

1.6 **Singular Terms.**

Except as otherwise expressly stated or unless the context otherwise requires, all references to the singular will include the plural and vice versa.

1.7 **Appendix 1, Schedules and Exhibits.**

Appendix 1 (including the Schedules thereto) and the following Exhibits are attached to, incorporated in, and form part of this Agreement:

- Appendix 1 — Form of Product Agreement (Including Schedules A to D)
- Exhibit A — Technical Dispute Resolution
- Exhibit B — Quarterly Active Materials Inventory Report
- Exhibit C — Report of Annual Active Materials Inventory Reconciliation and Calculation of Actual Annual Yield
2.1 Manufacturing Services.

From the date of this Agreement Patheon will perform (or procure the performance of, through its Affiliates) the Manufacturing Services to Manufacture the Products for Client for the Territory in each case for the Price. Schedule B to a Product Agreement sets forth a list of cost items that are included in the Price for Products; all cost items that are not included in the Price may comprise additional fees to be paid by Client to the extent the same have been agreed between the parties prior to them being invoiced by Patheon from time to time. Patheon may amend the fees and cost items that are included or excluded in the Price set out in Schedules B and C to a Product Agreement solely as set forth in Article 4.

in performing the Manufacturing Services, Patheon and Client agree that:

(a) Conversion of Active Materials and Components. Patheon will process and Manufacture Active Materials and Components into Product.

(b) Quality Control and Quality Assurance. The parties will enter into the Quality Agreement. Patheon will perform the quality control and quality assurance testing specified in the Quality Agreement. Batch review and release to Client will be the responsibility of Patheon’s quality assurance group. Patheon will perform its batch review and release responsibilities in accordance with Patheon’s standard operating procedures which will comply with Applicable Laws, the Quality Agreement and any other agreed Delivery documentation as set forth in the relevant Product Agreement (which shall include any documentation required by Applicable Law, the minimum shelf life and expiration requirements for the Products referred to in Section 2.1(l) and, where applicable, the relevant batch record). Each time Patheon ships Products to Client, it will give Client a Certificate of Analysis and certificate of compliance including a statement that the batch has been Manufactured and tested in accordance with Specifications and cGMPs. Client will have sole responsibility for the release of Products to the market provided that Patheon shall cooperate with Client (or its Affiliates) in respect of any questions raised or clarifications or further information reasonably requested by the Client as a consequence of its review of the release documentation supplied by Patheon. Client shall notify Patheon if it considers that any Products were not released in accordance with Patheon’s standard operating procedures at the time of Manufacture and the parties will engage in good faith discussions in respect of such issues. The form and style of batch documents, including, but not limited to, batch production records, lot packaging records, equipment set up control, operating parameters, and data printouts, raw material data, and laboratory notebooks are the exclusive property of Patheon. All Product related information and Intellectual Property contained in those batch documents is Client property. Patheon will provide one copy of such information to Client from time to time at Client’s request, any additional copies may be charged to Client at a fee to be mutually agreed between the parties from time to time.

(c) Components. Patheon will purchase and test all Components (with the exception of Client-Supplied Components) at Patheon’s expense and as required by the Specifications.

(d) Stability Testing. Patheon will conduct stability testing on the Products in accordance with the protocols set out in the Specifications for the separate fees and during the time
periods set out in Schedule C to a Product Agreement. Patheon will not make any changes to these testing protocols without prior written approval from Client. If a confirmed stability test failure occurs, Patheon will notify Client within one Business Day, after which Patheon and Client will jointly determine the proceedings and methods to be undertaken to investigate the cause of the failure, including which party, in accordance with this Agreement, will bear the cost of the investigation. Patheon will not be liable for these costs unless it has failed to perform the Manufacturing Services in accordance with the Specifications, Applicable Laws, the Quality Agreement and cGMPs. Patheon will give Client all stability test data and results at Client’s request.

(e) Packaging and Artwork. Patheon will package the Products in accordance with the Specifications. Client will be responsible for the cost of artwork development. Patheon will determine and imprint the batch numbers and expiration dates for each Product shipped. The batch numbers and expiration dates will be affixed on the Products and on the shipping carton of each Product as outlined in the Specifications and as required by cGMPs. Client may, in its sole discretion, make changes to labels, product inserts, and other packaging for the Products. Those changes will be submitted by Client to all applicable Regulatory Authorities and other third parties responsible for the approval of the Products. Client will be responsible for the cost of labelling obsolescence when changes occur, as contemplated in Section 4.4 unless labelling obsolescence is due to Patheon requested amendments to the Specifications, the Quality Agreement or the Manufacturing Site, or Patheon’s failure to provide the Manufacturing Services in accordance with this Agreement, in which case Patheon will be responsible for the cost of labeling obsolescence. Both parties will work in good faith to minimize the cost of obsolescence. Patheon’s name will not appear on the label or anywhere else on the Products unless:
   (i) required by any Laws; or
   (ii) Patheon and Client consent in writing to the use of its name. To the extent not previously provided, at least 120 days prior to the Delivery Date of Product for which new or modified artwork is required, Client will provide at no cost to Patheon, final camera ready artwork for all packaging Components to be used in the Manufacture of the Product that meet the Specifications; however, in the event that any new or modified artwork is urgently required by a Regulatory Authority or at initial Product launch, the parties will work together in good faith to have camera ready artworks procured within the said target of 120 days, but it is hereby understood that (i) this may not be achievable due to factors outside either party’s control and (ii) Patheon may delay the shipment of Product by the same number of days as equate to the delay in receipt of the new Packaging Components, to the extent the same are due to the said changes in artwork and bona fide commercial constraints imposed by its third party print supply vendor, provided in each case that it gives advance written notice to Client. For the avoidance of doubt, the parties acknowledge and agree that Client will be responsible for complying with any and all regulatory requirements for the labelling of the Product.

(f) Active Materials and Client-Supplied Components. At least 45 days before the scheduled production date as set out in Section 5.1(c) or agreed in writing in advance by the parties, Client will Deliver the Active Materials and any other Client-Supplied Components to the Manufacturing Site DDP (Incoterms 2010), at no cost to Patheon, with any VAT paid by Client or Client’s designate (e.g. courier), in sufficient quantity to enable Patheon to Manufacture the desired quantities of Product and to ship Product on the Delivery Date. If the Active Materials and/or Client-Supplied Components are not received 45 days before the scheduled production date, Patheon may delay the shipment of Product by the same number of days as the delay in receipt of the Active Materials and/or Client-Supplied Components. But if Patheon is unable to Manufacture Product to meet this new
shipment date due to prior third party production commitments, Patheon may delay the shipment until a later date as agreed to by the parties. All shipments of Active Material will be accompanied by Certificate(s) of Analysis from the Active Material Manufacturer or Client, confirming the identity and purity of the Active Materials and its compliance with the Active Material specifications. For Active Materials or Client-Supplied Components which may be subject to import or export, Client agrees that its vendors and carriers will comply with applicable requirements of the U.S. Customs and Border Protection Service and the Customs Trade Partnership Against Terrorism ("C-TPAT") and any equivalent requirements in applicable jurisdictions.

(g) **Bill Back Items.** Bill Back Items set out in Schedule B (or as further agreed in writing by the parties from time to time) and acquired by Patheon pursuant to the Specifications will be charged to Client at Patheon’s cost (provided that that this cost shall exclude any profit made by Patheon or any of its Affiliates through the application of transfer pricing) plus a 10% handling fee.

(h) **Manufacturing Site:**

Patheon shall, or shall procure that its Affiliates shall, make available to Client and its Affiliates sufficient capacity for each Product at the relevant Manufacturing Site as is necessary to enable Patheon to Manufacture and supply the binding Yearly Forecast Volumes, as agreed between the parties pursuant to Section 4.2.1.

Patheon may change the Manufacturing Site for the Products, provided that any change is approved in writing in advance by Client and is in compliance with Applicable Law and any applicable change control provisions in the Quality Agreement, including any requirement for the new Manufacturing Site to have Regulatory Approval. Client shall have the right to withhold their approval where it is acting reasonably and in good faith.

Client may request a reasonable change to the Manufacturing Site for the Products at any time and Patheon shall use Commercially Reasonable Endeavours to accommodate such a request within such reasonable time frame as is agreed between the parties.

In the event of a change of Manufacturing Site, the costs of such a change shall be borne according to the allocation agreed in good faith by the parties in respect thereof in accordance with the agreed allocation principles set out in the relevant Product Agreement from time to time.

(i) **Validation Activities (if applicable).** Patheon may assist in the development and approval of the validation protocols for analytical methods and Manufacturing procedures (including packaging procedures) for the Products. The fees for this service are not included in the Price and will be agreed in advance by the parties and set out separately in Schedule C to a Product Agreement.

(j) **Additional Services.** If Client requests services other than those expressly set forth herein or in any Product Agreement (such as qualification of a new packaging configuration or shipping studies, or validation of alternative batch sizes), Patheon will provide a good faith and reasonable written quote of the fee for the additional services and Client will advise Patheon whether it wishes to have the additional services performed by Patheon. The scope of work and fees will be set forth in a separate agreement signed by the parties. The terms and conditions of this Agreement will apply to these services. Patheon
shall not undertake any Additional Services or incur any cost (chargeable to Client) prior to the separate agreement governing these additional services being signed by both parties.

(k) **Active Materials Where Used Report.** On a quarterly basis, Patheon will submit to Client a report that identifies by lot number for each of the Active Materials the quantity of Active Materials used to produce a batch of Product. The batch of Product shall be identified by lot number.

(l) **Shelf Life:** Patheon shall ensure that on the Delivery Date the Products shall each respectively have at least such number of months of their registered shelf life remaining (with respect to each Product) as is set out in the table in paragraph 12 of the Product Agreement or, as is agreed in advance by the parties in writing from time to time. In the event that a Product has less than the agreed remaining shelf life and without prejudice to Patheon’s commitment to meet the agreed minimum remaining registered shelf life and without prejudice to Client’s right to reject Products under Article 6, Client agrees that it shall use Commercially Reasonable Endeavours to commercialise such Product For the avoidance of doubt, any such rejection of a batch of Product with short shelf life will only be deemed a rejection of such Product to the extent that Patheon are solely responsible for such delays.

(m) **Patheon Affiliates:** Patheon will ensure that its Affiliates act in compliance with the terms and conditions of this Agreement and any applicable Product Agreement, including but not limited to, complying with all Laws.

2.2 **Active Material Yield.**

(a) **Reporting.** Patheon will give Client a quarterly inventory report of the Active Materials held by Patheon using the inventory report form set out in Exhibit B, which will contain the following information for the quarter (provided that the first such inventory report shall relate to the period commencing date of commencement of each relevant Product Agreement and ending on the first quarter day falling at least one (1) month after such commencement date):

**Quantity Received:** The total quantity of Active Materials that complies with the Specifications and is received at the Manufacturing Site during the applicable period.

**Quantity Dispensed:** The total quantity of Active Materials dispensed at the Manufacturing Site during the applicable period. The Quantity Dispensed is calculated by adding the Quantity Received to the inventory of Active Materials that complies with the Specifications held at the beginning of the applicable period, less the inventory of Active Materials that complies with the Specifications held at the end of the period. The Quantity Dispensed will only include Active Materials received and dispensed in commercial Manufacturing of Products, including Active Materials lost in the warehouse prior to and during dispensing and will not include any (i) Active Materials that must be retained by Patheon as samples, (ii) Active Materials contained in Product that must be retained as samples, (iii) Active Materials used in testing (if applicable), and (iv) Active Materials received or dispensed in technical transfer activities or development activities during the applicable period, including without limitation, any regulatory, stability, validation or test batches Manufactured during the applicable period.
**Quantity Converted:** The total amount of Active Materials contained in the Products Manufactured with the Quantity Dispensed (including any additional Products produced in accordance with Section 6.3(a) or Section 6.3(b)), Delivered by Patheon, and not rejected, recalled or returned in accordance with Section 6.1 or Section 6.2 or when, as a result of Patheon’s failure to perform the Manufacturing Services in accordance with Specifications, cGMPs, and Applicable Laws such failure an Active Material cannot be used in the Manufacturing or supply of a Product;

Within 60 days after the end of each Year, Patheon will prepare an annual reconciliation of Active Materials on the reconciliation report form set forth in Exhibit C including the calculation of the “Actual Annual Yield” or “AAY” for the Product at the Manufacturing Site during the Year. AAY is the percentage of the Quantity Dispensed that was converted to Products and is calculated as follows:

\[
\text{Actual Annual Yield (AAY)} = \left( \frac{\text{Quantity Converted during the Year}}{\text{Quantity Dispensed during the Year}} \right) \times 100\%
\]

Unless otherwise agreed between the parties in the relevant Product Agreement, after Patheon has produced a minimum of ten (10) commercial production batches of Conforming Product which have been accepted by Client in accordance with the terms of this Agreement and has produced commercial production batches of Conforming Products for at least six months at the applicable Manufacturing Site (collectively, the “Target Yield Determination Batches”), the parties will agree on the target yield for the Product at the relevant Manufacturing Site (each, a “Target Yield”). The Target Yield will be revised annually to reflect the actual Manufacturing experience as agreed to by the parties. For the avoidance of doubt, any Batches that have unusually low yields due to deviations from the validated process will be excluded from the Target Yield Determination Batches.

(b) **Shortfall Calculation.** If the Actual Annual Yield falls more than 5% below the respective Target Yield in a Year, then the shortfall for the Year (the “Shortfall”) will be calculated as follows:

\[
\text{Shortfall} = [(\text{Target Yield} – 5\%) – \text{AAY}] \times \text{Active Materials Credit Value} \times \text{Quantity Dispensed}
\]

(c) **Surplus Calculation.** If the Actual Annual Yield is more than 5% above the respective Target Yield in a Year, then the surplus for that Year (the “Surplus”) will be determined based on the following calculation:

\[
\text{Surplus} = [\text{AAY} – (\text{Target Yield} + 5\%)] \times \text{Active Materials Credit Value} \times \text{Quantity Dispensed}
\]

(d) **Credits**

(i) **Shortfall Credit.** If there is a Shortfall for a Product in a Year, then Patheon will credit Client’s account for the amount of the Shortfall not later than 60 days after the end of each Year.

(ii) **Surplus Credit.** If there is a Surplus for a Product in a Year, then Patheon will be entitled to apply the amount of the Surplus as a credit against any Shortfall for that Product which may occur in the next Year. If there is no Shortfall in the next Year the Surplus credit will expire.
Each credit under this Section 2.2 will be summarized on the reconciliation report prepared in the form set forth in Exhibit C. Upon expiration or termination of a Product Agreement, any remaining Shortfall credit amount owing under this Section 2.2 will be paid to Client.

(c) **Maximum Credit.** Patheon’s liability for Active Materials calculated in accordance with this Section 2.2 for any Product in a Year will not exceed, in the aggregate, the Maximum Credit Value set forth in Schedule D to a Product Agreement.

(f) Client will perform a physical count of the inventory of Active Materials held at the Manufacturing Site once per Year.

(g) Patheon will provide Client with a system inventory of Active Materials held at the Manufacturing Site on a monthly basis.

(h) **Material Breach.** It will be a material breach of this Agreement by Patheon under Section 8.2(a) if the Actual Annual Yield is less than 75% of the Target Yield and such shortfall is due solely to Patheon’s act or omission.

**ARTICLE 3**

**CLIENT’S OBLIGATIONS**

3.1 **Payment.**

Client will pay Patheon for performing the Manufacturing Services according to the Prices specified in Schedules B and C in a Product Agreement. These Prices may be subject to adjustment under other parts of this Agreement. Client will also pay Patheon for any Bill Back Items in accordance with Section 2.1(g) and other terms hereunder.

3.2 **Active Materials and Qualification of Additional Sources of Supply.**

(a) Client will at its sole cost and expense Deliver the Active Materials to Patheon in accordance with Section 2.1(f). If applicable, Patheon and Client will reasonably cooperate to permit the import of the Active Materials to the Manufacturing Site. Client’s obligation will include obtaining the proper release of the Active Materials from the applicable Customs Agency and Regulatory Authority. Client or Client’s designated broker will be the “**Importer of Record**” for Active Materials imported to the Manufacturing Site. The Active Materials will be held by Patheon on behalf of Client as set forth in this Agreement. Title to the Active Materials will at all times remain the property of Client, provided that, subject to 2.2, Patheon will be responsible for (including liable for any loss of) Active Materials once received by Patheon in accordance with this Agreement. Any Active Materials received by Patheon will only be used by Patheon to perform the Manufacturing Services. Client will be responsible for paying for all rejected Product to the extent that the rejection arises from defects in the Active Materials which could not be reasonably discoverable by Patheon using the test methods set forth in the Specifications.
If Client asks Patheon to qualify an additional source for the Active Material or any Component, Patheon may agree to evaluate the Active Material or Component to be supplied by the additional source to determine if it is suitable for use in the Product. The parties will agree in advance on the scope of work to be performed by Patheon at Client’s cost. For an Active Material, this work at a minimum will include: (i) laboratory testing to confirm the Active Material meets existing specifications; (ii) Manufacture of an experimental batch of Product that will be placed on three months accelerated stability; and (iii) Manufacture of three full-scale validation batches that will be placed on concurrent stability (one batch may be the registration batch if Manufactured at full scale). Section 6.1(d) will apply to all Products Manufactured using the newly approved Active Material or Component because of the limited material characterization that is performed on additional sources of supply.

Patheon will promptly advise Client if it encounters supply problems, including delays and/or delivery of non-conforming Active Material or Components from a Client designated additional source. Patheon and Client will use Commercially Reasonable Endeavours to reduce or eliminate any supply problems from these additional sources of supply. Client will be obligated to certify all Client designated sources of supply on an annual basis at its expense and will provide Patheon with copies of these annual certifications. If Patheon agrees to certify Client designated additional sources of supply on behalf of Client, it will do so at Client’s expense.

ARTICLE 4

CONVERSION FEES AND COMPONENT COSTS

4.1 First Year Pricing.

The Price for the first Year will be listed in Schedules B and C in a Product Agreement and will be subject to the adjustments set forth in Sections 4.2 and 4.3. The Price may also be increased or decreased by Patheon at any time upon 60 day advance written notice to Client if the parties agree (each acting reasonably) that changes are required to the underlying Manufacturing, packaging or testing assumptions set forth in Schedule B of the Product Agreement in order to comply with Applicable Law, the Quality Agreement, the Specifications or cGMP and in each case to the extent that such changes result in an increase or decrease in the cost of performing the Manufacturing Services.

4.2 Price Adjustments – Subsequent Years’ Pricing.

After the first Year of the Product Agreement, Patheon may adjust the Price effective January 1st of each Year as follows:

(a) Manufacturing and Stability Testing Costs. Patheon may adjust (without any retrospective effect) the Conversion Fee element of the Price and the annual stability testing costs for inflation, based upon the preliminary number for any increase and decrease in the inflation index (stated in the Product Agreement) in June of the preceding Year compared to the final number for the same month of the Year prior to that (based on the average of the monthly changes over the 12-month period), unless the parties otherwise agree in
writing. Patheon will give Client a statement setting forth the calculation for the inflation adjustment to be applied in calculating the Price for the next Year no later than October 1 of the preceding Year.

(b) **Component Costs.** If Patheon incurs an aggregate increase or decrease in Component costs during the Year, it may increase or decrease the Price for the next Year to pass through the additional aggregate Component costs (or reduction in the same, as the case may be) Patheon will give Client information about the increase in Component costs which will be applied to the calculation of the Price for the next Year no later than October 1 of the preceding Year to reasonably demonstrate that the Price increase is justified.

(c) **Pricing Basis.** Client acknowledges that the Price in any Year is quoted based upon the Minimum Order Quantity specified in Schedule B to a Product Agreement. The Price is subject to change if the specified Minimum Order Quantity changes or if the Annual Volume is not ordered in a Year. For greater certainty and without limitation, if Patheon and Client agree that the Minimum Order Quantity will be reduced, then Patheon may increase the Price by an amount sufficient to absorb its documented increased costs. Patheon will give Client a statement setting forth the information to be applied in calculating those cost increases for the next Year.

(d) **Tier Pricing (if applicable).** The pricing in Schedule B of a Product Agreement is set forth in Annual Volume tiers based upon Client’s volume forecasts under Section 5.1. Client will be invoiced during the Year for the unit price set forth in the Annual Volume tier based on the 18 month forecast provided in September of the previous Year. Within 30 days after the end of each Year or of the termination of the Agreement, Patheon will send Client a reconciliation of the actual volume of Product ordered by Client during the Year with the pricing tiers. If Client has overpaid during the Year, Patheon will issue a credit to Client for the amount of the overpayment within 60 days after the end of the Year or will issue payment to Client for the overpayment within 60 days after the termination of the Agreement. If Client has underpaid during the Year, Patheon will issue an invoice to Client under Section 5.5 for the amount of the underpayment within 60 days after the end of the Year or termination of the Agreement. If Client disagrees with the reconciliation, the parties will work in good faith to resolve the disagreement amicably. If the parties are unable to resolve the disagreement within 30 days, the matter will be handled under Section 12.1.

(c) For all Price adjustments under this Section 4.2, Patheon will Deliver to Client on or about October 1 but no later than December 1 of each Year a revised Schedule B to the Product Agreement to be effective for Product Delivered on or after the first day of the next Year. If in any Year Patheon would have been entitled to increase or decrease the Price based on any of the provisions of this Section 4.2, but Patheon did not exercise its right to do so, then at the expiry of any subsequent Year, Patheon will be entitled to make cumulative prospective adjustments to the Price for the following Year based on changes it would have been entitled to make under Section 4.2 during the preceding Year(s) since Patheon last adjusted the Price. Patheon will not be entitled to retrospectively invoice for prior unexercised Price adjustments and shall apply them in accordance with the time frames set out in Section 4.2 (accordingly a Price increase or decrease shall only be applied up to the June recalculation point in each Year).
4.2.1 **Capacity Reservation Fee due to Volume Changes from Yearly Forecast Volumes for Sterile Products.**

On the execution of a Product Agreement, Client will give to Patheon a forecast of the volume of Product required for the first two Years of the Product Agreement (the “**Yearly Forecast Volume**” or “YFV”) that will become part of the Product Agreement. If at the end of each relevant Year the aggregate actual volume of Product ordered by Client and invoiced by Patheon under Section 5.5 (“**Actual Yearly Volume**” or “AYV”) during the Year is less than the YFV as set out in the Product Agreement, then Client will pay Patheon the Conversion Fee for the Product during the Year in an amount to be determined as follows.

(i) During the **first Year** of the Product Agreement a tolerance of 30% will be allowed before the calculation is made, so if the AYV for such first Year is lower than 70% of the YFV, then Client will pay Patheon an amount to be calculated as follows:

\[
\text{Amount due to Patheon} = ([\text{YFV} - 30\% \text{YFV}] - \text{AYV}) \times 90\% \text{ Conversion Fee for the Product}
\]

(ii) During the **second Year** of the Product Agreement a tolerance of 15% will be allowed before the calculation is made, so if the AYV for such second Year is lower than 85% of the YFV, then Client will pay Patheon an amount to be calculated as follows:

\[
\text{Amount due to Patheon} = ([\text{YFV} - 15\% \text{YFV}] - \text{AYV}) \times 90\% \text{ Conversion Fee for the Product}
\]

(iii) For Years thereafter, on or before June 10 of each Year, the parties will agree on the YFV for the next two Years of the Product Agreement on a rolling forward basis. The forecast of the volume of Product for the second Year may not vary by more than 25% from the original YFV for the second Year. Once agreed, the YFV for the next Year will become binding on the parties and during each Year a tolerance of 10% will be allowed before the calculation is made, so if the AYV in a Year is lower than 90% of the relevant YFV, then Client will pay Patheon an amount to be calculated as follows:

\[
\text{Amount due to Patheon} = ([\text{YFV} - 10\% \text{YFV}] - \text{AYV}) \times 90\% \text{ Conversion Fee for the Product}
\]

4.3 **Price Adjustments – Current Year Pricing.**

During any Year, the Prices set out in Schedule B of a Product Agreement will be adjusted as follows:

**Extraordinary Increases in Component Costs.** If, at any time, market conditions result in Patheon’s cost of Components being materially greater than normal forecasted increases, then Patheon will be entitled to adjust the Price for any affected Product to compensate it for the increased Component costs. Changes materially greater than normal forecasted increases will have occurred if: (i) the cost of a Component increases by 10% of the cost for that Component upon which the most recent Price or fee quote was based; or (ii) the aggregate cost for all Components required to Manufacture a Product increases by 5% of the total Component costs for the Product upon which the most recent fee quote was based. If Component costs have been previously adjusted to reflect an increase in the cost of one or more Components, the adjustments set out in (i) and (ii) above will operate based on the last cost adjustment for the Components.
For a Price adjustment under this Section 4.3, Patheon will deliver to Client a revised Schedule B to the Product Agreement and budgetary pricing information, adjusted Component costs or other documents reasonably sufficient to demonstrate that a Price adjustment is justified. Patheon will have no obligation to deliver any supporting documents that are subject to obligations of confidentiality between Patheon and its suppliers. The revised Price will be effective for any Product Delivered on or after the first day of the month following Client’s receipt of the revised Schedule B to the Product Agreement.

4.4 Adjustments Due to Technical Changes or Regulatory Authority Requirements.

Amendments to the Specifications or the Quality Agreement requested by Client will be implemented only following a technical and cost review that Patheon will perform at Client’s reasonable cost and are subject to Client and Patheon reaching agreement on Price changes required because of the amendment. Amendments to the Specifications, the Quality Agreement, or the Manufacturing Site requested by Patheon will only be implemented following the written approval of Client and in accordance with the terms of this Agreement, the approval not to be unreasonably withheld, conditioned or delayed. If Client accepts a proposed Price change, the proposed change in the Specifications or the Quality Agreement and the associated scope of work will be implemented at Client’s reasonable cost, and the Price change will become effective, only for those orders of Product that are Manufactured under the revised Specifications or Quality Agreement, as applicable. In addition, Client agrees to purchase, at the price paid by Patheon (including all costs incurred by Patheon for the purchase, handling, and transport of the Inventory), all Product specific Inventory held under the “old” Specifications and purchased or maintained by Patheon in order to fill Firm Orders or under Section 5.2, if the Inventory can no longer be used under the revised Specifications. Open purchase orders for Components no longer required under any revised Specifications that were placed by Patheon with suppliers in order to fill Firm Orders or under Section 5.2 will be cancelled where possible, but if the orders may not be cancelled without penalty, they will be assigned to and paid for by Client. Additional payments or price increases may also be required to compensate Patheon for fees and other expenses incurred by Patheon to comply with Regulatory Authority requirements or changes in Applicable Laws which apply to the Manufacturing Services.

The Parties recognize that as a contract Manufacturer, some of the changes required by Regulatory Authorities or other authorities will benefit Patheon and all clients. These costs will be borne by Patheon and factored into the next year’s cost estimates. Parties agree to work in good faith to identify and notify Client of changes which may result in the current process not being adequate to create commercially viable Product as early as possible and also agree to work in good faith to minimize the risk of obsolete Product.

4.5 Multi-Country Packaging Requirements.

If Client decides to have Patheon perform Manufacturing Services for the Product for countries outside the Territory, then Client will inform Patheon of the packaging requirements for each new country and Patheon will prepare a quotation for consideration by Client of any additional costs for Components (other than Client-Supplied Components) and the change over fees for the Product destined for each new country. The agreed additional packaging requirements and related packaging costs and change over fees will be set out in a written amendment to this Agreement.

4.6 Overall Adjustments.

In the event that the overall Price of the Product is increased by more than 10% in any given Year of the relevant Product Agreement (against the Price of the previous Year), the Parties shall meet and discuss in good faith any ways in which such an increase might be mitigated.
ARTICLE 5
ORDERS, SHIPMENT, INVOICING, PAYMENT

5.1 Orders and Forecasts.

(a) Long Term Forecast. On execution of this Agreement and subsequently when each Product Agreement is executed, Client will give Patheon a non-binding three year forecast of Client’s volume requirements for the Product for each Year during the Term of the Product Agreement (the “Long Term Forecast”). The Long Term Forecast will thereafter be updated every six months (as of June 1 and December 1) during the Initial Product Term. Subject to Patheon’s obligations with respect to Firm Orders, if Patheon is unable to accommodate any portion of the Long Term Forecast, it will notify Client and the parties will agree on any revisions to the forecast. For the avoidance of doubt, the Long Term Forecasts are provided for planning purposes only and do not create any binding obligation on Client to purchase or Patheon to supply Product.

(b) Rolling 18 Month Forecast. On execution of this Agreement and subsequently when each Product Agreement is executed, Client will give Patheon a non-binding 18 month forecast of the volume of Product that Client expects to order in the first 18 months of commercial Manufacture of the Product at the relevant Manufacturing Site. This forecast will then be updated by Client on or before the tenth day of each month on a rolling forward basis. Client will update the forecast forthwith if it determines that the volumes estimated in the most recent forecast have changed by more than 20%. The most recent 18 month forecast will prevail. These forecasts should be consistent with the Long Term Forecast to the extent possible and provided that the Long Term Forecast is updated in accordance with ARTICLE 5(a).

(c) Firm Orders. In accordance with ARTICLE 5(b) on a rolling basis during the term of the Product Agreement, Client will issue an updated 18 month forecast on or before the tenth day of each month. This forecast will start on the first day of the next month. Unless otherwise agreed in the Product Agreement, the first three months of this updated forecast will be considered binding. Concurrent with the 18 month forecast, Client will issue a new firm written order in the form of a purchase order or otherwise (“Firm Order”) by Client to purchase and, when accepted by Patheon, for Patheon to Manufacture and Deliver the amount of Product specified in the Firm Order, which amount shall be equal to the amount of Product specified in the binding portion of the monthly forecast which was not previously the subject of a Firm Order hereunder. The Delivery Date will not be less than 90 days from the first day of the month following the date that the Firm Order is submitted. Firm Orders submitted to Patheon will specify Client’s purchase order number, quantities by Product type, monthly Delivery schedule, and any other elements necessary to ensure the timely Manufacture and shipment of the Products. The quantities of Products ordered in those written orders will be firm and binding on Client and Patheon and may not be reduced by Client or Patheon unless mutually agreed upon in writing. Expedited Firm Orders will be subject to additional fees to be agreed between the parties from time to time.

(d) Acceptance of Firm Order. Patheon will accept Firm Orders by sending an acknowledgement to Client within ten Business Days of its receipt of the Firm Order. The acknowledgement will include, subject to confirmation from Client, the Delivery Date for the Product ordered or Delivery month for any Firm Orders that do not relate to the first

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three months of the 18-month forecast. The Delivery Date may be amended by agreement of the parties or as set forth in Section 2.1(e) or in Section 2.1(f). If Patheon fails to acknowledge receipt of a Firm Order within the ten Business Day period, the Firm Order will be deemed to have been accepted by Patheon.

(c) Cancellation of a Firm Order. If Client cancels a Firm Order, Client will pay Patheon 100% of the Price of the Firm Order but excluding the costs of Materials.

(f) Zero Volume Forecast. If Client forecasts zero volume for six successive months period during the term of a Product Agreement (the “Zero Forecast Period”), then Patheon will have the option, at its sole discretion, to provide a 30 day notice to Client of Patheon’s intention to terminate the Product Agreement on a stated day within the Zero Forecast Period. Client thereafter will have 30 days to either (i) withdraw the zero forecast and resubmit a reasonable volume forecast, or (ii) negotiate other terms and conditions on which the Product Agreement will remain in effect. Otherwise, Patheon will have the right to terminate the Product Agreement at the end of the 30 day notice period.

(g) Controlled Substance Quota Requirements (if applicable). Client will give Patheon the information set forth below for obtaining any required DEA or equivalent agency quotas needed to perform the Manufacturing Services. Patheon will be responsible for routine management of (“DEA”) (or any successor thereof) quota information in accordance with DEA regulations. Patheon and Client will cooperate to communicate the information and to assist each other in DEA information requirements related to the Product as follows: (i) as of April 1 of each Year for the applicable Product, Client will provide to Patheon the next Year’s annual quota requirements for the Product; (ii) as of August 1 of each Year, Client will provide to Patheon any changes to the next Year’s quota requirements; (iii) Client will pro-actively communicate any changes to the quota requirements for the then-current Year in sufficient time to allow Patheon to file and finalize DEA filings supporting the changes; (iv) upon Patheon receiving the necessary forecast information from Client in order to request additional quota, Patheon will submit to the DEA, on a timely basis, all filings necessary to obtain DEA or equivalent agency quotas for Active Materials and will use Commercially Reasonable Endeavours to secure sufficient quota from the DEA so as to achieve Delivery Dates for Product as set forth in applicable purchase orders and forecasts submitted to Patheon by Client or its designee; and (v) Patheon will not be responsible for DEA’s refusal or failure to grant sufficient quota for reasons beyond the reasonable control of Patheon.

5.2 Reliance by Patheon.

(a) Client understands and acknowledges that Patheon will rely on the Firm Orders and rolling forecasts submitted under Sections 5.1(a), and (b) in ordering the Components (other than Client-Supplied Components) required to meet the Firm Orders. In addition, Client understands that to ensure an orderly supply of the Components, Patheon may want to purchase the Components in sufficient volumes to meet the production requirements for Products during part or all of the forecasted periods referred to in Section 5.1(a) or to meet the production requirements of any longer period agreed to by Patheon and Client. Accordingly, Client authorizes Patheon to purchase Components to satisfy the Manufacturing Services requirements for Products for the first six months contemplated in the most recent forecast given by Client under Section 5.1(a). Patheon may make other purchases of Components to meet Manufacturing Services requirements for longer periods if agreed to in writing by the parties. Client will give Patheon written authorization to order Components for any launch quantities of Product requested by Client which will be considered a Firm Order when accepted by Patheon.
(b) Client will reimburse Patheon for the cost of Components (other than Client-Supplied Components) ordered by Patheon under Firm Orders or under Section 5.2(a) that are not included in finished Products Manufactured for Client within six months after the forecasted month for which the purchases have been made (or for a longer period as the parties may agree) or if the Components have expired or are rendered obsolete due to changes in artwork or applicable regulations during the period, in each case other than (i) in any case where such Components were not included in finished Product due to Patheon’s failure to comply with this Agreement or when, as a result of such failure, a Component cannot be used in the Manufacturing or supply of a Product or (ii) to the extent that Patheon was legally entitled to cancel the order for such Components without any penalty but failed to do so (collectively, “Obsolete Stock”). This reimbursement will include Patheon’s cost to purchase (plus a 10% handling fee) and destroy the Obsolete Stock. If any non-expired Components are used in Products subsequently Manufactured for Client or in third party products Manufactured by Patheon, Client will receive credit for any costs of those Components previously paid to Patheon by Client.

(c) If Client fails to take possession or arrange for the destruction of non-expired Components within 12 months of purchase pursuant to Section 5.2(b) or, in the case of the Delivery of finished Conforming Product not accepted by Client within one month of Manufacture, Client will pay Patheon EURO 75 per pallet, per month thereafter for storing the Components or finished Product. Storage fees for Components or Product which contain controlled substances or require refrigeration will be charged at EURO 200 per pallet per month. Storage fees are subject to a one pallet minimum charge per month. Patheon may ship finished Product held by it longer than one month to Client at Client’s expense on 14 days’ written notice to Client.

5.3 Minimum Orders.

Client may order Manufacturing Services for batches of Products only in multiples of the Minimum Order Quantities as set out in Schedule B to a Product Agreement.

5.4 Delivery and Shipping.

Delivery of Products will be made EXW (Incoterms 2010) to Patheon’s shipping point unless otherwise agreed in a Product Agreement. Subject to Section 8.3(a)(vi), risk of loss or of damage to Products will remain with Patheon until Patheon loads the Products onto the carrier’s vehicle for shipment at the shipping point at which time risk of loss or damage will transfer to Client. Patheon will, in accordance with Client’s instructions and as agent for Client, at Client’s risk, arrange for shipping to be paid by Client. Client will arrange for insurance and will select the freight carrier used by Patheon to ship Products and may monitor Patheon’s shipping and freight practices as they pertain to this Agreement. Products will be transported in accordance with the Specifications.

5.5 Invoices and Payment.

Invoices will be sent by email to the email address given by Client to Patheon in writing. Invoices will be issued when the Product is released by Patheon. Patheon will also submit to Client, with each shipment of Products, a duplicate copy of the invoice covering the shipment. Patheon will also give Client an invoice covering any Inventory or Components which are to be purchased by Client under Section 5.2 of this Agreement. Each invoice will, to the extent applicable, identify Client’s Manufacturing Services, any other amounts reimbursable to Patheon pursuant to this Agreement, purchase order number, Product numbers, names and quantities, unit price denominated in the invoice currency, freight charges, the amount of VAT (or other sales tax) if applicable due in respect of the Product Delivered and the total amount to be paid by Client. Client will pay all invoices within 30 days of the date thereof. If any portion of an invoice is disputed, Client will pay Patheon for the undisputed amount and the parties will
5.6 **Currency Conversion.**

In the event that:

(A) Client is required to pay the Price in a currency other than the Euro; or

(B) either party is required to pay any sum (other than the Price) to reimburse the other party for any fees, costs or expenses incurred by that other party in a currency other than the Euro,

the amount to be paid by Client or in the case of (B) above the first party by way of reimbursement shall be calculated by converting the price payable, sum, costs or expenses (as applicable) actually incurred into United States Dollars (US$) at the applicable spot rate of exchange published by the European Central Bank (ECB) on the Business Day immediately preceding the date of the invoice.

**ARTICLE 6**

**PRODUCT CLAIMS AND RECALLS**

6.1 **Product Claims.**

(a) **Product Claims.** Client has the right to reject all or any portion of any shipment of Product that contains Defective Product and in respect of rejection of a portion of any shipment such rejection will not invalidate any remainder of the shipment. Client or Client’s contract packager will inspect the Product Manufactured by Patheon immediately upon receipt and will give Patheon written notice (a “Deficiency Notice”) of all claims for Product that is Defective Product, within 30 days after Client’s receipt thereof (or, in the case of any defects not reasonably susceptible to discovery upon receipt of the Product, within 30 days after discovery by Client, but not after the expiration date of the Product). If Client fails to give Patheon the Deficiency Notice within the applicable 30 day period, then the Delivery will be deemed to have been accepted by Client at 11:59 p.m. (EST) on the 30th day after Delivery or discovery, as applicable. Patheon will have no liability for any deficiency for which it has not received notice within the applicable 30 day period.

(b) **Determination of Deficiency.** Upon receipt of a Deficiency Notice, Patheon will have ten days to advise Client by notice in writing that it disagrees with the contents of the Deficiency Notice. If Client and Patheon fail to agree within ten days after Patheon’s notice to Client as to whether any Product identified in the Deficiency Notice was not Manufactured in accordance with the Specifications, the Quality Agreement, cGMPs, or Applicable Laws the parties will proceed as follows: (i) if the issue is believed to be caused by a raw material deficiency, laboratory error or a suspect analytical method, representatives from both parties will jointly test the Product and/or materials side by side in the same laboratory to determine if a raw material or testing deficiency is the root cause and whether the Product and/or materials is acceptable; or (ii) if the issue is believed to be process related (including human error, equipment or facility malfunction), representatives from both parties will jointly evaluate the Patheon deviation report to determine if any other investigation could identify the root cause and proceed as determined. If, after the joint testing or investigation has been performed, the parties still cannot agree on the root cause, executives from both parties will meet and use good faith efforts to resolve the deficiency and liability issues. If the parties’ executives are unable to resolve the dispute within 30 days, the dispute will be handled as a Technical Dispute under Section 12.2.
(c) **Shortages and Price Disputes.** Claims for shortages in the amount of Product shipped by Patheon or a Price dispute will be dealt with by reasonable agreement of the parties. Any claim for a shortage or a Price dispute will be deemed waived if it has not been presented within 30 days of the date of invoice.

(d) **Product Rejection for Finished Product Specification Failure.** Internal process instructions will be defined and agreed upon in writing by the parties after validation of the Product. If after a full investigation as set forth in Section 6.1(b), it is determined that Patheon Manufactured Product in accordance with the Specifications, cGMPs, the Quality Agreement, Applicable Laws and the batch production record, and a batch or portion of batch of Product does not meet a finished Product Specification due to an error in such agreed upon process instructions, or due to a reason listed in Section 6.3(c)(i) to (vii), but not for the avoidance of doubt due to a Force Majeure Event, then Client will pay Patheon the applicable proportionate Price per unit for the non-conforming Product. The API in the non-conforming Product will be included in the “Quantity Converted” for purposes of calculating the “Actual Annual Yield” under Section 2.2(a).

6.2 **Product Recalls and Returns.**

(a) **Records and Notice.** Patheon and Client will each maintain records necessary to permit a Recall of any Product Delivered to Client or customers of Client. Each party will promptly notify the other by telephone (to be confirmed in writing) of any information which might affect the marketability, safety or effectiveness of the Product or which might result in the Recall or seizure of the Product. Upon receiving this notice or upon this discovery, each party will stop making any further shipments of any Product in its possession or control until a decision has been made whether a Recall or some other corrective action is necessary. The decision to initiate a Recall or to take some other corrective action, if any, will be made and implemented by Client. “Recall” will mean any action (i) by Client to recover title to or possession of quantities of the Product sold or shipped to third parties (including, without limitation, the voluntary withdrawal of Product from the market or where the Client deems it necessary under Applicable Law or customary industry practice to initiate a recall or withdrawal with respect to any Product); or (ii) by any Regulatory Authorities to detain or destroy any of the Product or require its recall or withdrawal from the relevant market. Recall will also include any action by either party to refrain from selling or shipping quantities of the Product to third parties which would be subject to a Recall if sold or shipped.

(b) **Recalls.** If (i) any Regulatory Authority issues a directive, order or, following the issuance of a safety warning or alert about a Product, a written request that any Product be Recalled, (ii) a court of competent jurisdiction orders a Recall, or (iii) Client determines that any Product should be Recalled or that a “Dear Doctor” letter is required relating the restrictions on the use of any Product, Patheon will cooperate as reasonably required by Client, having regard to all Applicable Laws and regulations.

(c) **Product Returns.** Client will have the responsibility for handling customer returns of the Product. Patheon will give Client any assistance that Client may reasonably require to handle the returns.

6.3 **Patheon’s Responsibility for Defective and Recalled Products.**

(a) **Defective Product.** If Client rejects Product under Section 6.1 and the rejection is determined to have arisen from Patheon’s failure to provide the Manufacturing Services in accordance with the Specifications, cGMPs, the Quality Agreement, Applicable Laws, Patheon will credit Client’s
account for Patheon’s invoice price for the Defective Product. If Client previously paid for the Defective Product, Patheon will promptly, at Client’s election, either: (i) refund the invoice price for the Defective Product; (ii) offset the amount paid against other amounts due to Patheon hereunder; or (iii) replace the Defective Product with Conforming Product, (if Patheon is able to Manufacture the replacement Conforming Product at the same Manufacturing Site as that of the rejected Product), without Client being liable for payment therefor under Section 3.1, contingent upon the receipt from Client of all Active Materials and Client-Supplied Components required for the Manufacture of the replacement Product, to be supplied at Patheon’s cost subject to the limitations under Section 10.2. For greater certainty, Patheon’s responsibility for any loss of Active Materials in Defective Product will be captured and calculated in the Active Materials Yield under Section 2.2.

(b) **Recalled Product.** If a Recall or return results from, or arises out of, a failure by Patheon to perform the Manufacturing Services in accordance with the Specifications, the Quality Agreement, cGMPs, or Applicable Laws, Patheon will be responsible for the documented out-of-pocket expenses of the Recall or return and, provided that the Recall does not arise from any Regulatory Authority directive, order or issuance of a safety warning or alert about a Product, will use its Commercially Reasonable Endeavours to replace the Recalled or returned Products with new Products as soon as reasonably practical, but in any event, no later than six (6) months after notification to the Purchaser of the need for the initiation of a Recall, contingent upon the receipt from Client of all Active Materials and Client-Supplied Components required for the Manufacture of the replacement Products (at Patheon’s cost subject to the limitations under Section 10.2). For purposes of clarification, Recall costs and expenses shall include, without limitation, notification to customers, Product retrieval, Product destruction, shipping and taxes. For greater certainty, Patheon’s responsibility for any loss of Active Materials in Recalled Product will be captured and calculated in the Active Materials Yield under Section 2.2. If Patheon is unable to replace the Recalled or returned Products (except where this inability results from a failure to receive the required Active Materials and Client-Supplied Components), then Client may request Patheon to reimburse Client for the Price that Client paid to Patheon for Manufacturing Services for the affected Products in addition to reimbursement of the documented out-of-pocket expenses of the Recall or return, subject to Section 10.2. In all other circumstances, Recalls, returns, or other corrective actions will be made at Client’s cost and expense.

(c) Except as set forth in Sections 6.3(a) and (b) above and Sections 6.4 and 6.5 below, Patheon will not be liable to Client nor have any responsibility to Client for any Defects in, or other liabilities associated with, any Product Manufactured by it, (collectively, "**Product Claims**"). For greater certainty but not limitation, Patheon will have no obligation for any Product Claims to the extent the Product Claim (i) is caused by faults in the Specifications, the safety, efficacy, or marketability of the Product or any distribution thereof, (ii) results from a Defect in a Component that is not reasonably discoverable by Patheon using the test methods set forth in the Specifications prior to use of the applicable Component in the performance of the Manufacturing Services, (iii) results from a defect in the Active Materials, Client-Supplied Components or Components supplied by a Client designated additional source that is not reasonably discoverable by Patheon using the test methods set forth in the Specifications, (iv) is caused by actions of Client or third parties occurring after the Product is shipped by Patheon under Section 5.4, (v) is due to packaging design or labelling defects or omissions for which Patheon has no responsibility, (vi) is due to any unascertainable reason despite Patheon having performed the Manufacturing Services in accordance with the terms of this Agreement, Specifications, the Quality Agreement, cGMPs, and Applicable Laws and Patheon having used Commercially Reasonable Efforts to establish a reason within the reasonable parameters of the Agreement, or (vii) is directly due to any other breach by Client of its obligations under this Agreement.
(d) Notwithstanding anything to the contrary in this Agreement, Patheon will only be required to replace or refund any batch or portion of a batch of recalled Product and will only be liable for Active Material contained therein to the extent the Product is unsold, returned, Recalled, destroyed or otherwise disposed of by Client in accordance with the terms of this Agreement. The quantity of API contained in this Product will be included in the Quantity Dispensed but not in the Quantity Converted for purposes of calculating the Shortfall in Section 2.2(b).

6.4 Disposition of Defective or Recalled Products.

Client will not dispose of any damaged, Defective, returned, or Recalled Products for which it intends to assert a claim against Patheon without Patheon’s prior written authorization to do so. Alternatively, Patheon may instruct Client to return the Products to Patheon. Patheon will bear the cost of transportation, storage and disposition for any damaged, Defective, returned or Recalled Products for which it bears responsibility under Section 6.3. In all other circumstances, Client will bear the cost of disposition, including all applicable fees for Manufacturing Services, for any damaged, Defective, returned, or Recalled Products.

6.5 Healthcare Provider or Patient Questions and Complaints.

Client will have the sole responsibility for responding to questions and complaints from its customers. Questions or complaints received by Patheon from Client’s customers, healthcare providers or patients will be promptly referred to Client. Patheon will co-operate as reasonably required to allow Client to determine the cause of and resolve any questions and complaints. This assistance will include follow-up investigations, including testing. In addition, Patheon will give Client all agreed upon information that will enable Client to respond properly to questions or complaints about the Product as set forth in the Quality Agreement. Unless it is determined that the cause of the complaint resulted from a failure by Patheon to perform the Manufacturing Services in accordance with this Agreement, the Specifications, cGMPs, the Quality Agreement and Applicable Laws all costs incurred under this Section 6.5 will be borne by Client.

6.6 Sole Remedy.

Except for the indemnity set forth in Section 10.3 and subject to the limitations set forth in Sections 10.1 and 10.2, the remedies described in this Article 6 will be Client’s sole remedy in contract, tort, equity or otherwise for any failure by Patheon to provide the Manufacturing Services in accordance with the Specifications, cGMPs, and Applicable Laws.

ARTICLE 7

CO-OPERATION

7.1 Quarterly Review.

Each party will forthwith upon execution of this Agreement appoint one of its employees to be a relationship manager responsible for liaison between the parties. The relationship managers will meet either in person or by teleconference not less than quarterly to review the current status of the business relationship and manage any issues that have arisen.
7.2 **Governmental Agencies.**

Subject to Section 7.8, each party may communicate with any Regulatory Authority or other governmental or regulatory entity including but not limited to governmental agencies responsible for granting Regulatory Approval for the Products, regarding the Products if, in the opinion of that party’s counsel, the communication is necessary to comply with the terms of this Agreement or the requirements of any law, governmental order or regulation. Unless prohibited from doing so, each party will share with the other copies of communications with the agency as they are relevant to the other party’s activities.

7.3 **Records and Accounting by Patheon.**

Patheon will keep records of the Manufacture, testing, and shipping of the Products, and retain samples of the Products as are necessary to comply with Manufacturing regulatory requirements applicable to Patheon and the requirements of the Quality Agreement, as well as to assist with resolving Product complaints and other similar investigations. Unless otherwise agreed to in the Quality Agreement, copies of the records and samples will be retained for one year following the date of Product expiry, or longer if required by law or regulation, following which time Client will be contacted concerning the delivery and destruction of the documents and/or samples of Products. Patheon reserves the right to destroy or return to Client, at Client’s sole expense, any document or samples for which the retention period has expired if Client fails to arrange for destruction or return within 30 days of receipt of notice from Patheon. Client is responsible for retaining samples of the Products necessary to comply with the legal/regulatory requirements applicable to Client.

7.4 **Inspection.**

Client may inspect Patheon reports and records relating to this Agreement during normal business hours and with reasonable advance notice, but a Patheon representative must be present during the inspection.

7.5 **Access.**

Patheon will give Client reasonable access at agreed times to the areas of the Manufacturing Site in which the Products are Manufactured, stored, handled, or shipped to permit Client to verify that the Manufacturing Services are being performed in accordance with the Specifications, cGMPs, Applicable Laws, the Quality Agreement and this Agreement. But, with the exception of “for-cause” audits, Client will be limited each Year to one cGMP-type audit, lasting no more than two days, and involving no more than two auditors. Client may request additional cGMP-type audits, additional audit days, or the participation of additional auditors subject to payment to Patheon of a fee of EURO 3,500 for each additional audit day and EURO 750 per audit day for each additional auditor. The right of access set forth in Sections 7.4 and 7.5 will not include a right to access or inspect Patheon’s financial records, except for invoices regarding Component costs. Patheon will support the first Product Approval Inspection (“PAI”) of the FDA or equivalent regulatory inspection for other jurisdictions (where applicable) and provide a copy of the resulting report to Client at no cost. Additional PAI or equivalent support will be subject to additional fees.

7.6 **Notification of Regulatory Inspections.**

Patheon will notify Client within one Business Day of any inspections by any Regulatory Authority specifically involving the Products. Patheon will also notify Client of receipt of any form 483s or warning letters or any other significant regulatory action which Patheon’s quality assurance group determines could impact the regulatory status of the Products.
7.7 Reports.
Upon request, Patheon will supply on an annual basis a copy of the Annual Product Review Report which includes all Product data in its control, including release test results, complaint test results, and all investigations (in Manufacturing, testing, and storage), that Client reasonably requires in order to complete any filing under any applicable regulatory regime, including any Annual Report or equivalent that Client is required to file with the FDA or any equivalent Regulatory Authority. Any additional data or report requested by Client beyond the scope of cGMPs and customary FDA requirements, including Continuous Process Verification data, will be subject to an additional fee to be agreed upon between Patheon and Client.

7.8 Regulatory Filings.
(a) Regulatory Authority.
(i) Client will have the sole responsibility at Client’s expense for filing all documents with all Regulatory Authorities and taking any other actions that may be required for the receipt and/or maintenance of Regulatory Authority approval for marketing, distribution and sale of the Products ("Regulatory Approval") and, to the extent relevant to providing the Manufacturing Services, will provide copies thereof to Patheon on reasonable request. Patheon will assist Client, to the extent consistent with Patheon’s obligations under this Agreement, to obtain Regulatory Authority approval for the commercial Manufacture, distribution and sale of all Products as quickly as reasonably possible.

(ii) Patheon will have the sole responsibility at Patheon’s expense for filing all documents with all Regulatory Authorities and taking any other actions that may be required for the receipt and/or maintenance of Regulatory Authority approval for the commercial manufacture of the Products at the Manufacturing Sites and, where reasonably requested, will provide 1 copy thereof to Client. Client will assist Patheon, to the extent consistent with Client’s obligations under this Agreement, to obtain Regulatory Authority approval for the commercial manufacture of all Products as quickly as reasonably possible.

(b) Verification of Data. Prior to filing any documents with any Regulatory Authority that incorporate data generated by Patheon, Client will give Patheon a copy of the documents incorporating this data to give Patheon the opportunity to verify the accuracy and regulatory validity of those documents as they relate to Patheon generated data. Patheon requires 21 days to perform this review but the parties may agree to a shorter time for the review as needed. Client, or its representative, will have the opportunity to review the source documents containing the Patheon generated data and verify the accuracy of the Patheon generated data that supports CTD.

(c) Verification of CTD. Prior to filing with any Regulatory Authority any documentation which is or is equivalent to the Quality Module (Drug Product Section for Product listed in Schedule A) of the Common Technical Document (all such documentation herein referred to as "CTD") related to any Marketing Authorization, such as a US New Drug Application, US Abbreviated New Drug Application, US Biologies Licence Application, or EU Marketing Authorisation Application, Client will give Patheon a copy of the CTD as well as all supporting documents which have been relied upon to prepare the CTD. This disclosure will permit Patheon to verify that the CTD accurately describes the validation or scale-up work that Patheon has performed and the Manufacturing processes that Patheon will perform under this Agreement. Patheon requires 21 days to perform this review but the parties may agree to a shorter time for the review as needed. Client will give Patheon copies of all relevant filings at the time of submission which contain CTD information regarding the Product.

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(d) **Deficiencies.** If, in Patheon’s sole discretion, acting reasonably, Patheon determines that any of the information given by Client under Section 7.8(b) and Section 7.8(c) above is inaccurate or deficient in any material respect (the “**Deficiencies**”), Patheon will notify Client in writing of the Deficiencies. The parties will work together to seek to have the Deficiencies resolved prior to the date of filing of the relevant application and in any event before any pre-approval inspection or before the Product is placed on the market if a pre-approval inspection is not performed.

**Client Responsibility.** In reviewing the documents referred to in Section 7.8(b) above, Patheon’s role will be limited to verifying the accuracy of the data generated by Patheon and the description of the work undertaken or to be undertaken by Patheon. Subject to the foregoing, Patheon will not assume any responsibility for the accuracy of any application for receipt of an approval by a Regulatory Authority. Client is solely responsible for the preparation and filing of the application for approval by the Regulatory Authority and any relevant costs will be borne by Client.

(e) **Inspection by Regulatory Authorities.** If Client does not give Patheon the documents requested under subsections (b) and (c) above within the time specified and if Patheon reasonably believes that Patheon’s standing with a Regulatory Authority may be jeopardized, Patheon may, in its sole discretion, delay or postpone any inspection by the Regulatory Authority until Patheon has reviewed the requested documents and is satisfied with their contents.

(f) **Pharmacovigilance.** Client will be responsible, at its expense, for all pharmacovigilance obligations for the Products pursuant to Applicable Laws. Unless required by Applicable Law, neither party will be obliged to exchange with the other party any information or data which it compiles pursuant to pharmacovigilance obligations or activities. Patheon shall cooperate in providing Client with all reasonable assistance and information required to enable Client to carry out its pharmacovigilance obligations in accordance with Applicable Laws.

(g) **No Patheon Responsibility.** Other than with respect to information provided by or based upon information provided by Patheon, Patheon will not assume any responsibility for the accuracy or cost of any application for Regulatory Approval.

**ARTICLE 8**

**TERM AND TERMINATION**

8.1 **Initial Term.**

(a) **Main Agreement:** This Agreement will become effective as of the Effective Date and will continue until December 31, 2020 (the “**Initial Term**”) and thereafter for successive terms of two Years each, unless terminated earlier (i) by one of the parties in accordance in accordance with Section 8.2; or (ii) by either party giving advance written notice to the other party of its intention to terminate this Agreement at least 18 months prior to the end of the then current Term provided that such notice shall not expire prior to last day of the Initial Term or the Continuation Term, as the case may be. In any event, if there is a Product Agreement in effect (each such period being a “**Continuation Term**”), the legal terms and conditions of this Agreement will continue to govern any Product Agreement in effect as provided in Section 1.2, unless this Agreement is terminated earlier by one of the parties in accordance in accordance with Section 8.2, provided always that, if at any time this Agreement has a shorter remaining Term than any Product Agreement and no Breach Notice or notice of termination has been validly served
in respect of this Agreement, the Term of this Agreement shall be automatically extended so that this Agreement shall continue in force until the termination or expiration of the last of the Product Agreements to be in force, after which it shall terminate automatically.

(b) **Product Agreements**: Each Product Agreement will have an initial term from the Effective Date of the Product Agreement until December 31 of the Year agreed to by the parties in the Product Agreement and, unless terminated earlier by one of the parties in accordance herewith (each, an “**Initial Product Term**”), will continue thereafter for successive terms of two Years each (each such period being a “**Continuation Product Term**”) provided that a Product Agreement may be terminated (i) by either party in accordance with Section 8.2; (ii) by either party giving advance written notice to the other party of its intention to terminate the Product Agreement at least 18 months prior to the end of the then current Term provided that such notice shall not expire prior to last day of the Initial Product Term or the Continuation Product Term, as the case may be or (iii) if a Breach Notice or notice of termination has been validly served in relation to this Agreement, any Product Agreements in force at that time shall automatically terminate, as and when this Agreement terminates.

8.2 **Termination for Cause**.

(a) Either party at its sole option may terminate this Agreement or a Product Agreement immediately upon written notice, if the other party commits a material breach of any of the terms of this Agreement or the Product Agreement and the other party has failed to remedy the material breach within 60 days following receipt of a written notice (the “**Remediation Period**”) of the breach from the aggrieved party that expressly states that it is a notice under this Section 8.2(a) (a “**Breach Notice**”) and sets out particulars of the breach in reasonable detail and requiring the breach to be remedied. The aggrieved party’s right to terminate this Agreement or a Product Agreement under this Section 8.2(a) may only be exercised for a period of 60 days following the expiry of the Remediation Period (where the breach has not been remedied) and if the termination right is not exercised during this period then the aggrieved party will be deemed to have waived the right to terminate based on the material breach described in the Breach Notice. The termination of a Product Agreement under this Section 8.2(a) will only affect the Product Agreement to which it relates and shall not affect this Agreement or any other Product Agreements where there has been no material breach of the other Product Agreements. The terms of and transactions contemplated by this Agreement and by all then-outstanding Product Agreement(s), will be considered in totality in determining whether a breach of a Product Agreement constitutes a material breach of this Agreement.

(b) Either party at its sole option may immediately terminate this Agreement or a Product Agreement upon written notice, but without prior advance notice, to the other party if: the other party is (i) deemed for the purpose of any Applicable Law, to be insolvent or unable to pay its debts as they fall due (ii) insolvent or bankrupt by a court of competent jurisdiction; (iii) a voluntary petition of bankruptcy is filed in any court of competent jurisdiction by the other party; or (iv) this Agreement or a Product Agreement is assigned by the other party for the benefit of creditors.

(c) Client may terminate a Product Agreement upon 30 days’ prior written notice:

(i) if any Authority takes any action, inaction, or raises any objection, that prevents Client from importing, exporting, purchasing, or selling the Product or the Marketing Authorisation for such Product is revoked due to a health, safety or efficacy concern; or

(ii) any Regulatory Authority intervenes to prevent Manufacture for a significant technical or regulatory reason, but if this occurs, the parties must still fulfill all of their respective obligations under Section 8.3 below and under any Capital Equipment Agreement regarding the Product.
(d) Client may terminate a Product Agreement upon six months’ prior written notice if it intends to no longer order Manufacturing Services for a Product due to the Product’s discontinuance in the market or may terminate immediately in the case of non-approval, such as by a Complete Response Letter, by regulatory authority.

(e) Patheon may terminate this Agreement or a Product Agreement upon twelve months’ prior written notice or other such longer period as may be agreed between the parties, if Client assigns under Section 13.6 any of its rights under this Agreement or a Product Agreement to an assignee that, in the opinion of Patheon acting reasonably, is: (i) not a credit worthy substitute for Client according to evaluation of Dunn and Bradstreet (or equivalent) ratings; or (ii) a Patheon Competitor;

8.3 Obligations on Termination.

(a) If a Product Agreement is completed, expires, or is terminated in whole or in part for any reason, then:

(i) Patheon will Manufacture and supply and Client will take Delivery of and pay for all unDelivered Products that are Manufactured and/or packaged in accordance with this Agreement under a Firm Order, at the Price in effect at the time the Firm Order was placed;

(ii) Client will purchase, at Patheon’s cost (including all costs incurred by Patheon for the purchase, handling, and processing of the Inventory), the Inventory applicable to the Products which was purchased, maintained or produced by Patheon in contemplation of filling Firm Orders or in accordance with Section 5.2;

(iii) Client will satisfy any write-off costs (in accordance with IFRS) that Patheon actually incurs under Patheon’s orders with suppliers of Components, if the orders were made by Patheon in reliance on Firm Orders or in accordance with Section 5.2 and cannot be cancelled;

(iv) Client acknowledges that no Patheon Competitor will be permitted access to the Manufacturing Site;

(v) after expiry or termination of this Agreement, the parties shall provide each other with reasonable support with respect to any investigation carried out by a Regulatory Authority with respect to the Manufacture of any Product under this Agreement, provided that the reasonable costs of the assisting party in providing such assistance shall be reimbursed by the party requesting such assistance; and

(vi) Client will make Commercially Reasonable Endeavours, at its own expense, to remove from Patheon site(s), within 30 days, all unused Active Material and Client-Supplied Components, all applicable Inventory and Materials (whether current or obsolete), supplies, unDelivered Product, chattels, equipment or other moveable property owned by Client, related to the Agreement and located at a Patheon site or that is otherwise under Patheon’s care and control (“Client Property”). Patheon will cooperate in good faith with Client in this regard,
providing sufficient access rights and support as is reasonably required by the Client. If Client fails to remove Client Property within 30 days following the completion, termination, or expiration of the Product Agreement, Client will pay Patheon EURO 150 per pallet, per month, one pallet minimum (except that Client will pay EURO 300 per pallet, per month, one pallet minimum, for any of Client Property that contains controlled substances, requires refrigeration or other special storage requirements) thereafter for storing Client Property and will assume any third party storage charges invoiced to Patheon regarding Client Property. Patheon will invoice Client for the storage charges as set forth in Section 5.5 of this Agreement. If Client fails to remove Client Property within 30 days following the completion, termination, or expiration of the Product Agreement, Client will assume all risk of loss or damage to the stored Client Property and it will be Client’s responsibility to have appropriate insurance coverage in place for this risk. If Client asks Patheon to destroy any Client Property, Client will be responsible for the cost of destruction.

(b) Client may,

(i) at any time during the Term (in respect of the transfer of Manufacturing Services to another Manufacturing Site owned or occupied by Patheon or an Affiliate of Patheon); or

(ii) in the event of expiration or termination of this Agreement, at any time during the Term following notice of termination or within ninety (90) days of termination or expiration (in respect of the transfer of all Manufacturing Services and associated activities to a third party), in each case except for termination by Patheon pursuant to Section 8.2(a), (b) or (c), or for termination by Client pursuant to Section 8.2(c) or (d) (in relation to the applicable Product),

on a Product-by-Product basis, request from Patheon, and, upon terms and conditions agreed with Patheon (with each party acting promptly, reasonably and in good faith), Patheon shall, provide or cause to be provided, technical transfer services to support a smooth and efficient transfer of the Manufacturing Services in respect of any Product or Component thereof from Patheon, its Affiliate(s) and/or subcontractor(s) to Client, or its designee(s) (including an Affiliate of Patheon in respect of a transfer of Manufacturing Site) in accordance with Applicable Laws and any regulatory requirements arising from, or connected to, such technical transfer services. Provided that in agreeing the terms and conditions of the provision of technical transfer services it shall be assumed that:

(iii) in the event of a technical transfer request (i) following or directly arising from a termination of the Agreement or the relevant Product Agreement pursuant to Section 8.2(a) or 8.2(b) by Client Patheon shall (at its cost) provide support to the technology transfer (which shall, without limitation, include the provision of such suitably qualified personnel, technical support information) relating to the Manufacturing process and development, as is reasonably required to ensure the smooth and efficient transfer of the production of the Manufacturing of the Products within a reasonable period, including the provision of all necessary documentation); and

(iv) in all other cases the costs of the technical transfer shall be allocated in accordance with the cost allocation principles set out in the Product Agreement.

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Any completion, termination or expiration of this Agreement or a Product Agreement will not affect any outstanding obligations or payments due prior to the completion, termination or expiration, nor will it prejudice any other remedies that the parties may have under this Agreement or a Product Agreement or any related Capital Equipment Agreement. For greater certainty, completion, termination or expiration of this Agreement or of a Product Agreement for any reason will not affect the obligations and responsibilities of the parties under Articles 10 and 11 and Sections 5.4, 5.5, 6, 7.3, 8.3, 13.1, 13.2, 13.3, 13.11, 13.16 and 13.19 and the continuation in force of any provisions which are necessary for interpretation purposes, all of which survive any completion, termination or expiration.

ARTICLE 9

PRESENTATIONS, WARRANTIES AND COVENANTS

9.1 Authority.

Each party covenants, represents, and warrants that it has the full right and authority to enter into this Agreement and that it is not aware of any impediment that would inhibit its ability to perform its obligations hereunder.

9.2 Client Warranties.

Client covenants, represents, and warrants that:

(a) Non-Infringement.

(i) it or its Affiliate owns or licenses the Specifications for each of the Products and that Client may lawfully disclose the Specifications to Patheon;

(ii) any Client Intellectual Property, used by Patheon in performing the Manufacturing Services according to the Specifications (A) is Client’s or its Affiliate’s, unencumbered property and (B) may be lawfully received, processed and used as directed by Client in accordance with this Agreement and such use does not infringe and will not infringe any Third Party Rights;

(iii) the performance of the Manufacturing Services by Patheon for any Product under this Agreement or any Product Agreement or the use or other disposition of any Product by Patheon in accordance with this Agreement and any Product Agreement, does not and will not infringe any Third Party Rights;

(iv) there are no actions or other legal proceedings involving Client that concern the infringement of Third Party Rights related to any of the Specifications, its Products, its formula, or, so far as Client is aware, related to any of the Active Materials and/or any Client Supplied Components, or the sale, use, or other disposition of any Product made in accordance with the Specifications;

(b) Quality and Compliance.

(i) the Specifications for all Products conform to all Applicable Laws;
(ii) the Products, if labelled and Manufactured in accordance with this Agreement; the Quality Agreement; the Specifications; in compliance with applicable cGMPs and Applicable Laws and any specific requirements set out in the Product Agreement(s) (i) may be lawfully sold and distributed in every jurisdiction in which Client markets the Products, (ii) will be fit for the purpose intended, and (iii) will be safe for human consumption;

(iii) on the date of shipment, the API will conform to the specifications for the API that Client has given to Patheon and that the API will be adequately contained, packaged, and labelled and will conform to the affirmations of fact on the container.

9.3 **Patheon Warranties.**

Patheon covenants, represents, and warrants that:

(a) it will perform the Manufacturing Services in accordance with the Specifications, cGMPs, the Quality Agreement, the conditions of any Regulatory Approval and Applicable Laws save that, to the extent such compliance relates to the packaging or labelling of the Products, the Applicable Laws shall be as notified in writing by Client prior to execution of the relevant Product Agreement;

(b) Product Delivered hereunder will be Manufactured and supplied in accordance with the Specifications, cGMPs, the Quality Agreement, the conditions of any Regulatory Approval as provided in writing by Client prior to execution of the relevant Product Agreement and Applicable Laws;

(c) any Patheon Intellectual Property used by Patheon to perform the Manufacturing Services (i) is Patheon’s or its Affiliate’s unencumbered property, (ii) may be lawfully used by Patheon, and (iii) does not infringe and will not infringe any Third Party Rights;

(d) it will not in the performance of its obligations under this Agreement use the services of any person it knows is debarred or suspended under 21 U.S.C. §335(a) or (b) or any equivalent in any other relevant jurisdiction as the same may be required in the relevant Product Agreement; and

(e) it does not currently have, and it will not hire, as an officer or an employee any person whom it knows has been convicted of a felony under the laws of the United States for conduct relating to the regulation of any drug product under the United States Federal Food, Drug, and Cosmetic Act or any other relevant Law as the same may be required in the relevant Product Agreement.

9.4 **Permits.**

(a) Subject to Section 9.4(b), Client will be solely responsible for obtaining or maintaining, on a timely basis, any permits or other Regulatory Approvals for the Products or the Specifications, including, without limitation, all marketing and post-marketing approvals.

(b) Patheon will obtain and maintain at all relevant times Regulatory Approvals required to enable it to lawfully and properly perform the Manufacturing Services at the Manufacturing Sites under the relevant Product Agreement, including but not limited to any required manufacturing licences in the jurisdiction.
9.5 **No Warranty.**

NEITHER PARTY (NOR ANY OF ITS RESPECTIVE AFFILIATES) MAKES ANY FURTHER OR ADDITIONAL WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EITHER EXPRESSED OR IMPLIED, BY FACT OR LAW, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT OR A PRODUCT AGREEMENT. ANY WARRANTIES, REPRESENTATIONS, CONDITIONS OR OTHER TERMS THAT MAY BE IMPLIED BY STATUTE OR GENERAL LAW ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THIS AGREEMENT OR A PRODUCT AGREEMENT, INCLUDING ANY WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF MERCHANTABILITY OR SATISFACTORY QUALITY FOR THE PRODUCTS (OTHER THAN, FOR THE AVOIDANCE OF DOUBT, THOSE EXPRESSLY MADE BY CLIENT IN SECTION 9.2 OF THIS AGREEMENT).

**ARTICLE 10**

**REMEDIES AND INDEMNITIES**

10.1 **Consequential and Other Damages.**

Under no circumstances whatsoever will either party be liable to the other under or in relation to this Agreement or any other document issued or entered into under or in connection with this Agreement, in contract, tort, as a result of negligence, breach of statutory duty or otherwise (including, for the avoidance of doubt, under or in relation to any indemnity given in this Agreement) for (i) any (direct or indirect) loss of profits, of anticipated savings, of business, goodwill or (ii) any reliance damages, to the extent the same relate to costs or expenditures incurred to evaluate the viability of entering into this Agreement or to prepare for performance under this Agreement; or (iii) for any other liability, damage, costs, penalty, or expense of any kind incurred by the other party of an indirect or consequential nature, regardless of any notice of the possibility of these damages.

10.2 **Limitation of Liability.**

(a) **Defective or Recalled Product.** Patheon’s maximum aggregate liability to Client for any obligation to (i) refund, offset or replace any Defective Product under Section 6.3(a) or (ii) replace any recalled Products under Section 6.3(b), will not exceed 100% of the Price for the Defective or recalled Product as applicable. This article 10.2(a) will not be subject to Section 10.2(c).

(b) **Active Materials.** Except as expressly set forth in Section 2.2, under no circumstances will Patheon be responsible for any loss or damage to the Active Materials. Patheon’s maximum responsibility for loss or damage to the Active Materials will not exceed the Maximum Credit Value set forth in Schedule D of a Product Agreement.

(c) **Maximum Patheon Liability.** Patheon’s maximum aggregate liability to Client in any Year under this Agreement or any Product Agreement for any reason whatsoever, including, without limitation, any liability arising under Section 6.3(b) relating to the expenses of a Recall or Product return, Sections 2.2 or 10.3 hereof or resulting from any and all breaches of its representations, warranties, or any other obligations under this Agreement or any Product Agreement will not exceed on a per Product basis (i)
15% of revenues (being payments of the Price) per Year, received by Patheon under the applicable Product Agreement during the Year in which the underlying event occurred that gave rise to the liability (e.g. the date of the incident or Manufacture). The said 15% maximum aggregate liability will increase to 100% in the event of Patheon’s gross negligence or wilful misconduct.

(d) Death, Personal Injury and Fraudulent Misrepresentation. Nothing contained in this Agreement shall act to exclude or limit either party’s or its Affiliate’s liability for (i) personal injury or death caused by the negligence of either party (or their respective Affiliates) (ii) fraud or fraudulent misrepresentation or any (ii) other liability to the extent the same may not be excluded or limited as a matter of Applicable Law.

10.3 **Patheon Indemnity.**

(a) Patheon agrees to be liable for, defend and indemnify Client and its Affiliates, and each of their respective officers and employees (on an after-tax basis) against all losses, damages, costs, claims, demands, judgments and liability to, from and in favour of third parties (other than Affiliates) arising from or in connection with (i) any claim of personal injury or property damage to the extent that the injury or damage is the result of or arises from a failure by Patheon or its Affiliates to perform the Manufacturing Services in accordance with this Agreement, the Specifications, cGMPs, the Quality Agreement and Applicable Laws or (ii) the breach by Patheon (or its Affiliates, if applicable) of any of Sections 9.3 and 9.4, Article ARTICLE 11 or Article 13.2, except, in each case to the extent that the losses, damages, costs, claims, demands, judgments, and liability are due to the negligence or wilful misconduct of Client or Client’s Affiliates, or their respective, its officers, employees.

(b) If a claim occurs, Client will: (a) promptly notify Patheon of the claim; (b) use Commercially Reasonable Endeavours to mitigate the effects of the claim; (c) reasonably cooperate with Patheon in the defense of the claim; and (d) permit Patheon to control the defense and settlement of the claim, all at Patheon’s cost and expense.

10.4 **Client Indemnity.**

(a) Client agrees to be liable for, defend and indemnify Patheon and its Affiliates, and each of their respective officers and employees (on an after-tax basis), against all losses, damages, costs, claims, demands, judgments and liability to, from and in favour of third parties (other than Affiliates) arising from or in connection with (i) any claim of personal injury or property damage to the extent that the injury or damage arises from a defect in the Specifications or (ii) the breach by Client (or its Affiliates, if applicable) of any material term of this Agreement (including, without limitation, Section 9.2) except, in each case, to the extent that the losses, damages, costs, claims, demands, judgments, and liability are due to the negligence or wilful misconduct of Patheon or Patheon’s Affiliates, or their respective officers and employees.

(b) If a claim occurs, Patheon will: (a) promptly notify Client of the claim; (b) use Commercially Reasonable Endeavours to mitigate the effects of the claim; (c) reasonably cooperate with Client in the defense of the claim; and (d) permit Client to control the defense and settlement of the claim, all at Client’s cost and expense.

10.5 **Reasonable Allocation of Risk.**

This Agreement (including, without limitation, this Article 10) is reasonable and creates a reasonable allocation of risk for the relative profits the parties each expect to derive from the Products. Patheon assumes only a proportionate degree of risk arising from the Manufacture, distribution, and use
of the Products because Client has developed and holds the marketing approval for the Products, Client requires Patheon to Manufacture and label the Products strictly in accordance with the Specifications, and Client, not Patheon, is best positioned to inform and advise potential users about the circumstances and manner of use of the Products.

ARTICLE 11

CONFIDENTIALITY

11.1 Confidential Information.

"Confidential Information" means any information disclosed by the Disclosing Party to the Recipient (whether disclosed in oral, written, electronic or visual form) that is non-public, confidential or proprietary including, without limitation, information relating to the Disclosing Party’s patent and trademark applications, process designs, process models, drawings, plans, designs, data, databases and extracts therefrom, formulae, methods, know-how and other intellectual property, its clients or client confidential information, finances, marketing, development, products and processes and all price quotations, Manufacturing or professional services proposals, information relating to composition, proprietary technology, and all other information relating to Manufacturing capabilities and operations. In addition, all analyses, compilations, studies, reports or other documents prepared by any party’s Representatives containing the Confidential Information will be considered Confidential Information.

For the purposes of this ARTICLE 11, a party or its Representative receiving Confidential Information under this Agreement is a “Recipient,” and a party or its Representative disclosing Confidential Information under this Agreement is the “Disclosing Party.”

11.2 Use of Confidential Information.

The Recipient will use the Confidential Information solely for the purpose of meeting its obligations under this Agreement or, in the case of Client, developing or commercializing the Product. The Recipient will keep the Confidential Information strictly confidential for the Term of this Agreement and for a minimum of 24 months after termination for any cause of this Agreement and/or the relevant Product Agreement. The Recipient will not disclose the Confidential Information in any manner whatsoever, in whole or in part, other than to those of its Representatives who (i) have a need to know the Confidential Information for the purpose of this Agreement; (ii) have been advised of the confidential nature of the Confidential Information and (iii) have obligations of confidentiality and non-use to the Recipient no less restrictive than those of this Agreement. Recipient will protect the Confidential Information disclosed to it by using reasonable precautions to prevent the unauthorized disclosure, dissemination or use of the Confidential Information, which precautions will in no event be less than those exercised by Recipient with respect to its own confidential or proprietary Confidential Information of a similar nature.

11.3 Exclusions.

The obligations of confidentiality will not apply to the extent that the information:

(a) is or becomes publicly known through no breach of this Agreement or fault of the Recipient or its Representatives;

(b) is in the Recipient’s possession at the time of disclosure by the Disclosing Party other than as a result of the Recipient’s breach of any legal obligation;
(c) is or becomes known to the Recipient on a non-confidential basis through disclosure by sources, other than the Disclosing Party, having the legal right to disclose the Confidential Information, provided that the other source is not known by the Recipient to be bound by any obligations (contractual, legal, fiduciary, or otherwise) of confidentiality to the Disclosing Party with respect to the Confidential Information;

(d) is independently developed by the Recipient without use of or reference to the Disclosing Party’s Confidential Information as evidenced by Recipient’s written records; or

(e) is expressly authorized for release by the written authorization of the Disclosing Party.

Any combination of information which comprises part of the Confidential Information are not exempt from the obligations of confidentiality merely because individual parts of that Confidential Information were publicly known, in the Recipient’s possession, or received by the Recipient, unless the combination itself was publicly known, in the Recipient’s possession, or received by the Recipient.
11.4 **Photographs and Recordings.**

Neither party will take any photographs or videos of the other party’s facilities, equipment or processes, nor use any other audio or visual recording equipment (such as camera phones) while at the other party’s facilities, without that party’s express written consent.

11.5 **Permitted Disclosure.**

Notwithstanding any other provision of this Agreement, the Recipient may disclose Confidential Information of the Disclosing Party to the extent required, as advised by counsel, in response to a valid order of a court or other governmental body or as required by law, regulation or stock exchange rule. But the Recipient will advise the Disclosing Party in advance of the disclosure to the extent practicable and permissible by the order, law, regulation or stock exchange rule and any other applicable Law, will reasonably cooperate with the Disclosing Party, if required, in seeking an appropriate protective order or other remedy, and will otherwise continue to perform its obligations of confidentiality set out herein. If any public disclosure is required by law, the parties will consult concerning the form of announcement prior to the public disclosure being made.

11.6 **Marking.**

The Disclosing Party will use reasonable efforts to summarize in writing the content of any oral disclosure or other non-tangible disclosure of Confidential Information within 30 days of the disclosure, but failure to provide this summary will not affect the nature of the Confidential Information disclosed if the Confidential Information was identified as confidential or proprietary when disclosed orally or in any other non-tangible form.

11.7 **Return of Confidential Information.**

Upon the written request of the Disclosing Party following termination, during the Term, of this Agreement, the Recipient will promptly return the Confidential Information to the Disclosing Party or, if the Disclosing Party directs, destroy all Confidential Information disclosed in or reduced to tangible form including any copies thereof and any summaries, compilations, analyses or other notes derived from the Confidential Information except for one copy which may be maintained by the Recipient for its records. The retained copy will remain subject to all confidentiality provisions contained in this Agreement.

11.8 **Remedies.**

The parties acknowledge that monetary damages may not be sufficient to remedy a breach by either party of this Article 11 and agree that the non-breaching party will be entitled to seek specific performance, injunctive and/or other equitable relief to prevent breaches of this Article 11 and to specifically enforce the provisions hereof in addition to any other remedies available at law or in equity. These remedies will not be the exclusive remedies for breach of this Article 11 but will be in addition to any and all other remedies available at law or in equity.

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**ARTICLE 12**

**DISPUTE RESOLUTION**

12.1 **Commercial Disputes.**
If any dispute arises out of this Agreement or any Product Agreement (other than a dispute under Section 6.1(b) or a Technical Dispute, as defined herein), the parties will first try to resolve it amicably. In that regard, any party may send a notice of dispute to the other, and each party will appoint, within ten Business Days from receipt of the notice of dispute, a single representative having full power and authority to resolve the dispute. The representatives will meet as necessary in order to resolve the dispute. If the representatives fail to resolve the matter within one month from their appointment, or if a party fails to appoint a representative within the ten Business Day period set forth above, the dispute will immediately be referred to the Chief Operating Officer (or another officer as he/she may designate) of each party who will meet and discuss as necessary to try to resolve the dispute amicably. Should the parties fail to reach a resolution under this Section 12.1, the dispute will be referred to a court of competent jurisdiction in accordance with Section 13.19.

12.2 Technical Dispute Resolution.

If a dispute arises (other than disputes under Section 12.1) between the parties that is exclusively related to technical aspects of the Manufacturing, packaging, labelling, quality control testing, handling, storage, or other activities under this Agreement (a “Technical Dispute”), the parties will make all reasonable efforts to resolve the dispute by amicable negotiations. In that regard, senior representatives of each party will, as soon as possible and in any event no later than ten Business Days after a written request from either party to the other, meet in good faith to resolve any Technical Dispute. If, despite this meeting, the parties are unable to resolve a Technical Dispute within a reasonable time, and in any event within 30 Business Days of the written request, the Technical Dispute will, at the request of either party, be referred for determination to an expert in accordance with Exhibit A. If the parties cannot agree that a dispute is a Technical Dispute, Section 12.1 will prevail. For greater certainty, the parties agree that the release of the Products for sale or distribution under the applicable marketing approval for the Products will not by itself indicate compliance by Patheon with its obligations for the Manufacturing Services and further that nothing in this Agreement (including Exhibit A) will remove or limit the authority of the relevant qualified person (as specified by the Quality Agreement) to determine whether the Products are to be released for sale or distribution.

ARTICLE 13

MISCELLANEOUS

13.1 Inventions.

(a) For the Term of this Agreement, Client hereby grants to Patheon a non-exclusive, paid-up, royalty-free, non-transferable license of Client’s Intellectual Property which Patheon must use in order to perform the Manufacturing Services.

(b) All Client Intellectual Property will be the exclusive property of Client.

(c) All Patheon Intellectual Property will be the exclusive property of Patheon. Patheon hereby grants to Client or, as the case may be, to its Affiliate (if Patheon has entered into a Product Agreement with such Affiliate) a perpetual, irrevocable, non-exclusive, paid-up, royalty-free, transferable license (with no right to grant sub license, unless otherwise agreed in the Product Agreement), to use the Patheon Intellectual Property used by Patheon to perform the Manufacturing Services to enable Client, its Affiliates to manufacture the Product(s).
(d) Each party will be solely responsible for the costs of filing, prosecution, and maintenance of patents and patent applications on its own Inventions.

(e) Either party will give the other party written notice, as promptly as practicable, of all Inventions which can reasonably be deemed to constitute improvements or other modifications of the Products or processes or technology owned or otherwise controlled by the party.

### 13.2 Intellectual Property

Neither party has, nor will it acquire, any interest in any of the other party’s Intellectual Property unless otherwise expressly agreed to in writing. Neither party will use any Intellectual Property of the other party, except as specifically authorized by the other party or as required for the performance of its obligations under this Agreement.

### 13.3 Insurance

Each party will maintain commercial general liability insurance, including blanket contractual liability insurance covering the obligations of that party under this Agreement through the Term of this Agreement and for a period of three years thereafter. This insurance will have policy limits of not less than (i) EURO 3,500,000 for each occurrence for personal injury or property damage liability; and (ii) EURO 3,500,000 in the aggregate per annum for product and completed operations liability. If requested each party will give the other a certificate of insurance evidencing the above and showing the name of the issuing company, the policy number, the effective date, the expiration date, and the limits of liability. The insurance certificate will further provide for a minimum of 30 days’ written notice to the insured of a cancellation of, or material change in, the insurance. If a party is unable to maintain the insurance policies required under this Agreement through no fault of its own, then the party will forthwith notify the other party in writing and the parties will in good faith negotiate appropriate amendments to the insurance provision of this Agreement in order to provide adequate assurances.

### 13.4 Independent Contractors

The parties are independent contractors and this Agreement and any Product Agreement will not be construed to create between Patheon and Client any other relationship such as, by way of example only, that of employer-employee, principal agent, joint-venturer, co-partners, or any similar relationship, the existence of which is expressly denied by the parties.

### 13.5 No Waiver

Neither party’s failure to require the other party to comply with any provision of this Agreement or any Product Agreement will be deemed a waiver of the provision or any other provision of this Agreement or any Product Agreement, with the exception of Sections 6.1 and 8.2 of this Agreement.

### 13.6 Assignment and Subcontracting

(a) Patheon may not assign this Agreement or any Product Agreement or any of its associated rights or obligations without the prior written consent of Client, this consent not to be unreasonably withheld. But Patheon may arrange for subcontractors to perform specific testing services arising under any Product Agreement without the consent of Client. Further it is specifically agreed that Patheon may subcontract any part of the Manufacturing Services under a Product Agreement to any Affiliates of equivalent...
commercial standing provided that, unless agreed by the parties, there is no additional cost to Client, including that for Active Materials. The subcontracting of any of the Manufacturing Services to Patheon Affiliates by Patheon shall not relieve Patheon from any of its liabilities or obligations under this Agreement, any Product Agreement or under the Quality Agreement and Patheon shall remain solely liable to Client for the acts or omissions of its Affiliates as if they were the acts or omissions of Patheon.

(b) Subject to Section 8.2(e), Client may assign this Agreement or any Product Agreement or any of its associated rights or obligations without approval from Patheon. But Client will give Patheon prior written notice of any assignment, any assignee will covenant in writing with Patheon to be bound by the terms of this Agreement or the Product Agreement, and Client will remain liable hereunder. Any partial assignment will be subject to Patheon’s cost review of the assigned Products and Patheon may terminate this Agreement or any Product Agreement or any assigned part thereof, on 18 months’ prior written notice to Client and the assignee, if good faith discussions do not lead to agreement on amended Manufacturing Service fees within a reasonable time. In the event of termination by Patheon pursuant to this Section 13.6(b), the parties shall discuss in good faith the supply by Patheon during the said 18-months’ period of additional Product volumes as may be reasonably required during the transition period necessary to transfer the Manufacturing activities of the Product to a new supplier. Client will reimburse Patheon for any costs incurred by Patheon in connection with the partial assignment including any expenses incurred by Patheon for any due diligence audits in connection with the partial assignment.

(c) Notwithstanding the foregoing provisions of this Section 13.6, either party may assign this Agreement or any Product Agreement to any of its Affiliates or to a successor to or purchaser of all or substantially all of its business, but the assignee will remain bound hereunder. For the avoidance of doubt, an assignment under this Section 13.6(c) shall not constitute an assignment under Section 13.6(b).

13.7 **Force Majeure.**

Neither party will be liable for the failure to perform its obligations under this Agreement or any Product Agreement if the failure is caused by an event beyond that party’s reasonable control, including, but not limited to,

(a) strikes or other labor disturbances, lockouts (to the extent the same are not as a result of a party limiting funds to the relevant workforce and apply on an country wide basis),

(b) quarantines, communicable disease outbreaks;

(c) riots, wars, acts of terrorism,

(d) fires, floods, storms and a significant interruption of or material delay in access to power due to a country wide incident that is generally affecting the industry in which the party seeking to rely on the provision participates;

(e) any law or governmental order, rule, regulation or direction, or any action taken by a Regulatory Authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, in each case, of general application or generally affecting the industries in which the parties participate,
(in each case a “Force Majeure Event”). A party claiming a right to excused performance under this Section 13.7 will immediately notify the other party in writing of the extent of its inability to perform, which notice will specify the event beyond its reasonable control that prevents the performance. Neither party will be entitled to rely on a Force Majeure Event to relieve it from an obligation to pay money (including any interest for delayed payment) which would otherwise be due and payable under this Agreement or any Product Agreement.

13.8 Additional Product.

Additional Products may be added to, or existing Products deleted from, any Product Agreement by amendments to the Product Agreement including Schedules A, B, C, and D as applicable.

13.9 Notices.

Unless otherwise agreed in a Product Agreement, any notice, approval, instruction or other written communication required or permitted hereunder will be sufficient if made or given to the other party by personal delivery or confirmed receipt email or by sending the same by first class mail, postage prepaid to the respective addresses or electronic mail addresses set forth below:

If to Client:

Melinta Pharmaceuticals, Inc,
300 TriState International – Suite 272
Lincolnshire, IL 60069
U.S.A.
Attention: Paul Estrem
Email address: pestrem@melinta.com

If to Patheon:

Patheon UK Limited
Kingfisher Drive
Covingham
Swindon
SN3 6BZ
United Kingdom
Attention: Legal Director
Email address: EULegalservices@patheon.com

or to any other addresses or electronic mail addresses given to the other party in accordance with the terms of this Section 13.9. Notices or written communications made or given by personal delivery, or electronic mail will be deemed to have been sufficiently made or given when sent (receipt acknowledged), or if mailed, five days after being deposited in the United States, Canada, or European Union mail, postage prepaid or upon actual receipt, whichever is sooner.
13.10 **Severability.**

If any provision of this Agreement or any Product Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, that determination will not impair or affect the validity, legality, or enforceability of the remaining provisions, because each provision is separate, severable, and distinct.

13.11 **Entire Agreement, variation and delay**

(a) This Agreement, together with the applicable Product Agreement and the Quality Agreement, constitutes the full, complete, final and integrated agreement between the parties relating to the subject matter hereof and supersedes all previous written or oral negotiations, commitments, agreements, transactions, or understandings concerning the subject matter hereof.

(b) Any modification, amendment, or supplement to this Agreement or any Product Agreement must be in writing and signed by authorized representatives of both parties. In case of conflict, the prevailing order of documents will be this Agreement, the Product Agreement, and the Quality Agreement.

(c) Unless otherwise provided in this Agreement, no failure or delay by a party in exercising any right or remedy provided by Applicable Law or under this Agreement or any Product Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

(d) Each party acknowledges that, in entering into this Agreement, it is not relying on any representation, warranty or undertaking not expressly incorporated into it.

(e) Except as expressly stated herein, each of the parties agrees and acknowledges that its only right and remedy in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for breach of the terms of this Agreement and each of the parties waives all other rights and remedies (including those in tort or arising under statute) in relation to any such representation, warranty or undertaking.

13.12 **Other Terms.**

No terms, provisions or conditions of any purchase order or other business form or written authorization used by Client or Patheon will have any effect on the rights, duties, or obligations of the parties under or otherwise modify this Agreement or any Product Agreement, regardless of any failure of Client or Patheon to object to the terms, provisions, or conditions unless the document specifically refers to this Agreement or the applicable Product Agreement and is signed by both parties.

13.13 **No Third Party Benefit or Right.**

(a) Subject to article 13.13(b) nothing in this Agreement or any Product Agreement will confer or be construed as conferring on any third party any benefit or the right to enforce any express or implied term of this Agreement or any Product Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
(b) Certain provisions of this Agreement and the Product Agreements shall confer benefits on the Affiliates of Client and the Affiliates of Patheon and, subject to article 13.13(c) are intended to be enforceable by each such Affiliate by virtue of the Contracts (Rights of Third Parties) Act 1999.

(c) Notwithstanding article 13.13(b) this Agreement and each Product Agreement may be varied in accordance with article 13.11 in any way and at any time without the consent of any Affiliate who is entitled to enforce this Agreement under article 13.13(b).

13.14 Execution in Counterparts.

This Agreement and any Product Agreement may be executed in two or more counterparts, by original, facsimile or “pdf” signature, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

13.15 Use of Client Name.

Patheon will not make any use of Client’s name, trademarks or logo or any variations thereof, alone or with any other word or words, without the prior written consent of Client, which consent will not be unreasonably withheld. Despite this, Client agrees that Patheon may include Client’s name and logo in customer lists or related marketing and promotional material for the purpose of identifying users of Patheon’s Manufacturing Services.

13.16 Taxes.

(a) Client will bear all taxes, duties, levies and similar charges (and any related interest and penalties) (“Tax” or “Taxes”), however designated, imposed as a result of the provision by the Patheon of Services under this Agreement, except:

(i) any Tax based on net income or gross income that is imposed on Patheon by its jurisdiction of formation or incorporation (“Resident Jurisdiction”);

(ii) any Tax based on net income or gross income that is imposed on Patheon by jurisdictions other than its Resident Jurisdiction if this tax is based on a permanent establishment of Patheon; and

(iii) any Tax that is recoverable by Patheon in the ordinary course of business for purchases made by Patheon in the course of providing its Services, such as Value Added Tax (as more fully defined in subparagraph (d) below), Goods & Services Tax (“GST”) and similar taxes.

(b) If Client is required to bear a tax, duty, levy or similar charge under this Agreement by any state, federal, provincial or foreign government, including, but not limited to, Value Added Tax, Client will pay the tax, duty, levy or similar charge and any additional amounts to the appropriate taxing authority as are necessary to ensure that the net amounts received by Patheon hereunder after all such payments or withholdings equal the amounts to which Patheon is otherwise entitled under this Agreement as if the tax, duty, levy or similar charge did not exist.
(c) Patheon will not collect an otherwise applicable tax if Client’s purchase is exempt from Patheon’s collection of the tax and a valid tax exemption certificate is furnished by Client to Patheon.

(d) If Section 13.16(a)(iii) does not apply, any payment due under this Agreement for the provision of Services to Client by Patheon is exclusive of value added taxes, turnover taxes, sales taxes or similar taxes, including any related interest and penalties (hereinafter all referred to as “VAT”). If any VAT is payable on a Service supplied by Patheon to Client under this Agreement, this VAT will be added to the invoice amount and will be for the account of (and reimbursable to Patheon by) Client. If VAT on the supplies of Patheon is payable by Client under a reverse charge procedure (i.e., shifting of liability, accounting or payment requirement to recipient of supplies), Client will ensure that Patheon will not effectively be held liable for this VAT by the relevant taxing authorities or other parties. Where applicable, Patheon will use its reasonable commercial efforts to ensure that its invoices to Client are issued in such a way that these invoices meet the requirements for deduction of input VAT by Client, if Client is permitted by law to do so.

(e) Any Tax that Client pays, or is required to pay, but which Client believes should properly be paid by Patheon pursuant hereto may not be offset against sums due by Client to Patheon whether due pursuant to this Agreement or otherwise.

13.17 Costs
Each party shall bear all costs incurred by it and its Affiliates in connection with the preparation and negotiation of, and the entry into, this Agreement.

13.18 Interest
If any party defaults in the payment when due of any sum payable under this Agreement, the liability of that party shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (as well after as before judgment) at a rate of two per cent. (2%) above LIBOR per annum. Such interest shall accrue from day to day. The parties acknowledge that the provisions of this clause provide a substantial contractual remedy for the late payment of such sums due under this Agreement.

13.19 Governing Law,

(a) This Agreement and any Product Agreement, unless otherwise agreed by the parties in the Product Agreement and then only for purposes of that Product Agreement, will be governed by and construed in accordance with the laws of England.

(b) Each of the parties irrevocably agrees that the courts of England and Wales are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement, and that accordingly any proceedings arising out of or in connection with this Agreement shall be brought in such courts. Subject to article ARTICLE 12 (Dispute Resolution) each of the parties irrevocably submits to the jurisdiction of such courts and waives any objection to proceedings in any such court on the ground of venue or on the ground that proceedings have been brought in an inconvenient forum.

(c) The UN Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
[Signature page to follow]

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IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement as of the Effective Date.

PATHEON UK LIMITED

By: /s/ Andrew Robinson
Name: Andrew Robinson
Title: Finance Director
Date: 20 July 2016

MELINTA THERAPEUTICS, INC.

By: /s/ Eugene Sun, M.D.
Name: Eugene Sun, M.D.
Title: Chief Executive Officer
Date: July 01, 2016
SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement (this “Agreement”), delivered December 21, 2017, confirms the following understandings and agreements between Melinta Therapeutics, Inc., a Delaware corporation (the “Company”) and John Temperato (hereinafter referred to as “you” or “your”).

In consideration of the promises set forth herein, you and the Company agree as follows:

1. Opportunity for Review; Acceptance. You have until February 16, 2018 (the “Review Period”), to review and consider this Agreement and the disclosure information provided pursuant to the Older Workers Benefit Protection Act (attached hereto as Exhibit A). To accept this Agreement, and the terms and conditions contained herein, prior to the expiration of the Review Period, you must execute and date this Agreement where indicated below and return the executed copy of this Agreement to the Company’s Vice President, Human Resources, Suzie Paulson (the “Company Representative”) by mail at c/o Melinta Therapeutics, 6320 Quadrangle Drive, Suite 360, Chapel Hill, North Carolina 27517, Attention: Suzie Paulson, or by email at spaulson@melinta.com. You acknowledge that, to the extent there are changes made to the terms of this Agreement, whether they are material or immaterial, the Review Period is not recommenced. Notwithstanding anything contained herein to the contrary, this Agreement will not become effective or enforceable for a period of seven (7) calendar days following the date of your execution of this Agreement (the “Revocation Period”), during which time you may revoke your acceptance of this Agreement by notifying the Company Representative, in writing, to the address specified above. To be effective, such revocation must be received by the Company Representative no later than 5:00 p.m. Eastern Time on the seventh (7th) calendar day following your execution of this Agreement. Provided that this Agreement is executed during the Review Period, and you do not revoke it during the Revocation Period, the eighth (8th) day following the date on which this Agreement is executed and delivered to the Company Representative shall be its effective date (the “Effective Date”). In the event that you fail to execute and deliver this Agreement prior to the expiration of the Review Period, or if you otherwise revoke this Agreement during the Revocation Period, this Agreement will be null and void and of no effect, and the Company will have no obligations hereunder.

2. Employment Status; Accrued Benefits; and Separation Payments.

(a) Employment Status. You acknowledge and agree that your employment with the Company and its direct and indirect parent(s), subsidiaries, and affiliates (collectively, with the Company, the “Company Group”), will terminate effective as of the close of business on January 2, 2018 (the “Separation Date”), and after the Separation Date, you will not represent yourself as being an employee, officer, agent, or representative of the Company or any other member of the Company Group. You hereby confirm your resignations from all offices, directorships, trusteeships, committee memberships and fiduciary and other capacities held with, or on behalf of, the Company Group effective as of the Separation Date and your execution of this Agreement will be deemed the grant by you to the officers of the Company of a limited power of attorney to sign in your name and on your behalf any such documentation as may be required to be executed solely for the limited purposes of effectuating such resignations. You agree that within five (5) business days following the Separation Date, you will update your accounts or profiles on any social media platform (including, but not limited to, Facebook, Twitter, MySpace or LinkedIn) to reflect that you are no longer actively employed by or affiliated with the Company.

(b) Accrued Benefits. The Separation Date shall be the termination date of your employment for purposes of participation in and coverage under all benefit plans and programs sponsored by or through the Company and any other member of the Company Group, except as otherwise provided herein. You will be paid for (i) all of your earned but unpaid salary through the Separation Date and, to the extent payable pursuant to the Company’s policies, your accrued but unused vacation as of the Separation Date, in each case, on or prior to the Company’s next regularly scheduled payroll date on or following the Separation Date.
Date, or earlier to the extent otherwise required by applicable law, and (ii) any business expenses incurred prior to the Separation Date and properly submitted in accordance with the Company’s policies and procedures within ten (10) days of the Separation Date. In addition, you will be entitled to continued medical and health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), and additional information concerning such benefits will be provided to you under separate cover following the Separation Date.

(c) Separation Payments and Benefits. In consideration of your release and waiver of claims set forth in paragraph 3 below, subject to your execution, delivery and non-revocation of this Agreement and continued compliance with this Agreement, including but not limited to, paragraph 11 hereof, the Company will provide you with the following separation benefits (the “Consideration”):

(i) Base Salary Continuation. An amount equal to twelve (12) months of your annual base salary, payable in equal installments in accordance with the Company’s regular payroll practices over a period of twelve (12) months, commencing on the first regularly scheduled payroll date following the Separation Date;

(ii) COBRA Premiums. If you elect continuing group medical coverage pursuant to COBRA, reimbursement of the employer portion of the premium costs of such continuation coverage (consistent with the Company’s policy for active employees) until the earlier of (x) the end of the twelfth (12th) month following the Separation Date, or (y) the date you are eligible for coverage under another group health plan, subject to the terms of the Company’s plan and applicable law. You agree to notify the Company of your eligibility for coverage under another group health plan during the period you are entitled to payments under this paragraph within ten (10) days of such eligibility; and

(iii) Pro-rated Annual Bonus. A lump sum cash payment equal to $208,068.75, representing the pro-rata portion of the annual bonus that you would otherwise have earned in respect of the 2017 fiscal year based on the number of months of completed employment up to the Separation Date, such amount to be paid at the same time it would otherwise be paid to you had no termination occurred, but in no event later than March 1, 2018.

(d) Deferral of Payments. Notwithstanding the foregoing, in the event that any payment otherwise scheduled to occur prior to the Effective Date, but for the condition on executing this Agreement, shall not be made until the first regularly scheduled payroll date following the Effective Date.

(e) Full Discharge. You acknowledge and agree that the payment(s) and other benefits provided pursuant to this paragraph 2 are in full discharge of any and all liabilities and obligations of the Company or any other member of the Company Group to you, monetarily or with respect to employee benefits or otherwise, including but not limited to any and all obligations arising under that certain Amended and Restated Severance Agreement between you and the Company, dated August 29, 2017 (the “Severance Agreement”), any other alleged written or oral employment agreement, policy, plan or procedure of the Company or any other member of the Company Group and/or any alleged understanding or arrangement between you and the Company or any other member of the Company Group (other than claims for accrued and vested benefits under an employee benefit, insurance, or pension plan of the Company or any other member of the Company Group (excluding any severance or similar plan or policy), subject to the terms and conditions of such plan(s)).

(f) Taxes. Amounts provided hereunder, including without limitation the Consideration, are subject to withholding for all applicable taxes, including but not limited to income, employment, and social insurance taxes, as shall be required by law.

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You hereby acknowledge and agree that, as of the Separation Date, pursuant to the terms of (A) that certain stock option grant notice, dated March 22, 2016, and (B) that certain stock option grant notice, dated August 8, 2017 (collectively, the “Grant Agreements”), you will be vested in options to purchase 33,061 shares of the common stock of the Company, in the aggregate, and have not yet vested in options to purchase 45,689 shares of common stock of the Company, in the aggregate. The stock options granted to you pursuant to the Grant Agreements will remain subject to the terms and conditions of the Grant Agreements and the Company’s 2011 Equity Incentive Plan, as amended and restated on December 17, 2013, and as further amended from time to time.


(a) As used in this Agreement, the term “claims” will include all claims, covenants, warranties, promises, undertakings, actions, suits, causes of action, obligations, debts, accounts, attorneys’ fees, judgments, losses and liabilities, of whatsoever kind or nature, in law, equity or otherwise.

(b) For and in consideration of the payments and benefits described in paragraph 2 above, and other good and valuable consideration, you, for and on behalf of yourself and your heirs, administrators, executors and assigns, as of the date hereof, do fully and forever release, remise and discharge each member of the Company Group and their successors and assigns, together with their respective officers, directors, partners, members, stockholders (including any management company of a stockholder), employees and agents (collectively, and with the Company, the “Company Parties”) from any and all claims whatsoever up to the date hereof which you had, may have had, or now have against the Company Parties, whether known or unknown, for or by reason of any matter, cause or thing whatsoever, including any claim arising out of or attributable to your employment or the termination of your employment with the Company or any member of the Company Group, whether for tort, breach of express or implied employment contract, intentional infliction of emotional distress, wrongful termination, unjust dismissal, defamation, libel or slander, or under any federal, state or local law dealing with discrimination based on age, race, sex, national origin, handicap, religion, disability or sexual orientation. This release of claims includes, but is not limited to, all claims arising under the Age Discrimination in Employment Act (the “ADEA”), Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Civil Rights Act of 1991, the Family and Medical Leave Act, the Equal Pay Act, the Worker Adjustment and Retraining Notification Act, and the Employee Retirement Income Security Act (excluding claims for accrued, vested benefits under an employee pension benefit plan of the Company Parties), each as may be amended from time to time, and all other federal, state and local laws, the common law and any other purported restriction on an employer’s right to terminate the employment of employees. You intend the release contained herein to be a general release of any and all claims to the fullest extent permissible by law and for the provisions regarding the release of claims against the Company Parties to be construed as broadly as possible, and hereby incorporate in this release similar federal, state or other laws, all of which you also hereby expressly waive.

(c) You understand and agree that claims or facts in addition to or different from those which are now known or believed by you to exist may hereafter be discovered, but it is your intention to fully and forever release, remise and discharge all claims which you had, may have had, or now have against the Company Parties, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or noncontingent, without regard to the subsequent discovery or existence of such additional or different facts. Without limiting the foregoing, by signing this Agreement, you expressly waive and release any provision of law that purports to limit the scope of a general release.

(d) You acknowledge and agree that as of the date you execute this Agreement, you have no knowledge of any facts or circumstances that give rise or could give rise to any claims under any of the laws listed in the preceding paragraphs.

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(c) Notwithstanding any provision of this Agreement to the contrary, by executing this Agreement, you are not releasing any claims relating to: (i) your rights with respect to payment of amounts under this Agreement, (ii) your right to accrued, vested benefits due to terminated employees under any employee benefit plan of the Company or any other member of the Company Group in which you participated (excluding any severance or similar plan or policy), in accordance with the terms thereof (including your right to elect COBRA continuation coverage), (iii) any claims that cannot be waived by law or that arise after the date on which you execute this Agreement, or (iv) your right to indemnification, advancement and reimbursement of legal fees and expenses, and directors and officers liability insurance, as provided by, and in accordance with the terms of, applicable law, the Company’s by-laws or otherwise.

(f) You acknowledge and agree that, by virtue of the foregoing, you have waived any relief available to you (including without limitation, monetary damages, equitable relief and reinstatement) under any of the claims and/or causes of action waived in this paragraph 3. Therefore you agree that you will not accept any award or settlement from any source or proceeding (including but not limited to any proceeding brought by any other person or by any government agency) with respect to any claim or right waived in this Agreement.

(g) You acknowledge and agree that as of the date of this Agreement, you have reported all accidents, injuries or illnesses relating to or arising from your employment with the Company or the Company Group and that you have not suffered any on-the-job injury or illness for which you have not yet filed a claim.

4. **Knowing and Voluntary Waiver.** You expressly acknowledge and agree that you:

(a) are able to read the language, and understand the meaning and effect, of this Agreement;

(b) have no physical or mental impairment of any kind that has interfered with your ability to read and understand the meaning of this Agreement or its terms, and that you are not acting under the influence of any medication, drug or chemical of any type in entering into this Agreement;

(c) are specifically agreeing to the terms of the release contained in this Agreement because the Company has agreed to provide you the Consideration, which the Company has agreed to provide because of your agreement to accept it in full settlement of all possible claims you might have or ever had against the Company Parties, and because of your execution of this Agreement;

(d) acknowledge that but for your execution of this Agreement, you would not be entitled to the Consideration;

(e) had or could have the entire Review Period in which to review and consider this Agreement and the disclosure information provided pursuant to the Older Workers Benefit Protection Act (attached hereto as Exhibit A), and that if you execute this Agreement prior to the expiration of the Review Period, you have voluntarily and knowingly waived the remainder of the Review Period;

(f) understand that, by entering into this Agreement, you do not waive rights or claims under the ADEA that may arise after the date you execute this Agreement;

(g) have not relied upon any representation or statement not set forth in this Agreement made by the Company Group or any of its representatives;
were advised to consult with your attorney regarding the terms and effect of this Agreement; and

have signed this Agreement knowingly and voluntarily.

5. **No Suit.** You represent and warrant that you have not previously filed, and to the maximum extent permitted by law agree that you will not file, a complaint, charge or lawsuit against any of the Company Parties regarding any of the claims released herein. If, notwithstanding this representation and warranty, you have filed or file such a complaint, charge or lawsuit, you agree that you shall cause such complaint, charge or lawsuit to be dismissed with prejudice and shall pay any and all costs required in obtaining dismissal of such complaint, charge or lawsuit, including without limitation the attorneys’ fees of any of the Company Parties against whom you have filed such a complaint, charge, or lawsuit. This paragraph 5 shall not apply, however, to any non-waivable right to file a charge with the U.S. Equal Employment Opportunity Commission (the “EEOC”) or similar state agency; provided, however, that if the EEOC or similar state agency pursues any claims relating to your employment with the Company or any member of the Company Group, you agree that you shall not be entitled to recover any monetary damages or any other remedies or benefits as a result and that this Agreement and the Consideration will control as the exclusive remedy and full settlement of all such claims by you. In addition, I understand that nothing in this Agreement shall be construed to prohibit you from reporting possible violations of law or regulation to any governmental agency or regulatory body or making other disclosures that are protected under any law or regulation, or from filing a charge with or participating in any investigation or proceeding conducted by any governmental agency or regulatory body.

6. **No Re-Employment.** You hereby agree to waive any and all claims to re-employment with the Company or any other member of the Company Group. You affirmatively agree not to seek further employment with the Company or any other member of the Company Group. You acknowledge that if you re-apply for or seek employment with the Company or any other member of the Company Group, the Company’s or any other member of the Company Group’s refusal to hire you based on this provision will provide a complete defense to any claims arising from your attempt to apply for employment.

7. **Successors and Assigns.** The provisions hereof shall inure to the benefit of your heirs, executors, administrators, legal personal representatives and assigns and shall be binding upon your heirs, executors, administrators, legal personal representatives and assigns.

8. **Severability; Third Party Beneficiaries.** If any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect. The illegality or unenforceability of such provision, however, shall have no effect upon and shall not impair the enforceability of any other provision of this Agreement. You acknowledge and agree that each of the Company Parties shall be a third-party beneficiary to the releases set forth in paragraph 3, with full rights to enforce this Agreement and the matters documented herein.

9. **Non-Disparagement.** You agree that you will make no disparaging or defamatory comments regarding any member of the Company Group or their respective current or former directors, officers, employees, members, stockholders (including any management company of a stockholder), or affiliates in any respect or make any comments concerning any aspect of your relationship with any member of the Company Group or the conduct or events which precipitated your termination of employment from any member of the Company Group. Your obligations under this paragraph 9 extend to, but are not limited to, text messages, e-mail communications, and comments or postings on blogs, comment boards or social media websites including, but not limited to, Facebook, Twitter, MySpace or LinkedIn. This paragraph 9 shall not prevent the truthful testimony by any individual or entity in a legal proceeding or pursuant to a governmental, administrative or regulatory investigation.
10. **Cooperation.**

(a) You agree that you will provide reasonable cooperation to the Company and/or any other member of the Company Group and its or their respective counsel in connection with any investigation, administrative proceeding or litigation relating to any matter that occurred during your employment in which you were involved or of which you have knowledge. The Company agrees to reimburse you for reasonable out-of-pocket expenses incurred at the request of the Company with respect to your compliance with this paragraph 10(a). You agree to provide information and answer questions as reasonably requested by the Company with respect to any matter on which you worked prior to the Separation Date of which you have knowledge.

(b) You agree that, in the event you are subpoenaed by any person or entity (including, but not limited to, any government agency) to give testimony or provide documents (in a deposition, court proceeding or otherwise) which in any way relates to your employment by the Company and/or any other member of the Company Group, you will give prompt written notice of such request to the Company Representative, in writing to the address specified above, or his successor or designee, and will make no disclosure until the Company and/or the other member of the Company Group has had a reasonable opportunity to contest the right of the requesting person or entity to such disclosure.

11. **Restrictive Covenants.** You hereby acknowledge and agree that the execution of this Agreement does not alter your obligations to any member of the Company Group under any confidentiality, non-compete, non-solicit, invention assignment, or similar agreement or arrangement to which you are a party with any member of the Company Group, including, without limitation, the provisions set forth in that certain Employee Non-Competition, Non-Disclosure and Developments Agreement, signed as of February 16, 2016 (the “Proprietary Rights Agreement”), which obligations are hereby incorporated into this Agreement and shall survive the termination of your employment with the Company, and you hereby acknowledge, reaffirm and ratify your continuing obligations to the Company Group pursuant to such agreements or arrangements. You further hereby acknowledge that your continued compliance with these obligations is a condition of your receiving the Consideration described in paragraph 2 above and upon any breach of the Proprietary Rights Agreement, the Company shall be entitled to an immediate refund of any Consideration already received by you.

12. **Confidentiality.** The terms and conditions of this Agreement are and shall be deemed to be confidential, and shall not be disclosed by you to any person or entity without the prior written consent of the Company, except if required by law, and to your accountants, attorneys and/or immediate family, provided that, to the maximum extent permitted by applicable law, rule, code or regulation, they agree to maintain the confidentiality of this Agreement.

13. **Return of Property.** You agree that you will promptly return to the Company, and you will retain no copies of, all property belonging to the Company and/or any other member of the Company Group, including but not limited to all proprietary and/or confidential information and documents (including any copies thereof) in any form belonging to the Company, cell phone, Blackberry, iPhone or other mobile device, key, credit card, identification card or badge, card access to the building and office floors, employee handbook, laptop, computer or other office equipment, computer user name and password, disks, data files, thumb drives, and/or voicemail code. If you discover after the Separation Date that you have retained any proprietary and/or confidential information (including, without limitation, proprietary and/or confidential information contained in any electronic documents or email systems in your possession or control), you agree immediately upon discovery to send an email to the Company Representative and inform the Company of the nature and location of the proprietary and/or confidential information that you have retained so that the Company may arrange to remove, recover, and/or collect such information. You further acknowledge and agree that the Company shall have no obligation to provide the Consideration referred to in paragraph 2 above unless and until you have satisfied all your obligations pursuant to this paragraph 13.
14. **Non-Admission.** Nothing contained in this Agreement will be deemed or construed as an admission of wrongdoing or liability on the part of you or any member of the Company Group. Accordingly, this Agreement may not be admissible in any forum as an admission, but only in an action to enforce it.

15. **Entire Agreement.** This Agreement and the Proprietary Rights Agreement constitute the entire understanding and agreement of the parties hereto regarding the termination of your employment. This Agreement and the Proprietary Rights Agreement supersede all prior negotiations, discussions, correspondence, communications, understandings and agreements between the parties relating to the subject matter of this Agreement and the Proprietary Rights Agreement.

16. **Governing Law; Jurisdiction.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THAT STATE, WITHOUT REGARD TO CONFLICT OF LAWS RULES. ANY DISPUTE, CONTROVERSY OR CLAIM BETWEEN YOU AND THE COMPANY ARISING OUT OF THIS AGREEMENT OR THE PROPRIETARY RIGHTS AGREEMENT SHALL BE RESOLVED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) IN ACCORDANCE WITH ITS EMPLOYMENT ARBITRATION RULES INCLUDING THE EMERGENCY INTERIM RELIEF PROCEDURES OF THE AAA. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PLACE OF ARBITRATION SHALL BE NEW YORK, NEW YORK. THE ARBITRATOR(S) MAY GRANT INJUNCTIONS OR OTHER RELIEF IN SUCH DISPUTE OR CONTROVERSY. THE DECISION OF THE ARBITRATOR(S) SHALL BE FINAL, CONCLUSIVE AND BINDING ON THE PARTIES TO THE ARBITRATION. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, YOU AND THE COMPANY SHALL EACH BEAR THEIR OWN ATTORNEYS’ FEES INCURRED IN CONNECTION WITH THE ARBITRATION, AND THE ARBITRATOR(S) WILL NOT HAVE AUTHORITY TO BE ENTITLED TO AWARD ATTORNEYS’ FEES UNLESS A STATUTE OR CONTRACT AT ISSUE IN THE DISPUTE AUTHORIZES THE AWARD OF ATTORNEYS’ FEES TO THE PREVAILING PARTY, IN WHICH CASE THE ARBITRATOR(S) SHALL HAVE THE AUTHORITY TO MAKE AN AWARD OF ATTORNEYS’ FEES AS REQUIRED OR PERMITTED BY APPLICABLE LAW. IF THERE IS A DISPUTE AS TO WHETHER THE COMPANY OR YOU IS THE PREVAILING PARTY IN THE ARBITRATION, THE ARBITRATOR(S) WILL DECIDE THIS ISSUE. LIABILITY FOR THE FEES AND EXPENSES OF ALL THE ARBITRATORS WITH RESPECT TO THE ARBITRATION SHALL BE EVENLY DIVIDED BETWEEN THE PARTIES TO THE ARBITRATION. THE DETERMINATION RENDERED BY THE ARBITRATOR(S) SHALL (I) SPECIFY THE FINDING OF FACTS UPON WHICH IT IS BASED AND THE REASONS THEREFOR, AND (II) BE CONCLUSIVE AND BINDING UPON THE PARTIES. NOTWITHSTANDING THE PROVISIONS OF THIS PARAGRAPH, THE COMPANY SHALL NOT BE COMPELLED TO ARBITRATE CLAIMS ARISING UNDER THE PROPRIETARY RIGHTS AGREEMENT AND MAY INSTITUTE JUDICIAL PROCEEDINGS TO ENFORCE THAT AGREEMENT PURSUANT TO SECTION 14 OF THE PROPRIETARY RIGHTS AGREEMENT. YOU HEREBY AGREE TO SUBMIT ANY AND ALL CLAIMS YOU MAY HAVE AGAINST THE COMPANY ON AN INDIVIDUAL BASIS. THIS MEANS THAT NO CLAIM (INCLUDING ANY CLAIM RELATED TO TERMS OR CONDITIONS OF YOUR EMPLOYMENT OR COMPENSATION PAID BY THE COMPANY, OR ANY CHANGE IN OR TERMINATION OF YOUR EMPLOYMENT) MAY BE LITIGATED OR ARBITrated ON A CLASS OR COLLECTIVE BASIS. YOU ALSO HEREBY WAIVE ANY RIGHT TO SUBMIT, INITIATE, OR PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A PLAINTIFF, CLAIMANT, OR MEMBER IN A CLASS ACTION, COLLECTIVE ACTION, OR OTHER REPRESENTATIVE OR JOINT ACTION AGAINST THE COMPANY, REGARDLESS OF WHETHER THE ACTION IS FILED IN ARBITRATION OR IN A JUDICIAL OR ADMINISTRATIVE FORUM. FURTHERMORE, IF A COURT ORDERS THAT
17. **Construction.** The section or paragraph headings or titles herein are for convenience of reference only and shall not be deemed a part of this Agreement. The parties hereto acknowledge and agree that each party has reviewed and negotiated the terms and provisions of this Agreement and has had the opportunity to contribute to its revision. Accordingly, the rule of construction to the effect that ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement. Rather, the terms of this Agreement shall be construed in a reasonable manner to effect the intentions of both parties hereto and not in favor or against either party.

18. **Section 409A.** Payments under this Agreement are intended to be exempt from, or comply with, Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A") and this Agreement will be interpreted to achieve this result. For purposes of this Agreement, each payment in a series of payments hereunder shall be deemed to be a separate payment for purposes of Section 409A. In no event is the Company responsible for any tax or penalty owed by you (other than for withholding obligations or other obligations applicable to employers, if any, under Section 409A) with respect to payments under this Agreement.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and electronically delivered copies of executed counterparts shall be deemed to be originals for all purposes.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

MELINTA THERAPEUTICS, INC.

By: 
Title: 
/s/ John Temperato
John Temperato
Dated: December 28th, 2017

[Signature Page to J. Temperato's Separation and Release Agreement]
Exhibit A
DISCLOSURE INFORMATION PROVIDED PURSUANT TO THE OLDER WORKERS BENEFIT PROTECTION ACT

Confidentiality Provision: The information contained in this Exhibit A is private and confidential. You may not disclose this information to anyone except your professional advisors provided that, to the maximum extent permitted by applicable law, rule, code or regulation, they agree to maintain the confidentiality of such information.

Eligibility Factors and Time Limitations

Melinta Therapeutics, Inc., a Delaware corporation (the “Company”) has decided to terminate the employment of certain employees. Employees who have been notified that they are being terminated are being offered a cash severance payment and benefits in exchange for their signing and not revoking a general release of claims (the “Release”). The decisional unit in connection with this termination program is Executive Management.

Employees who have been informed that they are being terminated and who desire to receive the cash severance payment and benefits will have at least forty-five (45) days from receipt of the Release and this Exhibit A to sign the Release and return it to the Company’s Vice President, Human Resources, Suzie Paulson (the “Company Representative”) by mail at c/o Melinta Therapeutics, 6320 Quadrangle Drive, Suite 360, Chapel Hill, North Carolina 27517,Attention: Suzie Paulson, or by email at spaulson@melinta.com. The Release will not become effective or enforceable for a period of seven (7) calendar days following the date of its execution (the “Revocation Period”), during which time an employee may revoke his or her acceptance of the Release by notifying the Company Representative, in writing, as specified above. To be effective, such revocation must be received by the Company Representative no later than 5:00 p.m. Eastern Time on the seventh (7th) calendar day following execution of the Release. Provided that the Release is executed and delivered to the Company and not revoked during the Revocation Period, the Release will become effective on the eighth (8th) calendar day following the date on which the Release is executed and delivered to the Company.

<table>
<thead>
<tr>
<th>Job Title</th>
<th>Age</th>
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<tbody>
<tr>
<td>Acting Chief Executive Officer (Cempra)</td>
<td>53</td>
</tr>
<tr>
<td>Chief Medical Officer (Cempra)</td>
<td>60</td>
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<tr>
<td>Executive Vice President, CMC (Cempra)</td>
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<tr>
<td>Executive Vice President and Chief Financial Officer (Cempra)</td>
<td>55</td>
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<tr>
<td>Executive Vice President, Regulatory Affairs (Cempra)</td>
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<td>Executive Vice President, Investor Relations and Corporate Communications (Cempra)</td>
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<tr>
<td>Chief Executive Officer (Melinta)</td>
<td>58</td>
</tr>
<tr>
<td>Chief Human Resources and Compliance Officer (Melinta)</td>
<td>43</td>
</tr>
<tr>
<td>Chief Commercial Officer (Melinta)</td>
<td>53</td>
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<td>Job Title</td>
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<tr>
<td>Chief Financial Officer (Melinta)</td>
<td>53</td>
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<td>Chief Medical Officer (Melinta)</td>
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<td>Chief Scientific Officer (Melinta)</td>
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<tr>
<td>Senior Vice President, Regulatory Affairs &amp; Quality Assurance (Melinta)</td>
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<tr>
<td>Vice President, Program Management and Technical Operations (Melinta)</td>
<td>56</td>
</tr>
<tr>
<td>Senior Vice President, Corporate Development and Strategy (Melinta)</td>
<td>41</td>
</tr>
<tr>
<td>Vice President, Human Resources (Cempra)</td>
<td>35</td>
</tr>
</tbody>
</table>
This Amendment (the “Amendment”) to the License Agreement dated as of December 23, 2005 (the “Agreement”), is effective as of January 6, 2009 (“Amendment Effective Date”), between Eli Lilly and Company, a corporation organized and existing under the laws of the State of Indiana (“Lilly”), and Targanta Therapeutics Corporation, a corporation organized and existing under the laws of the State of Delaware (“Targanta” or “Licensee”), successor to InterMune, Inc., a corporation organized and existing under the laws of the State of Delaware (“InterMune”), as purchaser of all rights, title and interest related to oritivancin from InterMune.

WHEREAS, the Parties desire to amend the Agreement to clarify a certain provision thereof;

NOW, THEREFORE, for good and lawful consideration, the sufficiency of which is acknowledged and agreed, the Parties, intending to be legally bound, hereby agree as follows:

Article 1. Amendment to Definition of Product. The last sentence of Section 1.25 of the Agreement is deleted in its entirety.

Article 2. Effect on Agreement. Except as amended by this Amendment, the Agreement shall remain in full force and effect. After the Amendment Effective Date, every reference in the Agreement to the “Agreement” shall mean the Agreement as amended by this Amendment.

Article 3. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Amendment Effective Date.

ELI LILLY AND COMPANY

By: /s/ Gino Santini

Name: Gino Santini
Title: Senior Vice President

TARGANTA THERAPEUTICS CORPORATION

By: /s/ Mark Leuchtenberger

Name: Mark Leuchtenberger
Title: President & CEO