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

# FORM 8-K

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

**Date of Report (Date of Earliest Event Reported): January 14, 2019**

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

| DELAWARE | 001-35405 | 45-4440364 |
|---|---|---|
| (State or other jurisdiction of incorporation) | (Commission File Number) | (I.R.S. Employer Identification No.) |

| 300 George Street, Suite 301, New Haven, CT | 06511 |
|---|---|
| (Address of principal executive offices) | (Zip Code) |

**Registrant's telephone number, including area code (908) 617-1309**

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. ☐

**Introductory Note**

On January 5, 2018, Melinta Therapeutics, Inc. (the "Company") entered into a Facility Agreement (the "Deerfield Facility") by and among the Company, as borrower, certain of the Company's subsidiaries party thereto as guarantors (collectively with the Company, the "Loan Parties"), Deerfield Private Design Fund IV, L.P., Deerfield Private Design Fund III, L.P. and Deerfield Special Situations Fund, L.P. (collectively referred to herein as "Deerfield"), as lenders, and Cortland Capital Market Services LLC, as agent for the lenders, for a secured loan facility. In connection with entering into the Deerfield Facility, the Company issued to Deerfield warrants to purchase an aggregate of 3,792,868 shares of the Company's common stock (collectively, the "Deerfield Warrants"). Also pursuant to the Deerfield Facility, the Company and Deerfield entered into a registration rights agreement, dated January 5, 2018 (the "Deerfield Registration Rights Agreement"), in respect of the shares of common stock issued to Deerfield at the time of entering into the Deerfield Facility and issuable upon exercise of, or otherwise pursuant to, the Deerfield Warrants. The foregoing agreements and transactions are further described in, and the description herein with respect thereto is qualified by reference to, the Form 8-K filed by the Company with the Securities and Exchange Commission (the "SEC") on January 9, 2018.

On December 31, 2018, the Loan Parties entered into a Senior Subordinated Convertible Loan Agreement (the "Vatera Loan Agreement") with Vatera Healthcare Partners LLC ("VHP") and Vatera Investment Partners LLC ("VIP" and, together with VHP, "Vatera") for a $135 million senior subordinated convertible loan facility (the "Vatera Facility," and the loans made thereunder, the "Vatera Convertible Loans"). The Vatera Facility and the Vatera Convertible Loans are further described in, and the description herein with respect thereto is qualified by reference to, the Form 8-K filed by the Company with the SEC on January 3, 2019.

**Item 1.01. Entry into a Material Definitive Agreement.**

*Deerfield Facility Amendment*

On January 14, 2019, the Loan Parties and Deerfield entered into an amendment to the Deerfield Facility (the "Deerfield Facility Amendment"). The Deerfield Facility Amendment is a condition (among other conditions) to funding the Vatera Facility. The amendments set forth in the Deerfield Facility Amendment, except for specified amendments described below which are immediately effective, will become effective, subject to the satisfaction (or waiver) of certain applicable conditions precedent, upon the funding of the initial $75 million disbursement under the Vatera Facility (the "Deerfield Facility Amendment Effective Date").

The Deerfield Facility Amendment, upon the satisfaction or waiver of the applicable conditions, will (i) modify the definition of "change of control" under the Deerfield Facility to permit VHP, VIP and their respective affiliates to own 50% or more of the equity interests in the Company on a fully diluted basis; (ii) modify the definition of "Indebtedness" under the Deerfield Facility to exclude certain specific payments under (x) the Agreement and Plan of Merger, dated as of December 3, 2013, among the Medicines Company, Rempex Pharmaceuticals, Inc. and the other parties thereto and (y) the Purchase and Sale Agreement, dated as of November 28, 2017, between The Medicines Company and Melinta Therapeutics, Inc.; (iii) modify the definition of "Permitted Indebtedness" under the Deerfield Facility to permit the payment of a certain amount of the interest on the Vatera Convertible Loans in cash; (iv) permit the Company's audited financial statements for the fiscal year ending December 31, 2018, to be delivered with an explanatory paragraph expressing doubt as to the Company's status as a going concern; (v) reduce the net sales covenant set forth in the Deerfield Facility for all periods after December 31, 2018, by 15%; (vi) require the Company to hold a minimum cash balance of $40 million through March 31, 2020, and thereafter $25 million (the current requirement); (vii) increase the exit fee under the Deerfield Facility to 4%; and (viii) make certain other technical modifications, including to accommodate the Vatera Facility and the Vatera Convertible Loans.

In connection with the Deerfield Facility Amendment, the Company agreed that, among other things, $74 million in principal amount of the loans under the Deerfield Facility (the "Deerfield Convertible Loan") would be made convertible into shares of the Company's common stock at Deerfield's option at any time and evidenced by a convertible note (the "Deerfield Convertible Note"), subject to the 4.985% Ownership Cap as described below. The conversion price for the Deerfield Convertible Loan (the "Deerfield Convertible Loan Conversion Price") will be the greater of (i) $1.03, which will be the minimum initial conversion price and is the minimum price in accordance with applicable Nasdaq rules, subject to adjustment for stock splits (including a reverse split), stock combinations or similar transactions, and (ii) 95% of the lesser of (A) the closing price of the Company's common stock on the trading day immediately preceding the conversion date and (B) the arithmetic average of the volume weighted average price of the Company's common stock on each of the three trading days immediately preceding the conversion date. A lender's ability to convert its portion of the Deerfield Convertible Loan will be subject to a restriction that no lender will be permitted to convert such portion if it would result in such lender and its affiliates beneficially owning more than 4.985% of the total number of shares of the Company's common stock outstanding (the "4.985% Ownership Cap"). However, that will not prevent a lender from periodically converting its portion of the loan up to the 4.985% Ownership Cap and then selling the shares such that up to $74 million of the loan is converted over time. However, no lender may, without the approval of a majority of the Company's board of directors, sell or dispose, in a pre-arranged single transaction or series of related transactions any shares of the Company's common stock issued upon conversion of the Deerfield Convertible Loan to any person or group if such lender knows, in advance of effecting such transaction or series of related transactions, that such transferee holds, or after giving effect to such sale would hold, in excess of 15% of the issued and outstanding shares of the Company's common stock. This 15% limitation does not apply if the sale is part of a tender offer or exchange offer made to all stockholders of the Company, or otherwise is in connection with a merger or other business combination transaction and also does not restrict the ability of any lender to transfer all or any portion of the Deerfield Convertible Note in accordance with its terms or to sell any shares of the Company's common stock that have been issued upon conversion of the Deerfield Convertible Loan in open-market transactions.

The Deerfield Convertible Loan will continue to be secured by the collateral and the liens granted pursuant to the Deerfield Facility and related loan documents.

The Deerfield Facility Amendment also amends, effective immediately, the Deerfield Warrants to replace the 9.985% ownership cap set forth therein with a 4.985% Ownership Cap. As a result, the Deerfield Warrants are subject to a restriction on the exercise thereof to the extent that, upon such exercise, a holder, its affiliates and any "group" of which such holder is a member would beneficially own greater than 4.985% of the outstanding shares of the Company's common stock. The Deerfield Facility Amendment also amends, effective immediately, the share payment provisions described in Exhibit 2.7 of the Deerfield Facility to replace the 9.985% ownership cap set forth therein with a 4.985% Ownership Cap. As a result, the Company is subject to a restriction on its ability to satisfy interest due and payable through the issuance of the Company's common stock to the extent that, upon such issuance, a holder, its affiliates and any "group" of which such holder is a member would beneficially own greater than 4.985% of the outstanding shares of the Company's common stock.

The Deerfield Facility Amendment also provides that the Deerfield Registration Rights Agreement will cover the shares of the Company's common stock issuable upon conversion of the $5 million of convertible loans that will be deemed funded by Deerfield upon the initial funding under the Vatera Loan Agreement.

In addition to the funding of the initial $75 million disbursement under the Vatera Facility, the effectiveness of the Deerfield Facility Amendment also is subject to the satisfaction (or waiver) of other conditions, including, without limitation, the absence of a default or event of default under the Deerfield Facility; the accuracy of the representations and warranties made by the Company in the Deerfield Facility Amendment; the payment of all fees and all expenses incurred by Deerfield in connection with the Deerfield Facility Amendment; the Vatera Facility and loan documents related thereto and the Subordination Agreement entered into by the Loan Parties and Deerfield remain in full force and effect and all conditions under the Vatera Facility to the effectiveness thereof have been satisfied (or waived); the Company obtains the Stockholder Approval (as defined in the Vatera Loan Agreement) and files the applicable amendment to the Certificate of Incorporation of the Company and the Certificate of Designations for the preferred stock with the Secretary of State of the State of Delaware; the common stock of the Company issuable upon conversion of the Deerfield Convertible Loan has been approved for listing on the Nasdaq Global Select Market or another eligible market; and the delivery to Deerfield of the Deerfield Convertible Note and any note evidencing the Deerfield Subordinated Loan (as defined below).

In addition, the Company is required at all times after the effective date of the Deerfield Facility Amendment to reserve and keep available a sufficient number of shares of common stock for the purpose of enabling the Company to issue all of the underlying shares of common stock issuable pursuant to the Deerfield Convertible Note.

*Vatera Facility Amendment*

In addition, on January 14, 2019, the Company and Vatera entered into an amendment and restatement of the Vatera Loan Agreement (the "A&R Vatera Loan Agreement") pursuant to which, among other things, Deerfield will be deemed to have funded an additional $5 million of senior subordinated convertible loans under the Vatera Facility as consideration for entering into the Deerfield Facility Amendment (the "Deerfield Subordinated Loan"), subject to the satisfaction of certain conditions, including the funding of the initial $75 million disbursement under the Vatera Facility. The Deerfield Subordinated Loan will be in addition to the up to $135 million of Vatera Convertible Loans that may actually be funded under the Vatera Facility, and will have substantially the same terms and conditions, including conversion terms, as the Vatera Convertible Loans that may actually be funded by Vatera under the Vatera Facility. A lender's ability to convert its portion of the Deerfield Subordinated Loan will be subject to the 4.985% Ownership Cap.

Additionally, the A&R Vatera Loan Agreement will terminate if the initial disbursement thereunder is not completed by February 25, 2019.

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

The information set forth under Item 1.01 of this report is incorporated by reference into this Item 2.03.

**Item 3.02. Unregistered Sales of Equity Securities.**

The Deerfield Convertible Note and the Deerfield Subordinated Loan are being acquired from the Company in reliance upon an exemption from registration under Section 3(a)(9) and Section 4(a)(2), respectively, and are not being registered under the Securities Act of 1933, as amended (the "Securities Act"). To the extent that any shares of the Company's stock are issued upon conversion of the Deerfield Convertible Note and the Deerfield Subordinated Loan, they will be issued in transactions anticipated to be exempt from registration under the Securities Act by virtue of Section 3(a)(9) thereof.

**Item 8.01. Other Items.**

**Additional Information and Where to Find It**

The Company has filed with the SEC a revised preliminary proxy statement (the "Revised Preliminary Proxy Statement") for a special meeting with respect to certain proposals related to the Vatera Facility and the Deerfield Facility, as further described therein. **STOCKHOLDERS ARE URGED TO READ THE REVISED PROXY STATEMENT, AND OTHER RELEVANT DOCUMENTS FILED BY THE COMPANY WITH THE SEC, IN THEIR ENTIRETY BECAUSE THEY CONTAIN IMPORTANT INFORMATION ABOUT THE COMPANY, VATERA, DEERFIELD, THE PROPOSED TRANSACTIONS AND RELATED MATTERS.** Stockholders are able to obtain free copies of the Revised Proxy Statement and other documents filed by the Company with the SEC through the website maintained by the SEC at www.sec.gov. In addition, stockholders are able to obtain free copies of the Revised Proxy Statement and other documents filed by the Company with the SEC by contacting the Company's proxy solicitor, Georgeson, LLC, at 800-905-7281.

**Participants in the Solicitation**

The Company and its directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of the Company in respect of the proposals that are contained in the Revised Proxy Statement. Information regarding the persons who are, under the rules of the SEC, participants in the solicitation of the stockholders of the Company in connection with the proposals, including a description of their direct or indirect interests, by security holdings or otherwise, are set forth in the Revised Proxy Statement. Information regarding the Company's directors and executive officers is contained in the Company's Annual Report on Form 10-K, as amended by Form 10-K/A, for the year ended December 31, 2017, and its Proxy Statement on Schedule 14A, dated May 11, 2018, each of which are filed with the SEC and can be obtained free of charge from the source indicated above.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

| Exhibit No. | Description |
|---|---|
| 10.1 | Amended and Restated Senior Subordinated Convertible Loan Agreement, originally dated as of December 31, 2018, and amended and restated as of January 14, 2019, by and among Melinta Therapeutics, Inc., the other loan parties party hereto from time to time, and the lenders party hereto from time to time |
| 10.2 | First Amendment to Facility Agreement, dated as of January 14, 2019, by and among Melinta Therapeutics, Inc., Deerfield Special Situations Fund, L.P., Deerfield Private Design Fund III, L.P., Deerfield Private Design Fund IV, L.P. and Cortland Capital Market Services LLC |

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: January 15, 2019

Melinta Therapeutics, Inc.

By: /s/ Peter Milligan
Peter Milligan
Chief Financial Officer

**Exhibit 10.1**

EXECUTION VERSION

**This Amended and Restated Senior Subordinated Convertible Loan Agreement (and the indebtedness and obligations evidenced hereby) are subordinate in the manner, and to the extent, set forth in that certain Subordination Agreement dated as of December 31, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "Subordination Agreement") by and among Melinta Therapeutics, Inc., a Delaware corporation, the other "Obligors" from time to time parties thereto, Vatera Healthcare Partners LLC, Vatera Investment Partners, LLC and the other "Subordinated Creditors" from time to time parties thereto, and Cortland Capital Market Services LLC, as Agent, to the Senior Debt (as defined in the Subordination Agreement); and each lender under this Amended and Restated Senior Subordinated Convertible Loan Agreement (and the indebtedness and obligations evidenced hereby), by its acceptance hereof, shall be bound by the terms and provisions of the Subordination Agreement. Notwithstanding anything to the contrary herein, in the event of any conflict between the terms and provisions of the Subordination Agreement, on the one hand, and this Amended and Restated Senior Subordinated Convertible Loan Agreement, on the other hand, the terms and provisions of the Subordination Agreement shall govern and control.**

# AMENDED AND RESTATED SENIOR SUBORDINATED CONVERTIBLE LOAN AGREEMENT

**originally dated as of December 31, 2018 and as amended and restated as of January 14, 2019**

**by and among**

**Melinta Therapeutics, Inc.,**
**as the Borrower,**

**the other Loan Parties party hereto from time to time**

**and**

**the Lenders**

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**Exhibits**

| | |
|---|---|
| Exhibit A | Form of Note |
| Exhibit B | Form of Guaranty |
| Exhibit C | Form of Compliance Certificate |
| Exhibit D | Form of Assignment and Assumption |
| Exhibit E | Form of Conversion Notice |
| Exhibit F-1 | Form of Reverse Split Amendment |
| Exhibit F-2 | Form of Authorized Shares Amendment |
| Exhibit G | Form of Certificate of Designations |
| Exhibit H | Closing Checklist |

**AMENDED AND RESTATED SENIOR SUBORDINATED CONVERTIBLE LOAN AGREEMENT**

AMENDED AND RESTATED SENIOR SUBORDINATED CONVERTIBLE LOAN AGREEMENT (this "Agreement"), originally dated as of December 31, 2018 and as amended and restated as of January 14, 2019, by and among Melinta Therapeutics, Inc., a Delaware corporation (the "Borrower"), the other Loan Parties (as defined below) party hereto from time to time and the lenders party hereto from time to time (together with their successors and permitted assigns, the "Lenders").

**WITNESSETH:**

WHEREAS, the Borrower has requested that the Lenders extend credit under this Agreement in the form of senior subordinated convertible loans in an aggregate principal amount of up to $140,000,000, the proceeds of which shall be used by the Borrower for the purposes set forth herein;

WHEREAS, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein;

WHEREAS, the Borrower, the other Loan Parties and the Lenders entered into a Senior Subordinated Convertible Loan Agreement, dated as of the Agreement Date (the "Existing Loan Agreement"); and

WHEREAS, the Borrower, the other Loan Parties and the Lenders set forth on the signature page of this Agreement, who collectively constitute the Required Lenders, desire to amend and restate the Existing Loan Agreement in its entirety pursuant to this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties hereby agree as follows:

**ARTICLE 1**

**DEFINITIONS**

**Section 1.1 General Definitions.** Wherever used in this Agreement, the Exhibits or the Schedules attached hereto, unless the context otherwise requires, the following terms have the following meanings:

"Acquisition" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the Stock of any Person or otherwise causing any Person to become a Subsidiary of the Borrower, or (c) a merger or consolidation or any other combination with another Person.

"4.985% Cap" has the meaning set forth in Section 2.9(l).

"Additional Amounts" has the meaning set forth in Section 2.5(a).

"Additional Permitted Debt" has the meaning set forth in clause (n) of the definition of "Permitted Indebtedness."

"Additional Permitted Debt Documents" means the agreements, instruments and documents evidencing any Additional Permitted Debt permitted by clause (n) of the definition of "Permitted Indebtedness."

"Additional Shares" has the meaning set forth in Section 2.11(a).

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly:

(a) controls, or is controlled by, or is under common control with, such Person; or

(b) is a general partner, manager or managing member of such Person.

Without limiting the foregoing, a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, no Lender shall be deemed an Affiliate of the Borrower or any of its Subsidiaries. With respect to any Specified Lender, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Specified Lender will be deemed to be an Affiliate of such Specified Lender.

"Agreement" has the meaning set forth in the preamble to this Agreement.

"Agreement Date" means December 31, 2018.

"Amendment Date" means January 14, 2019.

"Anti-Corruption Laws" has the meaning set forth in Section 3.1(ii).

"Anti-Money Laundering Laws" has the meaning set forth in Section 3.1(ii).

"Applicable Laws" means, with respect to any Person, the common law and any federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject.

"Applicable Premium" means, with respect to any Loan on any date of prepayment, the greater of (i) 1.0% of the principal amount of such Loan and (ii) the excess of (A) the present value at such date of prepayment of (1) 105.0% of the principal amount of such Loan, plus (2) all remaining required interest payments due on such Loan through July 6, 2022 (excluding accrued but unpaid interest to the date of prepayment), computed using a discount rate equal to the Treasury Rate plus 50 basis points, over (B) the principal amount of such Loan.

"Approval Conditions" means the entering into by the Borrower and the other parties thereto of the Senior Facility Amendment, the receipt of the Stockholder Approval and any additional stockholder approval required to be able to issue the Full Conversion Share Amount and the shares necessary to satisfy the conversion of the convertible loans and notes under the Senior Facility Documents, the filing and effectiveness of the applicable Certificate(s) of Amendment and the Certificate of Designations and any amendment to the charter for any additional stockholder approval so required and the approval of the Common Stock into which the Conversion Shares or the convertible loans or notes under the Senior Facility Documents are convertible for listing on an Eligible Market.

"Assignment and Assumption" means, an assignment and assumption agreement entered into by a Lender and an assignee, substantially in the form of Exhibit D or any other form reasonably approved by the Required Lenders.

"Authorization" means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, clearance, concession, grant, franchise, variance or permission from, and any other contractual

obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or Products or to which such Person or any of its property or Products is subject (including all Registrations), and any supplements or amendments with respect to the foregoing.

"Authorized Officer" means the chief executive officer, the president or the chief financial officer of the Borrower or any other officer having substantially the same authority and responsibility.

"Authorized Shares Amendment" has the meaning set forth in Section 4.2(l).

"Board of Directors" means the board of directors (or other equivalent governing body) of the Borrower.

"Borrower" has the meaning set forth in the preamble to this Agreement.

"Borrower Stock Plans" has the meaning set forth in Section 5.1(aa).

"Business Day" means a day other than Saturday or Sunday on which banks are open for business in New York, New York.

"Capital Lease" means, with respect to any Person, any lease of or other arrangement conveying the right to use, any property by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

"Capital Lease Obligations" means, at any time, with respect to any Capital Lease, any lease entered into as part of any sale leaseback transaction of any Person or any synthetic lease, the amount of all obligations of such Person that is (or that would be, if such synthetic lease or other lease were accounted for as a Capital Lease) capitalized on a balance sheet of such Person prepared in accordance with GAAP.

"Cash Equivalents" means (a) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government, (b) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least "A-1" from Standard & Poor's or at least "P-1" from Moody's Investor Services, (c) any commercial paper rated at least "A-1" by Standard & Poor's or "P-1" by Moody's Investor Services and issued by any Person organized under the laws of any state of the United States, (d) any United States dollar-denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers' acceptance issued or accepted by (i) any Lender or (ii) any commercial bank that is (A) organized under the laws of the United States, any state thereof or the District of Columbia, (B) "adequately capitalized" (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of $250,000,000 and (e) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c) or (d) above with maturities as set forth in the proviso below, (ii) has net assets in excess of $500,000,000 and (iii) has obtained from either Standard & Poor's or Moody's Investor Services the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (a), (b), (c) or (d) above shall not exceed one year.

"Ceiling Rate" has the meaning set forth in Section 2.11(f).

"Certificate Amendment" has the meaning set forth in Section 4.2(l).

"Certificate of Designations" has the meaning set forth in Section 4.2(l).

"Change of Control" means (a) except as otherwise expressly permitted under this Agreement, at any time the Borrower shall cease to own, directly or indirectly, one hundred percent (100%) of the issued and outstanding Stock of any of its Subsidiaries (measured both on a fully diluted basis and not on a fully diluted basis), (b) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than VHP, VIP and their respective Affiliates from time to time, is or shall at any time become the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act except that a person or group shall be deemed to have "beneficial ownership" of all Stock that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "Option Right")), directly or indirectly, of 30% or more on an issued and outstanding basis of the voting interests in the Borrower's Stock (taking into account all such securities that such person or group has the right to acquire pursuant to any Option Right), (c) a sale of all or substantially all of the assets of the Borrower (including, for the avoidance of doubt, the sale of all or substantially all of the assets of the Subsidiaries of the Borrower) or of the Borrower's Stock shall occur or be consummated, (d) the consummation of a purchase, tender or exchange offer made to and accepted by the holders of more than 50% of the outstanding Stock of the Borrower; provided, however, that none of the transactions contemplated by this Agreement, the Senior Facility Documents or the Certificate of Designations, including a repayment, repurchase, redemption or conversion (or a deemed repayment, repurchase, redemption or conversion) of any Loans or Preferred Stock or any loans or notes under the Senior Facility Documents, or any adjustment in the Conversion Price or the Conversion Rate in accordance with the terms of this Agreement, or of the conversion price or the conversion rate in accordance with the terms of the Preferred Stock or the Senior Facility Documents, shall constitute a purchase, tender offer or exchange offer for purposes of this clause (d), or (e) a "change of control" however so defined in any document, agreement or instrument governing or evidencing any Indebtedness or, in each case, any term of similar effect, shall occur.

"Change of Control Conversion Notice" has the meaning set forth in Section 2.3(b).

"Change of Control Notice" has the meaning set forth in Section 2.3(b).

"Change of Control Repayment Notice" has the meaning set forth in Section 2.3(b).

"Clause A Distribution" has the meaning set forth in Section 2.9(f)(iii).

"Clause B Distribution" has the meaning set forth in Section 2.9(f)(iii).

"Clause C Distribution" has the meaning set forth in Section 2.9(f)(iii).

"Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations promulgated thereunder.

"Commitment Letter" means that certain commitment letter dated as of December 18, 2018, by and between the Borrower, VHP and VIP.

"Common Stock" means the common stock of the Borrower, $0.001 par value per share.

"Common Stock Conversion Rate" has the meaning set forth in Section 2.9(c)(iii).

"Competitor" means any Person that commercially markets antibiotic products in the United States, but excluding any Person that is party to any licensing, distribution or other similar partnership agreement with the Borrower or any of its Subsidiaries.

"Compliance Certificate" means a certificate in substantially the form of Exhibit C signed by the chief executive officer (or Person with equivalent duties) of the Borrower that is reasonably satisfactory to the Required Lenders.

"Conversion Amount" means the aggregate principal amount of the Loans being converted (the "Converted Loans") (including any interest paid in kind that has been added to the principal balance of the Converted Loans at the end of a fiscal quarter in accordance with Section 2.7), plus any accrued and unpaid interest that is to be paid (including any interest to be paid in kind in accordance with Section 2.7) but has not yet been so paid on the aggregate principal amount of the Converted Loans, plus the portion of any Interim Exit Fee or Final Exit Fee attributable to the Converted Loans.

"Conversion Date" has the meaning set forth in Section 2.9(c)(i).

"Conversion Delivery Deadline" has the meaning set forth in Section 2.9(c)(ii).

"Conversion Effective Date" has the meaning set forth in Section 2.9(c)(i).

"Conversion Notice" has the meaning set forth in Section 2.9(c)(i).

"Conversion Price" means, at any time, (i) $1,000 divided by (ii) the Conversion Rate in effect at such time.

"Conversion Rate" means, initially, 6.25 shares of Preferred Stock per $1,000 of Conversion Amount, subject to adjustment as provided herein.

"Conversion Shares" has the meaning set forth in Section 2.9(a).

"Convertible Securities" means any Stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for shares of Common Stock.

"Deerfield Registration Rights Agreement" means that certain Registration Rights Agreement, dated as of January 5, 2018, entered into by the Borrower and the lenders under the Senior Facility Agreement, as amended, supplemented or otherwise modified from time to time.

"Default" means any event which, with the giving of notice, lapse of time or fulfillment of any other applicable condition (or any combination of the foregoing), would constitute an Event of Default.

"Disbursement" means the Initial Disbursement and/or any Subsequent Disbursement.

"Disbursement Commitment" means the commitment of a Lender to provide a Disbursement under this Agreement, and "Disbursement Commitments" means all of them, collectively; provided that, notwithstanding anything to the contrary in the Loan Documents and for the avoidance of doubt, as of the Amendment Date, no Specified Lender has any prior, present or future commitment or obligation to fund any Disbursement or other amount under the Loan Documents at any time.

"Disbursement Date" means the date that any Disbursement is funded by the applicable Lenders.

"Dispose" and "Disposition" mean (a) the sale, lease, conveyance or other disposition of any assets or property (including any transfer or conveyance of any assets or property pursuant to a division or split of a limited liability company or other entity or Person into two or more limited liability companies or other entities or Persons) and (b) the sale or Transfer by the Borrower or any Subsidiary of the Borrower of any Stock issued by any Subsidiary of the Borrower.

"Disqualified Stock" means any Stock which, by its terms (or by the terms of any security or other Stock into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is one year and one day following

the Maturity Date (excluding any provisions requiring redemption upon a "change of control" or similar event; provided that such "change of control" or similar event results in the occurrence of the Facility Termination Date), (b) is convertible into or exchangeable for (i) debt securities or (ii) any Stock referred to in (a) above, in each case, at any time on or prior to the date that is one year and one day following the Maturity Date at the time such Stock was issued, or (c) is entitled to receive scheduled dividends or distributions in cash prior to the date that is one year and one day following the Maturity Date. For the avoidance of doubt, the Preferred Stock shall not constitute "Disqualified Stock."

"Dollars" and the "$" sign mean the lawful currency of the United States of America.

"Domestic Subsidiary" means any Subsidiary of the Borrower incorporated, organized or otherwise formed under the laws of the United States, any state thereof or the District of Columbia.

"DTC" has the meaning set forth in Section 3.1(pp).

"EBITDA" means, for any period, net income (or loss) for the applicable period of measurement of any Person and any applicable Subsidiaries (together with the other Persons whose income or loss is taken into account as provided below in determining EBITDA) (such Person, such Subsidiaries and such other Persons, collectively, the "Subject Persons") on a consolidated basis, determined in accordance with GAAP, without duplication of any item described below (and the term "duplication" shall include any cash reimbursement for any loss or expense or other item for which an add-back is provided below), to the extent taken into account in the calculation of net income (or loss) for such period:

(a) less the income (or plus the loss) of any Person which is not a Subsidiary of a Subject Person, except to the extent of the amount of dividends or other distributions actually paid to the Subject Persons in cash or Cash Equivalents by such Person, provided the payment of dividends or similar distributions by that Person was not at the time subject to the consent of a third party or prohibited by operation of the terms of that Person's charter or of any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Person,

(b) except in connection with determining whether a Target's EBITDA will be accretive to, and will not have a negative impact on, the EBITDA of the Borrower and its Subsidiaries pursuant to clause (h) of the definition of "Permitted Acquisition", less the income (or plus the loss) of any Person accrued prior to the date it becomes a Subsidiary of a Subject Person or is merged into or consolidated with a Subject Person or that Person's assets are acquired by a Subject Person,

(c) less the proceeds of any insurance,

(d) less gains (or plus losses) from the Disposition of assets or property not in the ordinary course of business of such Subject Persons, and related tax effects in accordance with GAAP,

(e) less any other extraordinary gains (or plus any other extraordinary losses) of such Subject Persons, and related tax effects, in accordance with GAAP (as defined in GAAP prior to the effectiveness of Financial Accounting Standards Board ASU 2015-01),

(f) less income tax refunds received in excess of income tax liabilities,

(g) less income (or plus the loss) from the early extinguishment of Indebtedness, net of related tax effects,

(h) plus, without duplication, solely to the extent already taken into account in the calculation of net income (or loss) for such period:

(i) depreciation and amortization,

(ii) Net Interest Expense,

(iii) all Taxes on or measured by income (excluding income tax refunds), and

(iv) all non-cash losses or charges (or minus non-cash income or gain), including non-cash adjustments resulting from the application of purchase accounting, non-cash expenses arising from grants of Stock appreciation rights, Stock options or restricted Stock, non-cash impairment of good will and other long term intangible assets, unrealized non-cash losses (or minus unrealized non-cash gains) under Swap Contracts, unrealized non-cash losses (or minus unrealized non-cash gains) in such period due solely to fluctuations in currency values, but excluding any non-cash loss or non-cash charge (A) where there were cash losses or charges with respect to such losses or charges in past periods (B) that is an accrual of a reserve for a cash loss, charge, expenditure or payment to be made, or anticipated to be made, in a future period or there is a reasonable expectation that there will be cash losses or charges with respect to such losses or charges in future periods or (C) relating to a write-down, write off or reserve with respect to accounts receivable, inventory or current assets.

Notwithstanding anything to the contrary in the Loan Documents, EBITDA shall be calculated to give effect to any asset sales, divestitures or other Disposition at any time on or after the first day of the measurement period and prior to the date of determination, as if such asset sales, divestitures or other Disposition had been effected on the first day of such measurement period.

"EDGAR" has the meaning set forth in Section 3.1(s).

"Effective Date" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

"Eligible Market" means the New York Stock Exchange, Inc., the NYSE American, the NASDAQ Capital Market, the NASDAQ Global Market or the NASDAQ Global Select Market or, in each case, any successor thereto.

"Employee" means any employee of any Loan Party, any Subsidiary of any Loan Party or any Target.

"Employee Benefit Plan" means any "employee benefit plan" within the meaning of Section 3(3) of ERISA (other than a Multiemployer Plan), which any Loan Party maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any Loan Party (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be an employee benefit plan of such Loan Party) or for which it has or could reasonably be expected to have liability (including as an ERISA Affiliate).

"Environmental Laws" means all Applicable Laws, Authorizations and permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the workplace, the environment and natural resources, and including public notification requirements and environmental transfer of ownership, notification or approval statutes.

"Environmental Liabilities" means all Liabilities (including costs of removal and remedial actions, natural resource damages and costs and expenses of investigation and feasibility studies, including the cost of environmental consultants and attorneys' costs) that may be imposed on, incurred by or asserted against any Loan Party or any Subsidiary of any Loan Party as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law resulting from the ownership, lease, sublease or other operation or occupation of property by any Loan Party or any Subsidiary of any Loan Party, whether on, prior or after the Agreement Date.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended and applicable published guidance thereunder.

"ERISA Affiliate" means with respect to any Loan Party, any Loan Party and any trade or business which, together with such Loan Party, is treated as a single employer within the meaning of Code Section 414 (b) or (c) or Section 4001 of ERISA or, solely for purposes of Sections 302 and 303 of ERISA or Code Section 412 or Section 430, is treated as a single employer within the meaning of Code Section 414(b), (c), (m) or (o).

"ERISA Event" means any of the following: (a) a reportable event described in Section 4043(c) of ERISA (unless the 30-day notice requirement has been duly waived under the applicable regulations) with respect to a Title IV Plan; (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any ERISA Affiliate, within the meaning of Section 4201 of ERISA, from any Multiemployer Plan; (d) with respect to any Multiemployer Plan, the filing of a notice of insolvency or termination, or treatment of a plan amendment as termination, under Section 4041A of ERISA; (e) the filing of a notice of intent to terminate a Title IV Plan, or treatment of a plan amendment as termination, under Section 4041 of ERISA; (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (g) the failure by any ERISA Affiliate to make any required contribution to any Title IV Plan or Multiemployer Plan when due; (h) the imposition of a Lien under Section 412 or 430(k) of the Code or Section 303 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate; (i) the failure of an Employee Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Applicable Law to qualify thereunder; (j) a Title IV plan is in "at risk" status within the meaning of Code Section 430(i); (k) a Multiemployer Plan is in "endangered status" or "critical status" within the meaning of Section 432(b) of the Code; and (l) any other event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of any Liability upon any ERISA Affiliate under Title IV of ERISA other than for contributions to Title IV Plans and Multiemployer Plans in the ordinary course and PBGC premiums due but not delinquent.

"Event of Default" has the meaning set forth in Section 5.4.

"Ex-Dividend Date" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Borrower or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

"Excluded Foreign Subsidiary" means (a) any Foreign Subsidiary which is a controlled foreign corporation (as defined in the Code) that has not guaranteed any Indebtedness (other than the Obligations) of a Loan Party or (b) a Foreign Subsidiary owned by a Foreign Subsidiary described in clause (a).

"Excluded Taxes" means with respect to any Lender, (a) Taxes imposed on (or measured by) such Lender's net income, franchise Taxes and branch profits Taxes, in each case (i) imposed as a result of such Lender being organized under the laws of, or having its principal office, or applicable lending office located in the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) that are Other Connection Taxes, (b) any United States federal withholding Tax imposed on amounts payable to such Lender under the laws in effect at the time such Lender becomes a party to this Agreement or such Lender changes its lending office, except to the extent such Lender acquired its interest in the Loan from a transferor that was entitled, immediately before such Transfer, to receive Additional Amounts with respect to such withholding Tax pursuant to Section 2.5(a) or was itself so entitled immediately before changing its lending office, (c) any United States federal withholding Tax imposed on amounts payable to such Lender directly as a result of such Lender's failure to comply with Section 2.5(d) other than as a result of a change in law occurring subsequent to the date such Lender became a party to this Agreement, or (d) any United States federal withholding Tax imposed on amounts payable to such Lender under FATCA.

"Existing Loan Agreement" has the meaning set forth in the recitals to this Agreement.

"Facility Termination Date" has the meaning set forth in Section 2.3(a).

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

"FDA" means the United States Food and Drug Administration and any successor thereto.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System or any entity succeeding to any of its principal functions.

"Final Exit Fee" has the meaning set forth in Section 2.3(c).

"First Subsequent Disbursement" has the meaning set forth in Section 2.2(b).

"First Subsequent Disbursement Commitment" means the commitment of a Lender to provide a First Subsequent Disbursement under this Agreement, and "First Subsequent Disbursement Commitments" means all of them, collectively; provided that, notwithstanding anything to the contrary in the Loan Documents and for the avoidance of doubt, as of the Amendment Date, no Specified Lender has any prior, present or future commitment or obligation to fund any First Subsequent Disbursement or other amount under the Loan Documents at any time.

"Foreign Benefit Plan" means any Employee Benefit Plan that is subject to the laws or a jurisdiction outside the United States, including those mandated by a government other than the United States of America.

"Foreign Lender" has the meaning set forth in Section 2.5(d).

"Foreign Subsidiary" means, with respect to any Person, a Subsidiary of such Person that is not a Domestic Subsidiary.

"Form 10-K" means an annual report on Form 10-K (or successor form thereto), as required to be filed pursuant to the Exchange Act.

"Form 10-Q" means a quarterly report on Form 10-Q (or successor form thereto), as required to be filed pursuant to the Exchange Act.

"Full Conversion Share Amount" has the meaning set forth in Section 5.1(x).

"Fundamental Change" means an event that will be deemed to occur at the time any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act (other than (x) VHP, VIP and their respective Affiliates from time to time, (y) the Borrower, its Subsidiaries, and/or (z) the Borrower and its Subsidiaries' employee benefit plans, any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner" (as defined below) of shares of the Borrower's Common Stock representing more than 50% of the voting power of the Borrower's Common Stock other than as a result of a Disbursement hereunder;

(b) the consummation of:

(i) any recapitalization, reclassification or change of the Common Stock or Preferred Stock (other than changes resulting from a subdivision, stock split, reverse stock split or share combination) as a result of which the Common Stock or Preferred Stock would be converted into, or exchanged for, other capital stock, other securities, other property or assets;

(ii) any share exchange, consolidation, merger, or combination of the Borrower pursuant to which the Common Stock or Preferred Stock would be converted into cash, securities or other property or assets (provided, however, that a transaction in which the holders of the Borrower's common equity immediately prior to such transaction beneficially own, directly or indirectly, more than 50% of the common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (ii); provided that, for the avoidance of doubt, the immediately preceding proviso shall not be satisfied solely because VHP, VIP and their respective Affiliates or permitted assignees beneficially own more than, directly or indirectly, 50% of the Borrower's common equity immediately prior to such transaction and continue to beneficially own, directly or indirectly, more than 50% of the common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction, if substantially all other holders of the Borrower's common equity immediately prior to such transaction cease to beneficially own any common equity of the continuing or surviving corporation or transferee of the parent thereof immediately after such transaction); or

(iii) any sale of all or substantially all of the consolidated assets of the Borrower and its Subsidiaries, taken as a whole, to any person other than one of the Borrower's Subsidiaries;

(c) the Borrower's stockholders approve any plan or proposal for the liquidation or dissolution of the Borrower; or

(d) the Common Stock ceases to be listed or quoted on any Eligible Market;

provided, that, for the purposes of this definition of "Fundamental Change," (x) any transaction or event that constitutes a Fundamental Change under both clause (a) and clause (b) above will be deemed to constitute a Fundamental Change solely under clause (b) of this definition of "Fundamental Change," (y) whether a person is a "beneficial owner" will be determined in accordance with Rule 13d-3 under the Exchange Act and (z) none of the transactions contemplated by this Agreement or the Certificate of Designations, including a repayment, repurchase, redemption or conversion (or a deemed repayment, repurchase, redemption or conversion) of any Loans or Preferred Stock, or any adjustment in the Conversion Price or the Conversion Rate in accordance with the terms of this Agreement, or of the conversion price or the conversion rate in accordance with the terms of the Preferred Stock, or any issuance of Stock upon conversion of the Loans or the Preferred Stock, shall constitute a "Fundamental Change."

"Fundamental Change Conversion Notice" has the meaning set forth in Section 2.11(a).

"Fundamental Change Effective Date" has the meaning set forth in Section 2.11(b).

"Fundamental Change Notice" has the meaning set forth in Section 2.9(g)(i).

"Fundamental Change Period" has the meaning set forth in Section 2.11(a).

"GAAP" means generally accepted accounting principles consistently applied, as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession), in each case, subject to the provisions of Section 1.5.

"Governmental Authority" means any nation, sovereign, government, quasi-governmental agency, governmental department, ministry, cabinet, commission, board, bureau, agency, court, tribunal, regulatory authority, instrumentality, judicial, legislative, fiscal or administrative or public body or entity, whether domestic or foreign, federal, state, local or other political subdivision thereof, having jurisdiction over the matter or matters and Person or Persons in question or having the authority to exercise executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, securities exchange, regulatory body, arbitrator, public sector entity, supra-national entity and any self-regulatory organization. The term "Governmental Authority" shall further include any institutional review board, ethics committee, data monitoring committee or other committee or Person with defined authority to oversee Regulatory Matters.

"Guarantor" means each Subsidiary of the Borrower (other than any Excluded Foreign Subsidiary) or other Person who provides a guaranty of the Obligations under the Guaranty.

"Guaranty" means the guaranty of the Obligations made by the Guarantors in favor of the Lenders, substantially in the form of Exhibit B, together with any guaranty supplement delivered pursuant thereto.

"Hazardous Material" means any substance, material or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including petroleum or any fraction thereof, asbestos, polychlorinated biphenyls and radioactive substances.

"Indebtedness" means the following with respect to any Person:

(a) all indebtedness for borrowed money of such Person;

(b) the deferred purchase price of assets or services (other than trade payables entered into in the ordinary course of business and which are not more than 90 days past due) of such Person, including earn-outs, which in accordance with GAAP should be shown to be a liability on the balance sheet and have not been paid on or prior to the date due;

(c) all guarantees of Indebtedness by such Person;

(d) the face amount of all letters of credit issued or acceptance facilities established for the account of such Person (or for which such Person is liable), including without duplication, all drafts drawn thereunder;

(e) all Capital Lease Obligations of such Person;

(f) all indebtedness (including Indebtedness of other types covered by the other clauses of this definition) of such Person or another Person secured by any Lien on any assets or property of such Person, whether or not such indebtedness has been assumed or is recourse (with the amount thereof, in the case of any such indebtedness that has not been assumed by such Person, being measured as the lower of (y) fair market value of such property and (z) the amount of the indebtedness secured);

(g) indebtedness created or arising under any conditional sale or title retention agreement, or incurred as financing, in either case with respect to assets or property acquired by such Person (even if the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such assets or property);

(h) all obligations of such Persons evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses;

(i) all obligations of such Person, whether or not contingent, in respect of Disqualified Stock, valued at, in the case of redeemable preferred Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends;

(j) all direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such Indebtedness will be protected (in whole or in part) against loss with respect thereto;

(k) all direct or indirect liability, contingent or otherwise, of such Person under Swap Contracts (to the extent such amount can actually be calculated or determined with certainty at the time of any such determination, calculated on a net basis);

(l) all direct or indirect liability, contingent or otherwise, of such Person to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; and

(m) all direct or indirect liability, contingent or otherwise, of such Person for the Indebtedness of another Person through any agreement to purchase, repurchase or otherwise acquire such Indebtedness or any assets or property constituting security therefor, to provide funds for the payment or discharge of such Indebtedness or to maintain the solvency, financial condition or any balance sheet item or level of income of another Person;

provided that, notwithstanding the foregoing, the term "Indebtedness" shall exclude any payment obligations arising under (a) the Agreement and Plan of Merger, dated as of December 3, 2013, among The Medicines Company, Rempex Pharmaceuticals, Inc. and the other parties thereto or (b) the Purchase and Sale Agreement, dated as of November 28, 2017, between The Medicines Company and Melinta Therapeutics, Inc., in each case of clauses (a) and (b), so long as such documents and the payment obligations arising thereunder are not amended, restated, supplemented, changed, increased, accelerated or otherwise modified in any manner after the Amendment Date that (1) increases the aggregate amount payable by the Loan Parties and their Subsidiaries in respect of such obligations (other than (x) payments that are made in the form of Stock of the Borrower (other than Disqualified Stock) and (y) payments made in consideration for any extension of the due dates of any such obligations in the form of interest and fees on the extended amounts in an amount not to exceed five percent (5%) per annum while such amounts remain outstanding), (2) provides that any of such obligations are secured by Liens on any asset or property of any Loan Party or any of its Subsidiaries, (3) provides that any Subsidiary of any Loan Party shall guarantee, or otherwise become obligated (whether unconditionally or upon any condition) to make any payment of or in respect of, or have any other direct or indirect liability for, any of such obligations or provide any asset or property or distribution therefor, (4) shortens the weighted average life to maturity (or otherwise shortens the maturity) of any of such obligations, unless the aggregate outstanding amount of such obligations is permanently reduced in connection therewith in a manner where the shorter maturity (and/or the shorter weighted average life to maturity, as applicable) is reasonable (as determined in good faith by the Board of Directors) in relation to such reduced aggregate amount provided in exchange therefor, (5) restricts any Loan Party or any Subsidiary from performing, or otherwise adversely affects the performance by any Loan Party or any of its Subsidiaries of, any of its material obligations (including the Obligations) under the Loan Documents, (6) has the effect of putting the Loan Parties in a worse (or less favorable) position than such obligations in effect on the Amendment Date, as determined in good faith by the Board of Directors, (7) results in a Material Adverse Effect, or (8) results in any breach of, or Default or Event of Default under, any of the Loan Documents; provided, further, that if such obligations are amended, restated, supplemented, changed, increased, accelerated, waived, consented to or otherwise modified in any manner that is not permitted by the immediately preceding proviso, then such obligations shall automatically on the date of such amendment, restatement, supplement, change, increase, acceleration or modification be deemed to have been Indebtedness retroactively to and from the date such obligations were first incurred.

"Indemnified Person" has the meaning set forth in Section 6.11(a).

"Indemnified Taxes" means (a) any Tax imposed on or with respect to any payments made by or on account of any Obligation of any Loan Party under any Loan Document, other than an Excluded Tax, and (b) to the extent not otherwise described in clause (a) above in this definition, Other Taxes.

"Indemnity" has the meaning set forth in Section 6.11(a).

"Initial Disbursement" has the meaning set forth in Section 2.2(a).

"Initial Disbursement Commitment" means the commitment of a Lender to provide the Initial Disbursement under this Agreement, and "Initial Disbursement Commitments" means all of them, collectively; provided that, notwithstanding anything to the contrary in the Loan Documents and for the avoidance of doubt, as of the Amendment Date, no Specified Lender has any prior, present or future commitment or obligation to fund any Initial Disbursement or other amount under the Loan Documents at any time.

"Initial Disbursement Date" means the Disbursement Date of the Initial Disbursement.

"Intellectual Property" has the meaning set forth in Section 3.1(n).

"Interest Payment Date" has the meaning set forth in Section 2.7.

"Interest Rate" means 5.00% per annum for the principal amount of any Disbursement and any overdue interest thereon.

"Interim Exit Fee" has the meaning set forth in Section 2.3(c).

"Internal Controls" has the meaning set forth in Section 3.1(u).

"Investments" has the meaning set forth in Section 5.2(e).

"Investment Company Act" means the Investment Company Act of 1940, as amended.

"IP" has the meaning set forth in Section 3.1(n).

"IRS" means the United States Internal Revenue Service.

"Last Reported Sale Price" of a security on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid and ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on such date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the relevant security is traded. If the security is not listed for trading on a U.S. national or regional securities exchange on such date, the "Last Reported Sale Price" of the security will be the last quoted bid price per share for the security in the over-the-counter market on such date as reported by OTC Markets Group Inc. or a similar organization. If the relevant security is not so quoted, the "Last Reported Sale Price" will be the average of the mid-point of the last bid and ask prices per share for the relevant security on the relevant date from at least three nationally recognized independent investment banking firms selected by the Borrower for this purpose. The "Last Reported Sale Price" shall be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

"Latest Balance Sheet Date" has the meaning set forth in Section 3.1(t).

"Lenders" has the meaning set forth in the preamble to this Agreement.

"Liabilities" means all claims, actions, suits, judgments, damages, losses, liabilities, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

"Lien" means any lien, pledge, preferential arrangement, mortgage, security interest, deed of trust, charge, assignment, hypothecation, title retention or other encumbrance on or with respect to property or interest in property having the practical effect of constituting a security interest, in each case with respect to the payment of any obligation with, or from the proceeds of, any asset or revenue of any kind.

"Loan" means any loan made available from time to time by the Lenders to the Borrower pursuant to this Agreement or any other Loan Document or, as the context may require, the principal amount thereof from time to time outstanding. Any references in this Agreement to the "principal amount" of a Loan shall include any interest paid in kind that has previously been added to the principal balance of the Loans at the end of a fiscal quarter in accordance with Section 2.7. "Loan" shall include any funded Disbursement.

"Loan Documents" means this Agreement, the Notes, the Guaranty, each Compliance Certificate, the Senior Facility Subordination Agreement, any solvency certificate and other documents, agreements and instruments delivered in connection with any of the foregoing and dated the Agreement Date or subsequent thereto, whether or not specifically mentioned herein or therein, in each case, as amended, restated, supplemented or otherwise modified from time to time.

"Loan Parties" means the collective reference to the Borrower and all of the Guarantors.

"Loss" has the meaning set forth in Section 6.11(a).

"LTM Net Sales" means, without duplication, for the trailing four fiscal quarter period ending as of the end of each fiscal year of the Borrower, the sum of (a) the aggregate gross amount invoiced by or on behalf of the Borrower or any of its Subsidiaries for products sold globally in bona fide, arm's length transactions; less: (b) (i) deductions for trade, (ii) discounts, rebates, chargebacks and credits, (iii) allowances, (iv) taxes, (v) duties, (vi) governmental tariffs, (vii) freight, shipping and freight insurance costs and charges, (viii) returns and (ix) recalls.

"Major Transaction" has the meaning set forth in the Warrants.

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U or X of the Federal Reserve Board.

"Market Disruption Event" means, for the purposes of determining amounts due upon conversion (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts traded on any U.S. exchange relating to the Common Stock.

"Material Adverse Effect" means a material adverse effect on (a) the business, results of operations, financial condition or assets of the Loan Parties and their Subsidiaries, taken as a whole, (b) the validity or enforceability of any material provision of this Agreement, the Notes, the Guaranty or any other material Loan Document, (c) the ability of the Loan Parties to timely perform the Obligations or, solely for purposes of Sections 3.1(t), 4.1(e), 4.2(c) and 4.3(b), the Obligations (as defined in the Senior Facility Agreement), or (d) any of the rights and remedies of the Lenders under the Loan Documents.

"Material Environmental Liabilities" means Environmental Liabilities exceeding $550,000 in the aggregate.

"Maturity Date" means January 6, 2025.

"Merger Event" has the meaning set forth in Section 2.9(i).

"Multiemployer Plan" means any multiemployer plan, as defined in Section 3(37) or 4001(a)(3) of ERISA, as to which any ERISA Affiliate incurs or otherwise has, or could reasonably be expected to have, any obligation or Liabilities (including under Section 4212 of ERISA).

"Multi-Clause Distribution" has the meaning set forth in Section 2.9(f)(iii).

"Necessary Documents" has the meaning set forth in Section 3.1(l).

"Net Interest Expense" means for the Subject Persons for any period:

(a) gross interest expense (including that attributable to Capital Lease Obligations) for such period paid or required to be paid in cash (including all commissions, discounts, fees and other charges in connection with letters of credit and similar instruments and net amounts paid or payable and/or received or receivable under permitted Swap Contracts in respect of interest rates) for the Borrower and its Subsidiaries on a consolidated basis, less

(b) interest income for such period.

"Note" means, with respect to any Lender, a promissory note (a) issued by the Borrower to such Lender evidencing the Obligations to such Lender and, with respect to all Lenders other than the Specified Lenders, the Disbursements funded by such Lender pursuant to the Disbursement Commitments, and (b) held by such Lender in the form attached hereto as Exhibit A, in each case, as amended, restated, supplemented or otherwise modified from time to time, and "Notes" means all of them, collectively.

"Obligations" means all Loans and Disbursements, interest, fees (including any Prepayment Fees), expenses, costs, liabilities, indebtedness and other obligations (monetary (including post-petition interest, costs, fees, expenses and other amounts, whether allowed or not) or otherwise) of (or owed by) the Borrower and the other Loan Parties under or in connection with the Loan Documents, in each case howsoever created, arising or evidenced, whether direct or indirect (including those acquired by assignment), absolute or contingent, now or hereafter existing, or due or to become due.

"Open of Business" means 9:00 a.m., New York City time.

"Option Right" has the meaning set forth in the definition of "Change of Control".

"Options" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

"Organizational Documents" means (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, and any shareholder rights agreement, (b) for any partnership, the partnership agreement and, if applicable, certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or (d) for any other entity, any other document setting forth the manner of election or duties of the officers, directors, managers or other similar or equivalent persons or Persons, or the designation, amount or relative rights, limitations and preference of the Stock of such entity.

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

"Other Taxes" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes arising from any payment made hereunder or from the execution, delivery, registration, Transfer or enforcement of, or otherwise with respect to, any Loan Document.

"Ownership Limitation" means, other than with respect to VHP, VIP and their respective Affiliates from time to time (who shall not be subject to the Ownership Limitation), the "beneficial ownership" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act except that a person or group shall be deemed to have "beneficial ownership" of all Stock that such person or group has the right to acquire pursuant to an Option Right), directly or indirectly, by a Lender and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with such Lender's or any such Affiliate's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which such Lender is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) of 29.9% on an issued and outstanding basis of the voting interests in the Borrower's Stock.

"Parties" means the Borrower, the other Loan Parties and the Lenders.

"PBGC" means the United States Pension Benefit Guaranty Corporation or any successor thereto.

"Permitted Acquisition" means any Acquisition by a Loan Party of all of the Stock of a Target (subject to any local law requirements regarding qualifying shares) or all or substantially all of the assets of a Target, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) the Borrower shall have delivered each of the following to the Lenders:

(i) as soon as available, executed copies of the Acquisition agreement and all material agreements and documents pursuant to which such Acquisition is to be consummated; provided that, no later than the third (3rd) Business Day following the date of such Acquisition documents, the Borrower shall file a current report on Form 8-K with the SEC describing the terms of the transaction contemplated by such Acquisition documents, including such Acquisition documents as exhibits thereto and disclosing any other material non-public information provided to any of the Lenders in connection with such Acquisition (or otherwise); and

(ii) to the extent required to be delivered to (and permitted to be shared by) a Loan Party pursuant to the applicable Acquisition agreement, all required material regulatory and third party approvals;

(b) such Acquisition shall not be hostile and shall have been approved by the board of directors (or other similar body) and/or the holders of Stock of the Target;

(c) no Default or Event of Default shall exist at the time of the consummation of such Acquisition or after giving effect to such Acquisition and all other transactions contemplated by the applicable Acquisition documents;

(d) the total consideration paid or payable (including all transaction costs, Indebtedness incurred, assumed and/or reflected on a consolidated balance sheet of the Loan Parties and their Subsidiaries after giving effect to such Acquisition and the maximum amount of all deferred payments, including earn-outs) for all Acquisitions consummated during the term of this Agreement shall not exceed $55,000,000 in the aggregate for all such Acquisitions;

(e) (i) the Target, the Target's Subsidiaries and their respective assets and properties and the Stock of the Target and the Target's Subsidiaries shall be in compliance with Section 5.1(l) and the provisions of the Guaranty and the other Loan Documents and all actions in connection therewith shall have been taken and completed in a manner reasonably acceptable to the Required Lenders, (ii) to the extent required by the Loan Documents, the Target and its Subsidiaries shall have become Guarantors under the Loan Documents and have executed and delivered such documents reasonably requested by the Required Lenders in connection therewith and (iii) all other actions shall have been taken that are necessary or reasonably requested by the Required Lenders to effectuate the foregoing in this clause (e);

(f) all transactions in connection with such Acquisition shall be consummated, in all material respects, in accordance with all Applicable Laws and all applicable Authorizations shall have been obtained;

(g) the Target shall be in the same business or lines of business in which the Borrower and its Subsidiaries are engaged as of the Agreement Date or a business or line of business substantially related thereto or reasonably complementary thereof;

(h) immediately prior to, at the time of, and after giving effect to, such Acquisition and all other transactions contemplated by the applicable Acquisition documents, the Target and its Subsidiaries that are being acquired in such Acquisition have (i) positive EBITDA for the most recent twelve month period ending prior to the date of the consummation of such Acquisition for the later of (A) the period for which financial statements are available to the Loan Parties and their Affiliates or the Lenders and (B) the period that ended at least one year prior to the consummation of such Acquisition of the Target, (ii) such Acquisition is, on a pro forma basis, accretive to the EBITDA of the Borrower and its Subsidiaries and (iii) EBITDA that will not have a negative impact on the EBITDA of the Borrower and its Subsidiaries;

(i) at the time of, and after giving effect to, such Acquisition and all other transactions contemplated by the applicable Acquisition documents, all representations and warranties in the Loan Documents and in the applicable Acquisition documents shall be true, correct and complete in all material respects (without duplication of any materiality qualifier contained therein);

(j) after giving effect to such Acquisition and all other transactions contemplated by the applicable Acquisition documents, the Borrower and its Subsidiaries shall be in pro forma compliance with the financial covenants set forth in Section 5.1(v); and

(k) a certificate, in form reasonably satisfactory to the Required Lenders, that (i) has an Authorized Officer certify that all the conditions set forth in this definition of "Permitted Acquisition" have been satisfied and (ii) includes financial statements and documentation evidencing and supporting that clauses (h) and (j) of this definition of "Permitted Acquisition" have been satisfied.

"Permitted Dispositions" means each of the following:

(a) (i) Dispositions of inventory, goods or services, (ii) Dispositions of worn-out, obsolete, damaged or surplus equipment, and (iii) Dispositions or abandonment of Intellectual Property no longer useful or material to the business of the Loan Parties or any of their Subsidiaries, all in the ordinary course of business;

(b) (i) Dispositions of Cash Equivalents in the ordinary course of business made to a Person that is not an Affiliate of any Loan Party and (ii) conversions of Cash Equivalents into cash or other Cash Equivalents;

(c) (i) transactions permitted under clause (i)(ii) of the definition of "Permitted Liens" and (ii) the granting of Permitted Liens;

(d) Permitted Investments, to the extent any such Investment constitutes a Disposition;

(e) the sale or issuance of the Stock in the Borrower to any direct equity holder of the Borrower or pursuant to the Loan Documents, the Senior Facility Documents or any Borrower Stock Plans;

(f) the Transfer of any assets or property (i) by a Loan Party (other than the Borrower) to another Loan Party or (ii) by a Subsidiary that is not a Loan Party to (A) a Loan Party for no more than fair market value or (B) any other Subsidiary that is not a Loan Party;

(g) the issuance by any Foreign Subsidiary of Stock to qualified directors where required by or to satisfy any Applicable Law, including any Applicable Law with respect to ownership of Stock in Foreign Subsidiaries;

(h) transactions permitted by Section 5.2(a) or Section 5.2(b);

(i) Dispositions of past due accounts receivable in the ordinary course of business (including any discount and/or forgiveness thereof) or, in the case of accounts receivable in default, in connection with the collection or compromise thereof and, in any event, not involving any securitization thereof;

(j) (i) any termination of any lease in the ordinary course of business, (ii) any expiration of any option agreement in respect of real or personal property and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the ordinary course of business;

(k) Dispositions of any assets or property subject to foreclosure, casualty, eminent domain or condemnation proceedings (including in lieu thereof or any similar proceeding); and

(l) other Dispositions for fair market value of assets for aggregate consideration not to exceed $550,000 in any fiscal year; provided that such Dispositions do not (i) involve assets material to the conduct of the business of the Loan Parties and their Subsidiaries or (ii) cause a Material Adverse Effect to occur or exist.

"Permitted Indebtedness" means each of the following:

(a) Indebtedness existing as of the Agreement Date and set forth on Schedule 3.1(f) attached hereto;

(b) the Obligations;

(c) Indebtedness not to exceed $55,000 in the aggregate at any time outstanding, consisting of Capital Lease Obligations or secured by Liens permitted by clauses (k) and (l) of the definition of "Permitted Liens";

(d) Indebtedness in respect of netting services, overdraft protections and other similar and customary services in connection with deposit accounts incurred in the ordinary course of business;

(e) Indebtedness to employees in respect of benefit plans and employment and severance arrangements;

(f) Indebtedness arising under guaranties made in the ordinary course of business of obligations of any Loan Party that are otherwise permitted hereunder; provided that if such obligation is subordinated to the Obligations, such guaranty shall be subordinated to the same extent;

(g) Indebtedness owed by (i) any Loan Party to another Loan Party, (ii) any Loan Party to one of its Subsidiaries that is not a Loan Party so long as such Indebtedness is unsecured and subordinated to the Obligations in a manner reasonably satisfactory to the Required Lenders;

(h) unsecured obligations of any Loan Party under any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in the value of certain currencies entered into in the ordinary course of business; provided that any such agreement or arrangement shall be entered into for bona fide hedging purposes and not for speculation;

(i) Indebtedness under the Senior Facility Agreement in an aggregate principal amount not to exceed the Senior Debt Cap (as defined in the Senior Facility Subordination Agreement);

(j) Indebtedness arising with respect to customary indemnification obligations and purchase price adjustments in favor of sellers in connection with Permitted Acquisitions;

(k) endorsements for collection or deposit in the ordinary course of business;

(l) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(m) Indebtedness in respect of a revolving credit facility in an aggregate principal amount not to exceed $22,000,000 (the "Revolving Credit Facility"), so long as (i) no Subsidiary of the Borrower that is not a Loan Party shall be the borrower, a guarantor, obligor or otherwise obligated thereunder, (ii) the lenders providing the Revolving Credit Facility are third parties that are not Affiliates of (A) any Loan Party or (B) any Subsidiary of any Loan Party and (iii) only one Revolving Credit Facility can be in effect or exist at any time; and

(n) other unsecured Indebtedness not exceeding $71,500,000 in the aggregate at any time outstanding (the "Additional Permitted Debt"), which Indebtedness shall (i) bear interest not in excess of then applicable market rates, (ii) have a maturity no earlier than the earlier of (A) the payment in full of the Obligations and (B) the Maturity Date, (iii) shall not provide for any cash payments of any type before the earlier of (A) the payment in

full of the Obligations and (B) the Maturity Date, other than cash interest payments in an amount sufficient to cover any income taxes that would otherwise be payable by the lenders with respect to such Indebtedness in respect of "phantom income" on paid-in-kind interest, and (iv) be payment subordinated to the Indebtedness under the Senior Facility Agreement on substantially the same terms and conditions as the Obligations are payment subordinated to the Indebtedness under the Senior Facility Agreement.

"Permitted Investments" means each of the following:

(a) Investments in cash and Cash Equivalents;

(b) Investments consisting of (i) extensions of credit or capital contributions by any Loan Party to or in any other then existing Loan Party and (ii) extensions of credit or capital contributions by a Subsidiary of the Borrower which is not a Loan Party to or in another then existing Subsidiary of the Borrower which is not a Loan Party;

(c) travel advances to employees, officers and directors of the Loan Parties in the ordinary course of business not to exceed $27,500 in the aggregate at any time outstanding;

(d) Investments acquired in connection with the settlement of delinquent accounts receivable in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;

(e) Investments consisting of non-cash loans made by the Borrower to officers, directors and employees of a Loan Party which are used by such Persons to simultaneously purchase Stock of the Borrower in accordance with the Borrower's Organizational Documents;

(f) Investments existing on the Agreement Date and set forth on Schedule P-1;

(g) Investments comprised of guarantees of Indebtedness permitted in the definition of "Permitted Indebtedness";

(h) Subsidiaries of the Borrower established or created, so long as the Loan Parties and any such Subsidiary comply with the applicable provisions of Section 5.1(l);

(i) [Reserved];

(j) Permitted Acquisitions; and

(k) other Investments not to exceed $660,000 in the aggregate at any time outstanding; provided that immediately before, at the time of and after giving effect to such Investment, no Default or Event of Default has occurred and is continuing.

"Permitted Liens" means each of the following:

(a) Liens existing on the Agreement Date and set forth on Schedule 3.1(d);

(b) Liens securing Indebtedness incurred pursuant to the Senior Facility Agreement, solely to the extent permitted under clause (i) of the definition of "Permitted Indebtedness";

(c) carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the assets or property subject thereto and for which adequate reserves in accordance with GAAP are being maintained;

(d) Liens for Taxes, assessments or governmental charges or levies not past due or payable or that are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP are being maintained;

(e) (A) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default and (B) pledges or cash deposits made in lieu of, or to secure the performance of, judgment or appeal bonds in respect to such judgments and proceedings mentioned in clause (e)(A) above;

(f) Liens in favor of financial institutions arising in connection with the Borrower's or its Subsidiaries' deposit accounts maintained in the ordinary course held at such institutions to secure standard fees for services charged by, but not financing made available by, such institutions;

(g) Liens (other than any Lien imposed by ERISA) consisting of pledges or deposits required in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation or to secure the performance of tenders, statutory obligations, surety, stay, customs and appeals bonds, bids, leases, governmental contract, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other funded Indebtedness) or to secure liability to insurance carriers;

(h) easements, rights of way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, do not affect the value or marketability of such real property and which do not in any case materially interfere with the conduct of the business of any Loan Party or its Subsidiaries;

(i) (i) any interest or title of a lessor or sublessor under any lease not prohibited by this Agreement or (ii) non-exclusive licenses and sublicenses granted by a Loan Party or any Subsidiary of a Loan Party and leases and subleases (by a Loan Party or any Subsidiary of a Loan Party as lessor or sublessor) to third parties in the ordinary course of business not interfering with the business of the Loan Parties or any of their Subsidiaries;

(j) Liens of a collection bank arising under Section 4-210 of the UCC (or equivalent in foreign jurisdictions) on items in the course of collection;

(k) Liens on any assets or property acquired or held by any Loan Party or any Subsidiary of any Loan Party securing Indebtedness incurred or assumed for the purpose of financing (or refinancing) all or any part of the cost of acquiring such assets or property and permitted under clause (c) of the definition of "Permitted Indebtedness," provided that (i) such Lien attaches solely to the assets or property so acquired in such transaction and the proceeds thereof and (ii) the principal amount of the Indebtedness secured thereby does not exceed 100% of the cost of such assets or property;

(l) Liens securing Capital Lease Obligations permitted under clause (c) of the definition of "Permitted Indebtedness";

(m) Liens arising from the filing of precautionary uniform commercial code financing statements with respect to any lease not prohibited by this Agreement;

(n) Liens arising out of consignment or similar arrangements for the sale of goods entered into by the Borrower or any Subsidiary of the Borrower in the ordinary course of business;

(o) Liens in favor of customs and revenue authorities arising as a matter of law which secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(p) Liens on unearned insurance premiums securing the financing thereof to the extent permitted under clause (l) of the definition of "Permitted Indebtedness";

(q) Liens solely on cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement for a Permitted Acquisition; and

(r) Liens securing the Revolving Credit Facility, solely to the extent permitted under clause (m) of the definition of "Permitted Indebtedness".

"Person" means and includes any natural person, individual, partnership, joint venture, corporation, trust, limited liability company, limited company, joint stock company, unincorporated organization, government entity or any political subdivision or agency thereof, or any other entity.

"Portfolio Interest Certificate" has the meaning set forth in Section 2.5(d).

"Preferred Stock" means the Series A Convertible Preferred Stock, par value $0.001 per share, of the Borrower.

"Prepayment Fee" has the meaning set forth in Section 2.3(c).

"Prepayment Notice" has the meaning set forth in Section 2.3(c).

"Principal Market" means the NASDAQ Global Market (or any successor to the foregoing), or if after the Initial Disbursement Date the Common Stock is listed on another Eligible Market, such other Eligible Market.

"Pro Rata First Subsequent Disbursement Share" means, with respect to any Lender (other than the Specified Lenders), in respect of unfunded First Subsequent Disbursement Commitments, the applicable percentage (as adjusted from time to time in accordance with the terms hereof and as decreased as such First Subsequent Disbursement Commitments are funded) specified opposite such Lender's (other than the Specified Lenders') name on Annex A under the column "First Subsequent Disbursement Commitment." Notwithstanding anything to the contrary in the Loan Documents and for the avoidance of doubt, as of the Amendment Date, each Specified Lender's Pro Rata First Subsequent Disbursement Share is 0%.

"Pro Rata Initial Disbursement Share" means, with respect to any Lender (other than the Specified Lenders), in respect of unfunded Initial Disbursement Commitments, the applicable percentage (as adjusted from time to time in accordance with the terms hereof and as decreased as such Initial Disbursement Commitments are funded) specified opposite such Lender's (other than the Specified Lenders') name on Annex A under the column "Pro Rata Initial Disbursement Share."

"Pro Rata Second Subsequent Disbursement Share" means, with respect to any Lender (other than the Specified Lenders), in respect of unfunded Second Subsequent Disbursement Commitments, the applicable percentage (as adjusted from time to time in accordance with the terms hereof and as decreased as such Second Subsequent Disbursement Commitments are funded) specified opposite such Lender's (other than the Specified Lenders') name on Annex A under the column "Second Subsequent Disbursement Commitment."

"Pro Rata Share" means, with respect to any Lender, the applicable percentage (as adjusted from time to time in accordance with the terms hereof) obtained by dividing (a) the sum of (i) such Lender's Pro Rata Initial Disbursement Share of the Initial Disbursement Commitments (to the extent not terminated or used in its entirety), (ii) such Lender's Pro Rata First Subsequent Disbursement Share of the First Subsequent Disbursement Commitments (to the extent not terminated or used in its entirety), (iii) such Lender's Pro Rata Second Subsequent Disbursement Share of the Second Subsequent Disbursement Commitments (to the extent not terminated or used in its entirety), and (iv) the outstanding amount of Loans held by such Lender, by (b) the sum of (i) the total amount of remaining Disbursement Commitments held by all Lenders, and (ii) the total outstanding amount of Loans held by all Lenders.

"Products" means any item or any service that is designed, created, manufactured, managed, performed or otherwise used, offered or handled by or on behalf of the Loan Parties or any of their Subsidiaries.

"Proxy Statement" has the meaning set forth in Section 5.1(x).

"Public Health Laws" means all Applicable Laws relating to the procurement, development, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, sale or promotion of any drug, medical device, food, dietary supplement or other product (including any ingredient or component of the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.) and similar state laws, controlled substances laws, pharmacy laws or consumer product safety laws.

"Real Estate" means any real property owned, leased, subleased or otherwise operated or occupied by any Loan Party or any Subsidiary of any Loan Party.

"Reference Property" has the meaning set forth in Section 2.9(i).

"Register" has the meaning set forth in Section 1.4(b).

"Registration Rights Agreement" means that certain Registration Rights Agreement dated as of November 3, 2017 (as amended, supplemented or otherwise modified from time to time) by and among the Borrower, VHP and the other parties thereto.

"Registrations" means all Authorizations and exemptions issued or allowed by any Governmental Authority (including new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits) held by, or applied by contract to, any Loan Party or any of its Subsidiaries, that are required for the research, development, manufacture, distribution, marketing, storage, transportation, use and sale of the Products of any Loan Party or any of its Subsidiaries.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as in effect from time to time and any successor to all or a portion thereof establishing reserve requirements.

"Regulatory Matters" means, collectively, activities and Products that are subject to Public Health Laws.

"Release" means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

"Remaining First Subsequent Disbursement Commitment Termination Date" has the meaning set forth in Section 2.2(b).

"Remaining Initial Disbursement Commitment Termination Date" has the meaning set forth in Section 2.2(a).

"Remaining Second Subsequent Disbursement Commitment Termination Date" has the meaning set forth in Section 2.2(c).

"Reorganization Event" has the meaning set forth in Section 2.12.

"Reorganization Successor Corporation" has the meaning set forth in Section 2.12(a)(ii).

"Reporting Period" has the meaning set forth in Section 5.1(h).

"Required Lenders" means, at any time, (i) prior to the first date on which VHP, VIP and their respective Affiliates no longer hold outstanding Loans and/or unfunded Disbursement Commitments in an aggregate amount equal to or greater than 25% of the unfunded Disbursement Commitments held by VHP and VIP on the Agreement Date, VHP, and (ii) Lenders (including VHP for so long as it or one of its Affiliates is a Lender, but excluding the Specified Lenders or any assignee or transferee thereof) having Pro Rata Shares of which the aggregate Dollar equivalent amount exceeds 50% of the outstanding Loans (excluding any Loans held by the Specified Lenders or any assignee or transferee thereof) and the unfunded Disbursement Commitments, collectively.

"Reservation Date" has the meaning set forth in Section 2.9(d).

"Restricted Payments" means, with respect to any Person, (i) the declaration or making of any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities, in each case on account of any of its Stock, other than a payment or other distribution made solely in Stock (other than Disqualified Stock) of such Person, (ii) the purchasing, redemption or other acquisition for value of any of its Stock now or hereafter outstanding or (iii) the making of any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Indebtedness subordinated to the Obligations as to right and time of payment or as to other rights and remedies thereunder; provided that any such payment or prepayment described in this clause (iii) that is permitted by the subordination agreement with respect to such Indebtedness shall not constitute a "Restricted Payment" within the meaning of this Agreement.

"Reverse Split Amendment" has the meaning set forth in Section 4.2(l).

"Reverse Stock Split" has the meaning set forth in Section 5.1(x).

"Revolving Credit Facility" has the meaning set forth in clause (m) of the definition of "Permitted Indebtedness."

"Revolving Credit Facility Documents" means the agreements, instruments and documents evidencing the Revolving Credit Facility permitted by clause (m) of the definition of "Permitted Indebtedness."

"Sanctioned Country" has the meaning set forth in Section 3.1(ii).

"Sanctions" has the meaning set forth in Section 3.1(ii).

"Sarbanes-Oxley" has the meaning set forth in Section 3.1(jj).

"SDN List" has the meaning set forth in Section 3.1(ii).

"SEC" means the United States Securities and Exchange Commission.

"SEC Documents" means all reports, schedules, forms, statements and other documents filed by any Loan Party or any of its Subsidiaries with the SEC pursuant to the Securities Act or the Exchange Act after December 31, 2015 (including, in each case, all financial statements and schedules and pro forma financial information included therein, all exhibits thereto and all documents incorporated by reference therein).

"Second Subsequent Disbursement" has the meaning set forth in Section 2.2(c).

"Second Subsequent Disbursement Commitment" means the commitment of a Lender to provide a Second Subsequent Disbursement under this Agreement, and "Second Subsequent Disbursement Commitments" means all of them, collectively; provided that, notwithstanding anything to the contrary in the Loan Documents and for the avoidance of doubt, as of the Amendment Date, no Specified Lender has any prior, present or future commitment or obligation to fund any Second Subsequent Disbursement or other amount under the Loan Documents at any time.

"Securities" means the Loans, the Disbursement Commitments, the Notes and the related guaranties set forth in the Guaranty of the Guarantors.

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

"Securities Act Legends" has the meaning set forth in Section 2.9(c)(vii)(b).

"Senior Facility Agent" has the meaning set forth in the definition of "Senior Facility Agreement."

"Senior Facility Agreement" means the Facility Agreement dated as of January 5, 2018 (as amended, restated, supplemented, changed, extended, replaced or otherwise modified from time to time) by and among the Borrower, certain of its Subsidiaries, the lenders from time to time party thereto and Cortland Capital Market Services LLC, as agent (in such capacity, the "Senior Facility Agent").

"Senior Facility Amendment" has the meaning set forth in Section 6.27.

"Senior Facility Documents" means the Loan Documents (as defined in the Senior Facility Agreement).

"Senior Facility Subordination Agreement" means the Subordination Agreement dated as of the Agreement Date (as amended, restated, supplemented, changed, extended, replaced or otherwise modified from time to time) by and among the Borrower, certain of its Subsidiaries, the Lenders and the Senior Facility Agent.

"Social Security Act" means the Social Security Act of 1965 as set forth in Title 42 of the United States Code, as amended, and any successor statute thereto, as interpreted by the rules and regulations issued thereunder, in each case as in effect from time to time.

"Specified Lender" means any of the Lenders that is managed on a discretionary basis by, or is otherwise an Affiliate of, Deerfield Management Company, L.P. (including each of Deerfield Private Design Fund IV, L.P., Deerfield Private Design Fund III, L.P. or Deerfield Special Situations Fund, L.P.) and each of their successors and permitted assigns and transferees, and "Specified Lenders" means all of them, collectively (but, for the avoidance of doubt, not jointly and severally).

"Spin-Off" has the meaning set forth in Section 2.9(f)(iii)(B).

"Stock" means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting; and (b) all securities convertible into or exchangeable for any other Stock and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any other Stock, whether or not presently convertible, exchangeable or exercisable. The term "Stock" shall not include any Loans, Notes or Disbursements hereunder, nor any "Loans", "Notes" or "Disbursements" under the Senior Facility Agreement (as such terms are defined therein).

"Stock Price" means, for (x) any Fundamental Change, (i) if the holders of the Common Stock receive only cash in consideration for their shares of Common Stock in such Fundamental Change and such Fundamental Change is of the type described in sub-clause (ii) of clause (b) of the definition of Fundamental Change, the amount of cash paid per share of the Common Stock in such Fundamental Change, (ii) in all other cases, the Volume Weighted Average Price of the Common Stock over the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Fundamental Change Effective Date for such Fundamental Change, or for (y) any prepayment in connection with Section 2.3(c), the Volume Weighted Average Price of the Common Stock over the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the effective date of the prepayment.

"Stockholder Approval" has the meaning set forth in Section 5.1(x).

"Stockholder Meeting" has the meaning set forth in Section 5.1(x).

"Subject Foreign Subsidiaries" means Rib-X Ltd., Rempex London Limited and Rempex Australia Pty Limited.

"Subject Persons" has the meaning set forth in the definition of "EBITDA."

"Subsequent Disbursement" means a First Subsequent Disbursement or a Second Subsequent Disbursement, and "Subsequent Disbursements" means all of them, collectively.

"Subsequent Disbursement Commitments" means the commitments of the Lenders to provide Subsequent Disbursements under this Agreement; provided that, notwithstanding anything to the contrary in the Loan Documents and for the avoidance of doubt, as of the Amendment Date, no Specified Lender has any prior, present or future commitment or obligation to fund any Subsequent Disbursement or other amount under the Loan Documents at any time.

"Subsequent Stockholder Approval" has the meaning set forth in Section 5.1(x).

"Subsidiary" or "Subsidiaries" means, as to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to Subsidiaries of the Borrower.

"Successor Major Transaction" means either a Change of Control or a Fundamental Change that constitutes a Merger Event in which the shares of Common Stock are converted into the right to receive cash, securities of another entity and/or other assets.

"Successive Conversion Period" means the period beginning upon receipt by the Specified Lenders of a Change of Control Notice, Fundamental Change Notice or Prepayment Notice, as applicable, and ending on the one-year anniversary of the effective date of the Change of Control, Fundamental Change or prepayment, as applicable.

"Swap Contract" means any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Target" means any other Person incorporated or organized under the laws of any state in the United States or the District of Columbia or a business unit, product line, division or asset group of any such Person acquired or proposed to be acquired in an Acquisition.

"Tax Affiliate" means (a) the Borrower and its Subsidiaries and (b) any Affiliate of the Borrower with which the Borrower files or is required to file consolidated, combined or unitary tax returns.

"Tax Distributions" means distributions from any Subsidiary to the Borrower in the aggregate amount necessary to permit the Borrower to pay all or a portion of the U.S. federal, state and local income tax liabilities attributable to the Borrower's ownership of the Subsidiaries; provided that the amount of such distributions in any taxable period shall not exceed the amount of U.S. federal, state and local income tax the Subsidiaries would be required to pay with respect to such taxable period if they filed as a separate consolidated, combined, unitary or other similar group for income tax purposes with the Borrower as the common parent of such group.

"Tax Returns" has the meaning set forth in Section 3.1(p).

"Taxes" means all present or future taxes, levies, imposts, stamp or other duties, deductions, charges or withholdings imposed by an Governmental Authority, together with any interest, additions to tax, penalties or other Liabilities with respect thereto.

"Title IV Plan" means an Employee Benefit Plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has or could reasonably be expected to have any obligation or Liabilities (including under Section 4069 of ERISA).

"Trading Day" means, except for determining amounts due upon conversion as set forth below, a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on the NASDAQ Global Market or, if the Common Stock (or such other security) is not then listed on the NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; provided that if the Common Stock (or such other security) is not so listed or traded, "Trading Day" means a Business Day; and provided, further, that for purposes of determining amounts due upon conversion only, "Trading Day" means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Stock generally occurs on the NASDAQ Global Market or, if the Common Stock is not then listed on the NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, except that if the Common Stock is not so listed or admitted for trading, "Trading Day" means a Business Day.

"Transactions" means (a) the funding of the Disbursements, (b) the providing of the Disbursement Commitments, (c) the execution and delivery of the Loan Documents and (d) the payment of fees, commissions, costs and expenses in connection with each of the foregoing.

"Transfer" means directly or indirectly, sell, give, assign, hypothecate, pledge, encumber, grant a security interest in or otherwise dispose of (whether by operation of law or otherwise).

"Transfer Agent" has the meaning set forth in Section 2.9(c)(ii).

"Treasury Rate" means, on any date of prepayment, the yield to maturity as of such prepayment date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such prepayment date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such prepayment date to July 6, 2022; provided, however, that if the period from such prepayment date to July 6, 2022 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Trigger Event" has the meaning set forth in Section 2.9(f)(iii).

"UCC" means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

"unit of Reference Property" has the meaning set forth in Section 2.9(i).

"United States" and "U.S." each means the United States of America.

"USA Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, P.L. 107-56, as amended from time to time.

"Valuation Period" has the meaning set forth in Section 2.9(f)(iii)(B).

"VHP" means Vatera Healthcare Partners LLC.

"VIP" means Vatera Investment Partners LLC (to be re-named Oikos Investment Partners LLC after the date hereof).

"Volume Weighted Average Price" means the volume weighted average price per share of the relevant securities over the relevant period (as reported by Bloomberg L.P. or, if not reported thereby, by another authoritative source mutually agreed by the Loan Parties and the Required Lenders).

"Warrants" means such warrants issued by the Borrower to Deerfield Private Design Fund IV, L.P., Deerfield Private Design Fund III, L.P., and Deerfield Special Situations Fund, L.P. on January 5, 2018 (as amended, supplemented or otherwise modified from time to time) to purchase an aggregate of 3,792,868 shares of Common Stock of the Borrower.

**Section 1.2 Interpretation.** In this Agreement and the other Loan Documents, unless the context otherwise requires, all words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties requires and the verb shall be read and construed as agreeing with the required word and pronoun. The division of this Agreement and the other Loan Documents into Articles and Sections and the use of headings and captions is for convenience of reference only and shall not modify or affect the interpretation or construction of this Agreement or any of its provisions. The words "herein," "hereof," "hereunder," "hereinafter" and "hereto" and words of similar import refer to this Agreement (or other applicable Loan Document) as a whole and not to any particular Article or Section hereof (or thereof). The term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The term "documents" and "agreements" include any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The use in any of the Loan Documents of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. References to a specified Article, Exhibit, Section or Schedule shall be construed as a reference to that specified Article, Exhibit, Section or Schedule of this Agreement (or other applicable Loan Document). Unless specifically stated otherwise, any reference to any of the Loan Documents means such document as the same shall be amended, restated, supplemented or otherwise modified and from time to time in effect. The references to "asset" (or "assets") and "property" (or "properties") in the Loan Documents are meant to be mean the same and are used throughout the Loan Documents interchangeably, and such words shall be deemed to refer to any and all tangible and intangible assets and properties, including cash, securities, Stock, accounts and contract rights. Unless otherwise specified herein or therein, all terms defined in any Loan Document shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto or thereto. The meanings of defined terms shall be equally applicable to the singular and plural forms of the defined terms. Terms (including uncapitalized terms) not otherwise defined herein and that are defined in the UCC shall have the meanings therein described. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including." If any provision of this Agreement or any other Loan Document refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, unless otherwise expressly stated, such provision shall be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action. References to any statute or regulation may be made by using either the common or public name thereof or a specific cite reference and, except as otherwise provided with respect to FATCA, are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation, and any reference to any law or regulation, shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. Whenever any reference is made in any Loan Document to any Person such reference shall be construed to include such Person's permitted successors and permitted assigns. Any financial ratios required to be satisfied in order for a specific action to be permitted under any Loan Document shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein or therein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number). Unless otherwise specified, all references in any Loan Document to

times of day shall be references to New York City time. Notwithstanding anything to the contrary in any Loan Document, any reference to "Organizational Document" or "Organizational Documents" of any Loan Party or any of its Subsidiaries in any Loan Document shall mean such written documents, agreements and arrangements that are in effect on the Agreement Date after giving effect to the Transactions occurring on the Agreement Date that have been approved by the Required Lenders, without giving effect to any amendment, restatement, change, supplement, waiver or other modification thereto or thereof that is not expressly permitted by Section 5.2(j). Any reference to "payment in full", "paid in full", "repaid in full", "prepaid in full", "redeemed in full" or any other term or word of similar effect used in this Agreement or any other Loan Document with respect to the Loans or the Obligations shall mean all Obligations (including any Prepayment Fees) (excluding contingent claims for indemnification to the extent no claim giving rise thereto has been asserted) have been repaid in full in cash or through the issuance of Conversion Shares or a combination of cash and Conversion Shares and have been fully performed. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document, (a) no action or inaction is permitted (and any such action or inaction shall be and is expressly prohibited) under this Agreement and/or any other Loan Document to the extent such action or inaction is prohibited by the Senior Facility Subordination Agreement, (b) all terms and provisions in this Agreement and the other Loan Documents shall be deemed to be (i) qualified and modified by the terms and provisions of the Senior Facility Subordination Agreement and (ii) subject to the Senior Facility Subordination Agreement without having to expressly include language stating that such terms and provisions are "subject to the Senior Facility Subordination Agreement," and (c) with respect to any conflict between the terms and provisions of this Agreement and/or any other Loan Document, on the one hand, and the Senior Facility Subordination Agreement, on the other hand, the Senior Facility Subordination Agreement shall govern and control.

**Section 1.3 Business Day Adjustment.** Except as otherwise expressly stated herein or in any other Loan Document (and except on the Maturity Date or any date of acceleration of any of the Obligations, which in each such case, such payment or performance shall be due and payable or performed on or prior to such day regardless of whether such day is a Business Day), if the day by which any payment or other performance is due to be made is not a Business Day, that payment or performance shall be made by the next succeeding Business Day unless that next succeeding Business Day falls in a different calendar month, in which case that payment or other performance shall be made by the Business Day immediately preceding the day by which such payment or other performance is due to be made; provided that interest will continue to accrue each additional day in connection therewith.

**Section 1.4 Loan Records.**

(a) The Borrower will record on its books and records the amount of the Loans, the unfunded amount of the Disbursement Commitments, the interest rate applicable thereto, all payments of principal and interest thereon and the principal balance thereof from time to time outstanding.

(b) The Borrower shall establish and maintain at its address referred to in Section 6.1, (i) a record of ownership (the "Register") of the interests (including any rights to receive payment hereunder) of each Lender in the Loans and the unfunded Disbursement Commitments, and any assignment of any such interest or interests, and (ii) accounts in the Register in which it shall record (1) the names and addresses of the Lenders (and any change thereto pursuant to this Agreement), (2) the amount of the Loans and the unfunded Disbursement Commitments and each funding of any participation therein, (3) the amount of any principal, interest, fee or other amount due and payable or paid, and (4) any other payment received by the Lenders from the Borrower and its application to the Loans and the unfunded Disbursement Commitments. The Register of the Borrower shall be absolute, binding and conclusive absent manifest error.

(c) The Loans made by each Lender are evidenced by this Agreement. Additionally, the Borrower shall execute and deliver to each Lender (and/or, if applicable and if so requested by any assignee Lender pursuant to the assignment provisions of Section 6.5) on each Disbursement Date (or, if such assignment is made after the applicable Disbursement Date, promptly after such Lender's request) a Note payable to such Lender in an amount equal to the unpaid principal amount of the outstanding Loans held by such Lender (which, at the request

of such Lender, may provide separate Notes for separate or different parts of the outstanding Loans held by such Lender). Notwithstanding anything to the contrary contained in this Agreement, the Loans and the unfunded Disbursement Commitments (including any Notes evidencing the such outstanding Loans) are registered obligations, the right, title and interest of the Lenders and their successors and assignees in and to the Loan and any Disbursement Commitments shall be transferable only upon notation of such Transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 1.4 shall be construed so that the Loan is at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code.

(d) The Borrower and the Lenders shall treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. Information contained in the Register with respect to any Lender shall be available for access by the Borrower or such Lender at any reasonable time and from time to time upon reasonable prior written notice.

**Section 1.5 Accounting Terms and Principles.** All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any financial statement hereafter adopted by the Borrower or its Subsidiaries (including, with respect to GAAP, any change in GAAP that would require leases that would be classified as operating leases under GAAP on the Agreement Date to be reclassified as Capital Leases) shall be given effect for purposes of measuring compliance with any provision of this Agreement or otherwise determining any relevant ratios and baskets which govern whether any action is permitted hereunder unless the Borrower and the Required Lenders agree to modify such provisions to reflect such changes in GAAP, and unless such provisions are modified, all financial statements and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein or in any other Loan Document, all terms of an accounting or financial nature used herein and in the other Loan Documents shall be construed, and all computations of amounts and ratios referred to herein and in the other Loan Documents shall be made, without giving effect to any election under Statement of Financial Accounting Standards No. 159 (Codification of Accounting Standards 825-10) to value any Indebtedness or other liabilities of any Loan Party or any Subsidiary at "fair value," as defined therein. A breach of any financial covenant set forth in Section 5.1(v) shall be deemed to have occurred as of the last day of any specified measurement period, regardless of when the financial statements reflecting such breach are delivered to any Lender.

**Section 1.6 Officers.** Any document, agreement or instrument delivered under the Loan Documents that is signed by an Authorized Officer or another officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Authorized Officer or other officer shall be conclusively presumed to have acted on behalf of such Loan Party in such person's capacity as an officer of such Loan Party and not in any individual capacity.

## ARTICLE 2

## AGREEMENT FOR THE LOAN

**Section 2.1 Use of Proceeds.** The proceeds of each Disbursement will be used for working capital and other general corporate purposes of the Borrower, including Permitted Acquisitions; provided, however, that the proceeds of each Disbursement shall not be used to pay all or any portion of any liability in excess of $15,000,000 (other than any Indebtedness or other obligations under the Senior Facility Documents or the Revolving Credit Facility Documents) in the aggregate without the prior written consent of the Required Lenders in their sole discretion.

**Section 2.2 Disbursements.**

(a) Initial Disbursement. Subject to the satisfaction (or waiver by the Required Lenders) of the conditions set forth in Section 4.1, Section 4.2 and this Section 2.2(a) and subject to the terms in this Agreement

and in reliance on the representations and warranties in the Loan Documents, the Borrower shall provide a written notice to each Lender (other than the Specified Lenders) holding an Initial Disbursement Commitment in form and substance reasonably satisfactory to each such Lender from an Authorized Officer of the Borrower (certifying that all such aforementioned conditions in this Section 2.2(a) are satisfied or are expected to be satisfied on the proposed date of the funding of the Initial Disbursement) requesting each such Lender fund in a single advance its Pro Rata Initial Disbursement Share of the Initial Disbursement at least five (5) Business Days in advance of the proposed date of the funding of the Initial Disbursement amount by such Lender (or such shorter period agreed to by all such Lenders in their sole discretion) with the proposed date of funding being required to be a single Business Day during the period commencing on (and including) the Agreement Date and ending on (and including) February 25, 2019 (or such earlier date set forth in the proviso of the first sentence of Section 2.3(a) or caused by the Facility Termination Date occurring or any earlier date of termination based on remedies available upon (or at the time of) the occurrence of an Event of Default) (such end date of the Initial Disbursement Commitments, the "Remaining Initial Disbursement Commitment Termination Date"), whereupon each Lender (other than the Specified Lenders) holding an Initial Disbursement Commitment severally but not jointly agrees to lend to the Borrower in a single advance on the proposed date of funding, the principal amount (but not less than the principal amount) of the total Initial Disbursement Commitment amount multiplied by the percentage set forth opposite such Lender's name in Annex A under the heading "Pro Rata Initial Disbursement Share." Following receipt of such written notice from Borrower pursuant to the above terms in this Section 2.2(a), each Lender (other than the Specified Lenders) holding an Initial Disbursement Commitment with a Pro Rata Initial Disbursement Share greater than 0% shall make its Pro Rata Initial Disbursement Share of the Initial Disbursement requested by the Borrower pursuant to such written notice available to the Borrower on the proposed date of funding of the Initial Disbursement covered by such written notice to the extent that the conditions set forth in Section 4.1, Section 4.2 and this Section 2.2(a) have been satisfied for the Initial Disbursement. Amounts borrowed under this Section 2.2(a) are referred to as the "Initial Disbursement." Upon the funding by any Lender (other than the Specified Lenders) of its Pro Rata Initial Disbursement Share of the Initial Disbursement, the Initial Disbursement Commitment of such Lender shall immediately and automatically terminate and the Borrower shall provide notation thereof in the Register of such termination and the holding of the Initial Disbursement by such Lender. Upon the funding by each Lender (other than the Specified Lenders) of its Pro Rata Initial Disbursement Share of the Initial Disbursement, each of the Specified Lenders shall be deemed for all purposes of this Agreement to have funded its Pro Rata Initial Disbursement Share of the Initial Disbursement, the Initial Disbursement Commitment of such Specified Lender shall immediately and automatically terminate and the Borrower shall provide notation thereof in the Register of such termination and the holding of the Initial Disbursement by such Specified Lender; provided that no Specified Lender shall have any duty or obligation to fund (and has made no commitment to fund) any Initial Disbursement Commitment, or any amounts or obligations under this Agreement or the other Loan Documents. Any Initial Disbursement Commitments that are still available as of the Remaining Initial Disbursement Commitment Termination Date shall immediately and automatically terminate without any action or notice by any Person. Notwithstanding anything to the contrary in the Loan Documents or otherwise, as consideration for agreeing to the terms and provisions set forth in the Senior Facility Amendment (which it is understood and agreed by all Parties to this Agreement would have not been agreed to by the lenders (including the Specified Lenders) party to the Senior Facility Amendment without the receipt and benefit thereof), on and after the date any Initial Disbursement of any amount is funded or made by any Lender or any other Person, the Specified Lenders shall hold (and be deemed to hold for all purposes) $5,000,000 in Initial Disbursements in the percentages set forth on Annex A under the heading "% of Total Initial Disbursement Commitment" (with such changes to such amount and such percentages from any permitted assignments or transfers thereof, or any prepayments, repayments, conversions or other reductions thereof in accordance with the terms and provisions of this Agreement, from time to time).

(b) First Subsequent Disbursement. Subject to the satisfaction (or waiver by the Required Lenders) of the conditions set forth in Section 4.1, Section 4.3 and this Section 2.2(b) and subject to the terms in this Agreement and in reliance on the representations and warranties in the Loan Documents, to the extent the Borrower provides a written notice to each Lender holding a First Subsequent Disbursement Commitment in form and substance reasonably satisfactory to each such Lender from an Authorized Officer of the Borrower

(certifying that all such aforementioned conditions in this Section 2.2(b) are satisfied or are expected to be satisfied on the proposed date of the funding of such First Subsequent Disbursement) requesting each such Lender fund in a single advance its Pro Rata First Subsequent Disbursement Share of the First Subsequent Disbursement at least twelve (12) Business Days in advance of the proposed date of the funding of such First Subsequent Disbursement amount by such Lender (or such shorter period agreed to by all such Lenders in their sole discretion) with the proposed date of funding being required to be a single Business Day during the period commencing on (and including) the first Business Day after March 31, 2019 and ending on (and including) June 30, 2019 (or such earlier date set forth in the proviso of the first sentence of Section 2.3(a) or caused by the Facility Termination Date occurring or any earlier date of termination based on remedies available upon (or at the time of) the occurrence of an Event of Default) (such end date of the First Subsequent Disbursement Commitments, the "Remaining First Subsequent Disbursement Commitment Termination Date"), each Lender holding a First Subsequent Disbursement Commitment severally but not jointly agrees to lend to the Borrower in a single advance on the proposed date of funding, up to the principal amount set forth opposite such Lender's name in Annex A under the heading "First Subsequent Disbursement Commitment." Following receipt of such written notice from Borrower pursuant to the above terms in this Section 2.2(b), each Lender holding a First Subsequent Disbursement Commitment shall make its Pro Rata First Subsequent Disbursement Share of such First Subsequent Disbursement requested by the Borrower pursuant to such written notice available to the Borrower on the proposed date of funding of such First Subsequent Disbursement covered by such written notice to the extent that the conditions set forth in Section 4.1, Section 4.3 and this Section 2.2(b) have been satisfied for such First Subsequent Disbursement. Amounts borrowed under this Section 2.2(b) are referred to as the "First Subsequent Disbursement." Upon the funding by any Lender of its Pro Rata First Subsequent Disbursement Share of the First Subsequent Disbursement, the First Subsequent Disbursement Commitment of such Lender shall immediately and automatically terminate and the Borrower shall provide notation thereof in the Register of such termination and the holding of the First Subsequent Disbursement by such Lender. Any First Subsequent Disbursement Commitments that are still available as of the Remaining First Subsequent Disbursement Commitment Termination Date shall immediately and automatically terminate without any action or notice by any Person.

(c) Second Subsequent Disbursement. Subject to the satisfaction (or waiver by the Required Lenders) of the conditions set forth in Section 4.1, Section 4.3 and this Section 2.2(c) and subject to the terms in this Agreement and in reliance on the representations and warranties in the Loan Documents, to the extent the Borrower provides a written notice to each Lender holding a Second Subsequent Disbursement Commitment in form and substance reasonably satisfactory to each such Lender from an Authorized Officer of the Borrower (and with such written notice certifying that all such aforementioned conditions in this Section 2.2(c) are satisfied or are expected to be satisfied on the proposed date of the funding of such Second Subsequent Disbursement) requesting each such Lender fund in a single advance its Pro Rata Second Subsequent Disbursement Share of the Second Subsequent Disbursement at least twelve (12) Business Days in advance of the proposed date of the funding of such Second Subsequent Disbursement amount by such Lender (or such shorter period agreed to by all such Lenders in their sole discretion) with the proposed date of funding being required to be a single Business Day during the period commencing on (and including) the first Business Day after June 30, 2019 and ending on (and including) July 10, 2019 (or such earlier date set forth in the proviso of the first sentence of Section 2.3(a) or caused by the Facility Termination Date occurring or any earlier date of termination based on remedies available upon (or at the time of) the occurrence of an Event of Default) (such end date of the Second Subsequent Disbursement Commitments, the "Remaining Second Subsequent Disbursement Commitment Termination Date"), each Lender holding a Second Subsequent Disbursement Commitment severally but not jointly agrees to lend to the Borrower in a single advance on the proposed date of funding, up to the principal amount set forth opposite such Lender's name in Annex A under the heading "Second Subsequent Disbursement Commitment." Following receipt of such written notice from Borrower pursuant to the above terms in this Section 2.2(c), each Lender holding a Second Subsequent Disbursement Commitment shall make its Pro Rata Second Subsequent Disbursement Share of such Second Subsequent Disbursement requested by the Borrower pursuant to such written notice available to the Borrower on the proposed date of funding of such Second Subsequent Disbursement covered by such written notice to the extent that the conditions set forth in Section 4.1, Section 4.3

and this Section 2.2(c) have been satisfied for such Second Subsequent Disbursement. Amounts borrowed under this Section 2.2(c) are referred to as the "Second Subsequent Disbursement." Upon the funding by any Lender of its Pro Rata Second Subsequent Disbursement Share of the Second Subsequent Disbursement, the Second Subsequent Disbursement Commitment of such Lender shall immediately and automatically terminate and the Borrower shall provide notation thereof in the Register of such termination and the holding of the Second Subsequent Disbursement by such Lender. Any Second Subsequent Disbursement Commitments that are still available as of the Remaining Second Subsequent Disbursement Commitment Termination Date shall immediately and automatically terminate without any action or notice by any Person.

(d) No Re-Borrowing of Disbursements or Loans. Amounts borrowed as an Initial Disbursement or a Subsequent Disbursement which are paid, repaid, redeemed and/or prepaid may not be re-borrowed under any circumstances.

**Section 2.3 Payments; Prepayments; Exit Fees; Prepayment Fee; No Call.**

(a) The Borrower shall pay in cash to each Lender (based on its respective Pro Rata Share) the outstanding principal amount of the Obligations on the earlier (such earlier date, the "Facility Termination Date") of (i) the Maturity Date and (ii) the date the principal amount of the Obligations are declared to be or automatically become due and payable upon (or at the time of) the occurrence of an Event of Default; provided that, notwithstanding anything to the contrary in the Loan Documents, to the extent the Remaining Initial Disbursement Commitment Termination Date, the Remaining First Subsequent Disbursement Commitment Termination Date and/or the Remaining Second Subsequent Disbursement Commitment Termination Date would occur after such earlier date of clauses (i) – (ii) above in this sentence, then the Remaining Initial Disbursement Commitment Termination Date, the Remaining First Subsequent Disbursement Commitment Termination Date and/or the Remaining Second Subsequent Disbursement Commitment Termination Date, as applicable, shall automatically be moved to the same earliest date without any action or notice of any Person.

(b) At least fifteen (15) calendar days prior to the anticipated occurrence of any Change of Control, the Borrower shall notify the Lenders of the applicable Change of Control (a "Change of Control Notice"). Subject to Section 2.9(l), any Lender may notify the Borrower, in such Lender's sole discretion, by delivering written notice to the Borrower at least five (5) calendar days prior to the anticipated occurrence of such Change of Control, that such Lender elects to either (i) convert all or a portion of its outstanding Loans into Preferred Stock at the applicable Conversion Rate in accordance with Section 2.9 and, if applicable, Section 2.11 (a "Change of Control Conversion Notice") or (ii) in the case of VHP, VIP, any Specified Lender or their respective Affiliates only, for any amounts not elected to be converted pursuant to clause (i), have the Borrower pay in cash to such Lender (based on its respective Pro Rata Share) the outstanding Obligations substantially concurrently with the occurrence of such Change of Control (a "Change of Control Repayment Notice"). In the event (x) a Lender (other than VHP, VIP, any Specified Lender and their respective Affiliates) fails to timely deliver a Change of Control Conversion Notice or (y) a Change of Control Repayment Notice is timely received by the Borrower from VHP, VIP, each Specified Lender or their respective Affiliates pursuant to this Section 2.3(b), the Borrower shall pay in cash to such Lender (based on its respective Pro Rata Share) the outstanding Obligations substantially concurrently with the occurrence of such Change of Control. For the avoidance of doubt, VHP, VIP, any Specified Lender or their respective Affiliates may elect to deliver neither a Change of Control Conversion Notice nor a Change of Control Repayment Notice for any of their Loans, in which case such Lenders shall continue to hold their respective Loans which are not elected for conversion or repayment following such Change of Control, unless such Loans are subject to prepayment pursuant to and in accordance with Section 2.3(c).

(c) Except as provided below in this Section 2.3(c), the Loans may, at the option of the Borrower, be prepaid in cash, in whole or in part, together with accrued and unpaid interest thereon, at any time upon fifteen (15) Business Days' prior written notice to the Lenders (any such notice, a "Prepayment Notice") subject to the payment by the Borrower to each Lender (based on its respective Pro Rata Share of such Loans) in accordance with Section 2.3(d) and Section 2.4 of (i) the Interim Exit Fee or Final Exit Fee, as applicable, set

forth in the last paragraph of this Section 2.3(c), and (ii) the fees outlined below (any such fee outlined below, a "Prepayment Fee") to be paid in cash, if paid, repaid, redeemed or prepaid:

(i) on or prior to July 6, 2022, upon cash payment of a premium equal to the Applicable Premium as of the date of prepayment;

(ii) after July 6, 2022 but on or prior to July 6, 2023, upon cash payment of a premium equal to 5.0% of the principal of the applicable Loans being paid, repaid, redeemed or prepaid (without giving effect to the principal payment, repayment, redemption or prepayment when calculating the 5.0%); and

(iii) after July 6, 2023 but on or prior to January 5, 2025, upon cash payment of a premium equal to 4.0% of the principal of the applicable Loans being paid, repaid, redeemed or prepaid (without giving effect to the principal payment, repayment, redemption or prepayment when calculating the 4.0%).

Notwithstanding the foregoing or anything to the contrary in the Loan Documents, (i) except for a prepayment in connection with a Change of Control or a Fundamental Change in which the consideration to be paid to the holders of outstanding Common Stock (other than shares held by VHP, VIP or their respective Affiliates) consists solely of cash at a per share price in excess of the then current Conversion Price (determined based on the Common Stock Conversion Rate), the Loans shall not be permitted to be prepaid at any time that the Volume Weighted Average Price of the Common Stock for the five-trading-day period ending on and including the Trading Day immediately preceding the delivery of any Prepayment Notice exceeds then current Conversion Price (determined based on the Common Stock Conversion Rate) and (ii) upon receipt of any Prepayment Notice, each Lender shall have the right, prior to the applicable prepayment, to convert all or a portion of the Loans to be so prepaid (but including, for the avoidance of doubt, any Interim Exit Fee or Final Exit Fee and excluding, for the avoidance of doubt, any Prepayment Fee) into Preferred Stock at the Conversion Rate in accordance with Section 2.9 and Section 2.11 that would apply as if such prepayment were a Fundamental Change, using the Stock Price applicable to such prepayment. Upon receipt of any Prepayment Notice, the Borrower shall, if requested in writing by a Lender that is VHP, VIP or their respective Affiliates, disclose to such Lender any material non-public information regarding the Borrower (as such term is defined under U.S. federal securities laws), subject to execution by such Lender of a customary confidentiality agreement (with a trading restriction on the Lender and no "cleansing" requirement by the Borrower) with the Borrower.

The Parties acknowledge and agree that, in light of the impracticality and extreme difficulty of ascertaining actual damages, the Prepayment Fee set forth in this Section 2.3(c) is intended to be a reasonable calculation of the actual damages that would be suffered by the Lenders as a result of any such payment, repayment, redemption or prepayment. The parties hereto further acknowledge and agree that the Prepayment Fee set forth in this Section 2.3(c) is not intended to act as a penalty or to punish the Borrower or any other Loan Party for any such payment, repayment, redemption or prepayment.

Notwithstanding anything to the contrary in the Loan Documents, at any time that (i) any of the Loans (including any Loans held by the Specified Lenders) are paid, repaid, redeemed or prepaid or converted into Preferred Stock in accordance with Section 2.9 (whether before, at the time of or after the Maturity Date or any acceleration, bankruptcy or otherwise), the Borrower shall pay to each Lender (based on its respective Pro Rata Share of such Loans) a non-refundable exit fee (the "Interim Exit Fee") equal to 1% of the aggregate principal amount of such Loans so paid, repaid, redeemed, prepaid or converted, which Interim Exit Fee shall be (A) due and payable in cash upon any such payment, repayment, redemption or prepayment of such Loans or (B) converted into Preferred Stock (assuming such Interim Exit Fee were principal) in accordance with Section 2.9 upon any such conversion of such Loans into Preferred Stock, and (ii) all (but not less than all) of the Loans are paid, repaid, redeemed or prepaid or converted into Preferred Stock in accordance with Section 2.9 (whether before, at the time of or after the Maturity Date or any acceleration, bankruptcy or otherwise), the Borrower shall pay to each Lender (based on its respective Pro Rata Share of such Loans) a non-refundable exit fee (the "Final Exit Fee") equal to 3% of the aggregate principal amount of the Disbursement Commitments that

were not drawn by the Borrower in accordance with Section 2.2(a), (b) or (c), as applicable, prior to such time, which Final Exit Fee (A) shall be due and payable in cash upon any such payment, repayment, redemption or prepayment of all (but not less than all) the Loans or (B) be converted into Preferred Stock (assuming such Final Exit Fee were principal) in accordance with Section 2.9 and, if applicable, Section 2.11 upon any such conversion of all (but not less than all) the Loans into Preferred Stock.

(d) Each payment, repayment, redemption and prepayment by the Borrower or any other Loan Party shall be applied (i) first, ratably to all fees, costs and expenses (including any attorneys' fees) owed to any Lender under the Loan Documents, (ii) second, ratably to accrued and unpaid interest owed to the Lenders under the Loan Documents, (iii) third, ratably to the principal amount of the Loans owed to the Lenders (including any Prepayment Fee), and, (iv) fourth, to all other Obligations owing to any Lender; provided that notwithstanding the foregoing or anything else to the contrary in the Loan Documents, (1) any acceleration payments, repayments, redemptions or prepayments shall be applied as determined by the Required Lenders and the Specified Lenders in their sole discretion and, with respect to any such Obligations owed to the Lenders, shall be allocated among the Lenders in accordance with and in proportion to their respective Pro Rata Shares and (2) the Borrower shall not be able to direct the application of any payments during the continuance of a Default or an Event of Default, in which case such payments shall be applied as determined by the Required Lenders and the Specified Lenders in their sole discretion.

**Section 2.4 Payment Details.** All payments of the Obligations by the Borrower or any other Loan Party hereunder and under any of the other Loan Documents shall be made without setoff or counterclaim and shall be paid in cash in Dollars and applied in accordance with Section 2.3(d). Payments of any amounts and other Obligations due to the Lenders under this Agreement or the other Loan Documents shall be made in Dollars in immediately available funds prior to 11:00 a.m. (New York City time) on such date that any such payment is due, using such wire information or address for such applicable Lender that is set forth on Schedule 2.4 or at such other bank or place as such applicable Lenders shall from time to time designate in writing at least prior to the date such payment is due. Any payment received by any Lender after 11:00 a.m. (New York City time) may in such Lender's discretion be deemed to have been made on the following Business Day. The Borrower shall pay all and any fees, costs and expenses (administrative or otherwise) imposed by banks, clearing houses or any other financial institutions in connection with making any payments under any of the Loan Documents.

**Section 2.5 Taxes.**

(a) Any and all payments hereunder or under any other Loan Document shall be made, in accordance with this Section 2.5, free and clear of and without deduction for any and all present or future Taxes except as required by Applicable Law. If any Loan Party shall be required by Applicable Law to deduct any Taxes from or in respect of any sum payable hereunder or under any other Loan Document, (i) such Loan Party shall make such deductions, (ii) such Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law, and (iii) to the extent that the deduction is made on account of Indemnified Taxes, the sum payable shall be increased by as much as shall be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.5), each Lender shall receive an amount equal to the sum it would have received had no such deductions been made (any and all such additional amounts payable shall hereafter be referred to as the "Additional Amounts"). Within thirty (30) days after the date of any payment of such Taxes, the Borrower shall furnish to the applicable Lender the original or a certified copy of a receipt evidencing payment thereof or other evidence of such payment reasonably satisfactory to such Lender.

(b) In addition, the Loan Parties agree to pay and authorize each Lender to pay in their name, all Other Taxes. Within 30 days after the date of any payment of Other Taxes by any Loan Party, the Borrower shall furnish to the applicable Lender the original or a certified copy of a receipt evidencing payment thereof or other evidence of such payment reasonably satisfactory to such Lender.

(c) The Borrower shall reimburse and indemnify, within ten (10) days after receipt of demand therefor, each Lender for all Indemnified Taxes (including all Indemnified Taxes imposed on amounts payable under this

Section 2.5(c)) paid or payable by such Lender, and any Liabilities arising therefrom or relating thereto, whether or not such Indemnified Taxes were correctly or legally asserted. A certificate of the applicable Lender(s) setting forth the amounts to be paid thereunder and delivered to the Borrower shall be absolute, conclusive and binding, absent manifest error.

(d) Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall, on or before the date on which the Lender becomes a party to this Agreement, provide to Borrower a properly completed and executed IRS Form W-9 certifying that such Lender is not subject to backup withholding tax. Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) (a "Foreign Lender") and is entitled to an exemption from or reduction of U.S. federal withholding tax with respect to payments under this Agreement shall, on or before the date on which such Lender becomes a party to this Agreement, provide Borrower with a properly completed and executed IRS Form W-8ECI, W-8BEN-E, W-8IMY or other applicable forms (together with any required supporting documentation), or any other applicable certificate or document reasonably requested by the Borrower, and, if such Foreign Lender is relying on the portfolio interest exception of Section 871(h) or Section 881(c) of the Code (or any successor provision thereto), shall also provide the Borrower with a certificate (the "Portfolio Interest Certificate") representing that such Foreign Lender is not a "bank" for purposes of Section 881(c) of the Code (or any successor provision thereto), is not a 10% holder of the Borrower described in Section 871(h)(3)(B) of the Code (or any successor provision thereto), and is not a controlled foreign corporation receiving interest from a related person (within the meaning of Sections 881(c)(3)(C) and 864(d)(4) of the Code or any successor provisions thereto). If the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a Portfolio Interest Certificate on behalf of such partners. Each Lender shall provide new forms (or successor forms) as reasonably requested by the Borrower from time to time and shall notify the Borrower in writing within a reasonable time after becoming aware of any event requiring a change in the most recent forms previously delivered by such Lender to the Borrower.

(e) If a payment to a Lender under this Agreement would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA, such Lender shall deliver to the Borrower, at the times prescribed by law or as reasonably requested by Borrower, such documentation as is required in order for the Borrower to comply with its obligations under FATCA, to determine that such Lender has or has not complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.5(e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) If a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified pursuant to this Section 2.5, such Lender shall promptly pay such refund (but only to the extent of indemnity payments made under this Section 2.5 with respect to the Taxes refund) to the Borrower, net of all out-of-pocket expense (including any Taxes imposed thereon) of such Lender incurred in obtaining such refund or making such payment, provided that the Borrower, upon the request of such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Lender if such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.5(f), in no event shall a Lender be required to pay any amount to the Borrower pursuant to this Section 2.5(f), the payment of which would place such Lender in a less favorable net after-Tax position than such Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted or otherwise imposed and the indemnification payments with respect to such Tax had never been paid. Nothing in this Section 2.5(f) shall require any Lender to disclose any information it deems confidential (including its tax returns) to any Person, including the Borrower.

**Section 2.6 Costs, Expenses and Losses.** If, as a result of any failure by the Borrower or any other Loan Party to pay any sums or Obligations due under this Agreement or any other Loan Document on the due date therefor (after the expiration of any applicable grace periods, but without giving effect to any grace period after the occurrence of an Event of Default of the type set forth in Section 5.4(d)), any Lender shall incur costs, expenses and/or losses, by reason of the liquidation or redeployment of deposits from third parties or in

connection with obtaining funds to make or maintain any Disbursement or Loan or provide the Disbursement Commitments, the Borrower shall pay to such Lender upon request by the Lenders, the amount of such costs, expenses and/or losses within fifteen (15) days after receipt by it of a certificate from the Lenders setting forth in reasonable detail such costs, expenses and/or losses, along with supporting documentation. For the purposes of the preceding sentence, "costs, expenses and/or losses" shall include any interest paid or payable to carry any unpaid amount and any loss, premium, penalty or expense which may be incurred in obtaining, liquidating or employing deposits of or borrowings from third parties in order to make, maintain or fund any Disbursement or Loan (or provide the Disbursement Commitments) or any portion thereof.

**Section 2.7 Interest.** From and after the Agreement Date, the outstanding principal amount of the Loans and any overdue interest thereon shall bear interest at the Interest Rate (calculated on the basis of the actual number of days elapsed in each month based on a year of 360 days). Interest shall be paid quarterly in arrears on the last Business Day of each calendar quarter commencing on March 29, 2019 (each, an "Interest Payment Date"), with fifty percent (50%) of such interest paid in cash and the remaining fifty percent (50%) of such interest paid in kind by increasing the principal balance of the outstanding Loans in an amount equal to the amount of interest then due, which increased principal amount shall, from and after such Interest Payment Date, constitute Loans hereunder and bear interest in accordance with this Section 2.7.

**Section 2.8 Interest on Late Payments; Default Interest.**

(a) Without limiting the remedies available to the Lenders under the Loan Documents or otherwise, to the maximum extent permitted by Applicable Law, if the Borrower or any other Loan Party fails to make a required payment of principal or interest with respect to the Loan or any other Obligations when due, other than to than to the extent arising from an acceleration (except for an acceleration due (completely or partially) to an Event of Default under Section 5.4(a) that is not caused by an automatic acceleration from an Event of Default under Section 5.4(d)) or bankruptcy, or fails to deliver any Conversion Shares by the Conversion Delivery Deadline, the Borrower shall pay, in respect of such principal, interest and other Obligations, or Conversion Amount as applicable, at the rate per annum equal to the Interest Rate plus ten percent (10%) for so long as such payment or Conversion Share delivery failure remains outstanding. In the event a Lender revokes its Conversion Notice pursuant to Section 2.9(i), such Conversion Share delivery failure shall no longer be outstanding as of and following the date of such revocation. Such interest shall be payable in cash on demand to the extent permitted under the Senior Facility Subordination Agreement and, if not so permitted, shall be paid in shares of Common Stock valued based on the Volume Weighted Average Price of the Common Stock for the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Conversion Delivery Deadline.

(b) At the election of the Required Lenders, while any Event of Default exists (or automatically, in the case of any Event of Default under Section 5.4(a) or Section 5.4(d)), the Borrower shall pay interest (after as well as before entry of judgment thereon to the extent permitted by Applicable Law) on the Obligations and past due interest thereon, if any, from and after the date of occurrence of such Event of Default, at a rate per annum equal to the Interest Rate plus two percent (2%). To the extent permitted by Applicable Law, such additional interest rate shall retroactively apply to the first day of existence of such Event of Default. Such interest shall be payable in cash on demand to the extent permitted under the Senior Facility Subordination Agreement and, if not so permitted, shall be paid in shares of Common Stock valued based on the Volume Weighted Average Price of the Common Stock for the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Conversion Delivery Deadline.

**Section 2.9 Conversion Feature.** The Loans may be converted into Preferred Stock on the terms and conditions set forth in this Section 2.9 and, as applicable, Section 2.11.

(a) Conversion at Option of the Lenders. Each Lender shall be entitled in its sole discretion to convert at any time all or any part of its Loans into Preferred Stock (the "Conversion Shares"), in accordance with this Section 2.9, at the Conversion Rate (subject to the 4.985% Cap, as applicable, and the Ownership Limitation, as

applicable). The Borrower shall not issue any fractional shares of Preferred Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Preferred Stock, then the Borrower shall round such fraction of a share of Preferred Stock up or down to the nearest whole share (with 0.5 rounded up).

(b) Conversion Rate. The number of Conversion Shares issuable upon a conversion of all or any portion of the Loans pursuant to this Section 2.9 shall be determined according to the following formula:

Number of shares of Preferred Stock = Conversion Rate * (Conversion Amount / $1,000)

The Conversion Rate shall be subject to adjustment pursuant to this Section 2.9 and pursuant to Section 2.11 in connection with a Fundamental Change.

(c) Mechanics of Conversion. The conversion of any Loans shall be conducted in the following manner:

(i) Lender Delivery Requirements. To convert a Conversion Amount into Conversion Shares on any date (the "Conversion Date"), the applicable Lender shall (x) provide written notice, substantially in the form of Exhibit E hereto (and, in the case of a Change of Control or a Fundamental Change, as applicable, shall indicate whether such conversion is being made in connection with such Change of Control pursuant to Section 2.3(b) or a Fundamental Change pursuant to Section 2.11) (any such notice, a "Conversion Notice"), to the Borrower setting forth the Conversion Amount and, if any portion of the Conversion Amount is required to be paid in cash pursuant to Section 2.4, wire transfer instructions for the payment of such cash, and to the extent that any Conversion Shares are to be issued in a name other than the Lender's name, the names and addresses of such Person and the number of shares issuable in the name of such Person and (y) surrender to the Borrower for cancellation any Note certificate representing the Converted Loans. For purposes of this Section 2.9, subject to any Subsequent Stockholder Approval pursuant to Section 5.1(x) (which, if not obtained, shall be subject to the last paragraph of Section 2.11), conversion shall occur immediately prior to the close of business on the date (the "Conversion Effective Date") that the Borrower receives both the Conversion Notice or, in the case of a Change of Control Conversion Notice or a Fundamental Change Conversion Notice, immediately prior to the effectiveness of such Change of Control or Fundamental Change with respect to which such notice was delivered, as applicable, and the certificate (if any) representing the Converted Loans.

(ii) Borrower's Response. Following receipt by the Borrower of the Conversion Notice and, if applicable, the Note certificate(s) representing the Converted Loans, the Borrower (x) shall promptly send a confirmation of receipt of such Conversion Notice to the applicable Lender and the Borrower's designated transfer agent (the "Transfer Agent"), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein, and (y) shall use commercially reasonable efforts to, (A) on or before the second (2nd) Business Day (and in any event on or before the fifth (5th) Business Day (such fifth (5th) Business Day, the "Conversion Delivery Deadline")) following the Conversion Effective Date or, (B) in the case of a Change of Control Conversion Notice or a Fundamental Change Conversion Notice, immediately prior to the effectiveness of such Change of Control or Fundamental Change with respect to which such notice was delivered, as applicable, issue and deliver to the address specified in the Conversion Notice, a stock certificate, registered in the name of such Lender or its designee, for the number of Conversion Shares to which such Lender shall be entitled.

(iii) Conversion into Common Stock. In the event a Lender seeks to convert any Loan directly into shares of Common Stock instead of Preferred Stock, such Lender shall be entitled to indicate the Conversion Amount to be converted directly into Common Stock in its Conversion Notice and, in connection with any such conversion, all references herein to "Conversion Shares" or "Preferred Stock" in connection with the conversion of such Conversion Amount shall instead refer to "Common Stock" (and any other provisions of this Agreement shall be similarly interpreted, *mutatis mutandis*).

The Conversion Rate for any such conversion directly into Common Stock (the "Common Stock Conversion Rate") will be based on the Conversion Rate that would apply to the conversion of such Loans into Preferred Stock and the conversion rate that would apply to the conversion of such Preferred Stock into Common Stock as set forth in the Certificate of Designations.

(iv) Record Holder. The Person or Persons entitled to receive the Conversion Shares issuable upon a conversion of any Loan shall be treated for all purposes as the legal and record holder or holders of such Preferred Stock upon delivery of the Conversion Notice in accordance with the terms hereof.

(v) [Reserved].

(vi) Taxes. The Borrower shall pay any and all Other Taxes that may be payable with respect to the issuance and delivery of Conversion Shares upon the conversion of any Loan, except to the extent the Other Tax is due because the Lender requests any such shares to be issued in a name other than the Lender's name (other than due to a name change of Lender), in which case the Lender will pay such Other Tax (and the Borrower shall not be required to issue or deliver any such Conversion Shares unless and until the Lender shall have paid to the Borrower such Other Tax). For greater certainty, the provisions of Section 2.5 shall apply with respect to any and all Taxes with respect to payments by the Borrower (or any other applicable credit party) hereunder, including with respect to the delivery of Conversion Shares upon the conversion of any Loan.

(vii) Legends.

(A) Restrictive Legend. Each Lender understands that the Conversion Shares (including book-entry notations) shall bear a restrictive legend in the form set forth in the Certificate of Designations (and a stop-transfer order will be placed against Transfer of the certificates for such securities), subject to clause (B) below. In addition, each Lender understands that until such time as the shares of Common Stock issuable upon conversion of the Conversion Shares have been registered under the Securities Act and applicable state securities laws as contemplated by the Registration Rights Agreement or otherwise may be sold pursuant to Rule 144 under the Securities Act or an exemption from registration under the Securities Act, in each case without any restriction as to the number of securities as of a particular date that can then be immediately sold, all certificates or other instruments (including book-entry notations) representing any such shares of Common Stock shall bear a restrictive legend substantially in the form set forth below (and a stop-transfer order shall be placed against Transfer of the certificates for such shares).

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE DIRECTLY OR INDIRECTLY OFFERED, SOLD, TRANSFERRED, ENCUMBERED, ASSIGNED OR OTHERWISE DISPOSED OF EXCEPT IN ACCORDANCE WITH THE TRANSFER RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATIONS AND PURSUANT TO (I) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR (II) AN APPLICABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, INCLUDING RULE 144, SUBJECT TO THE COMPANY'S AND THE TRANSFER AGENT'S RIGHT PRIOR TO ANY SUCH OFFER, SALE, TRANSFER, ENCUMBRANCE, ASSIGNMENT OR OTHER DISPOSITION TO REQUIRE THE DELIVERY OF REASONABLE AND CUSTOMARY CERTIFICATIONS, OPINIONS OF COUNSEL AND/OR OTHER INFORMATION REASONABLY SATISFACTORY TO EACH OF THEM.

(B) Removal of Restrictive Legend. Upon the request of a Lender and upon receipt by the Borrower of an opinion of counsel reasonably satisfactory to the Borrower to the effect that such

legend is no longer required under the Securities Act and applicable state laws, the Borrower shall as promptly as practicable, subject to such applicable policies and procedures of the Borrower's Transfer Agent, cause (i) the Securities Act restrictive legend or electronic legend set forth in clause (B) of the legend set forth in the Certificate of Designations and set forth on any Conversion Shares to be removed and (ii) the Securities Act restrictive legend or electronic legend on shares of Common Stock to be removed. The legends referred to in the immediately preceding clauses (i) and (ii), the "Securities Act Legends."

(C) Sale of Unlegended Shares. Each Lender agrees that the removal of the Securities Act Legend from any certificates representing securities as set forth in Section 2.9(c)(vii)(A) above is predicated upon the Borrower's reliance that such Lender will sell any Conversion Shares (or the shares of Common Stock into which the Conversion Shares are convertible) pursuant to either the registration requirements of the Securities Act and applicable state securities laws, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if such securities are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein.

(d) While any Loan is outstanding, on or prior to the Initial Disbursement and as of each June 30 thereafter (each a "Reservation Date") the Borrower shall have reserved out of its authorized but unissued shares of Common Stock and Preferred Stock, for delivery upon conversion of the Loans, a number of shares of Common Stock and Preferred Stock equal to the Full Conversion Share Amount that would be issuable if the then outstanding Loans (and the underlying shares of Preferred Stock) were converted in full at any time during the twelve (12) months following such Reservation Date.

(e) Any shares of Preferred Stock delivered upon the conversion of the Loans will be newly issued shares or treasury shares, duly and validly issued, fully paid, nonassessable, free from preemptive rights and free of any Lien or adverse claim (except to the extent of any Lien or adverse claim created by the action or inaction of any Lender, or otherwise created by the Lender holding the applicable Loans).

(f) Adjustment of Conversion Rate. The Borrower will adjust the Conversion Rate from time to time as described in this Section 2.9(f) for any applicable events occurring after the Agreement Date, except that the Borrower will not make an adjustment to the Conversion Rate if each Lender participates (other than in a share split or share combination), at the same time and upon the same terms as holders of the Common Stock, and solely as a result of holding the Loans, in the relevant transaction described in this Section 2.9(f) without having to convert its Loans and as if it held a number of shares of the Common Stock equal to the product of (i) the Conversion Rate in effect on the applicable record date, Ex-Dividend Date, Effective Date or expiration date, and (ii) the aggregate Conversion Amount (expressed in thousands) as would apply to the Loans held by such Lender on such date, rounded up or down to the nearest whole share (with 0.5 rounded up).

(i) Stock Dividends and Share Splits. If the Borrower exclusively issues to all or substantially all holders of the Common Stock shares of Common Stock as a dividend or distribution on shares of the outstanding Common Stock, or if the Borrower effects a share split of the Common Stock (including, if applicable, the Reverse Stock Split) or a share combination of the Common Stock, the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where

$CR_0$ = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the Open of Business on the Effective Date of such share split or share combination, as applicable;

$CR_1$ = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date of such dividend or distribution or the Open of Business on such Effective Date;

$OS_0$ = the number of shares of Common Stock outstanding immediately prior to the Open of Business on the Ex-Dividend Date of such dividend or distribution or Effective Date (before giving effect to any such dividend, distribution, share split or share combination); and

$OS_1$ = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 2.9(f)(i) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately after the Open of Business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 2.9(f)(i) is declared, but not so paid or made, the Conversion Rate will be immediately readjusted, effective as of the date the Borrower determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(ii) Rights, Options and Warrants. If the Borrower issues to all or substantially all holders of its outstanding Common Stock, rights, options or warrants entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such issuance, to subscribe for, or purchase, shares of Common Stock, at a price per share less than the average of the Volume Weighted Average Price of the Common Stock for the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \quad \text{x} \quad \frac{OS_0 + X}{OS_0 + Y}$$

where

$CR_0$ = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such issuance;

$CR_1$ = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date of such issuance;

$OS_0$ = the number of shares of Common Stock outstanding immediately prior to the Open of Business on the Ex-Dividend Date of such issuance;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to (i) the aggregate price payable to exercise such rights, options or warrants, divided by (ii) the Volume Weighted Average Price of the Common Stock over the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 2.9(f)(ii) shall become effective immediately after the Open of Business on the Ex-Dividend Date of such issuance. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, including because the issued rights, options or warrants were not exercised, the Conversion Rate will be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate will be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 2.9(f)(ii), in determining whether any rights, options or warrants entitle holders of the Common Stock to subscribe for, or purchase, shares of Common Stock at a price per share less than the

Volume Weighted Average Price of the Common Stock for the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for an issuance, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration received by the Borrower for such rights, options or warrants and any amount payable on exercise thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) Spin-Offs and Other Distributed Property.

(A) If the Borrower distributes shares of its Common Stock, evidences of its Indebtedness or other assets or property of the Borrower, or rights, options or warrants to acquire Stock of the Borrower or other securities of the Borrower, to all or substantially all holders of the Common Stock, excluding:

(1) dividends, distributions and issuances described in Section 2.9(f)(i) hereof or Section 2.9(f)(ii) hereof, as applicable;

(2) dividends or distributions paid exclusively in cash described in Section 2.9(f)(iv) hereof;

(3) Spin-Offs for which the provisions set forth in Section 2.9(f)(iii)(B) hereof will apply; or

(4) distributions of Reference Property in a transaction described in Section 2.9(i).

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

| | | |
|---|---|---|
| $CR_0$ | = | the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date of such distribution; |
| $CR_1$ | = | the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date of such distribution; |
| $SP_0$ | = | the Volume Weighted Average Price of the Common Stock over the five (5) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date of such distribution; and |
| FMV | = | the fair market value (as determined by the Board of Directors) of the shares of Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of Common Stock on the Ex-Dividend Date of such distribution. |

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than the "$SP_0$" (as defined above), in lieu of the foregoing increase, each Lender will receive, for each $1,000 principal amount of the aggregate Conversion Amount as would apply to the Loans held by such Lender on the record date for the distribution, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of shares of Stock, evidences of Indebtedness, assets or property, rights, options or warrants to acquire Stock of the Borrower or other securities that such Lender would have received if such Lender had owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for such distribution.

Any increase made under this Section 2.9(f)(iii)(A) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the

Conversion Rate will be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, including because the issued rights, options or warrants were not exercised, the Conversion Rate will be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered.

(B) With respect to an adjustment pursuant to this Section 2.9(f)(iii) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Borrower, and such Stock or similar equity interest is listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange or a reasonably comparable non-U.S. equivalent (as determined by the Borrower) (a "Spin-Off"), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where

$CR_0$ = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

$CR_1$ = the Conversion Rate in effect immediately after the end of the Valuation Period;

$FMV_0$ = the Volume Weighted Average Price of the Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of Common Stock (determined for purposes of the definition of the Volume Weighted Average Price as if such Stock or similar equity interest were the Common Stock) over the first ten (10) consecutive Trading Day period after, and including, the Ex-Dividend Date of such Spin-Off (the "Valuation Period"); and

$MP_0$ = the Volume Weighted Average Price of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under this Section 2.9(f)(iii) will occur as of the close of business on the last Trading Day of the Valuation Period; provided that for any Trading Day that falls within the Valuation Period, references to "10" in the portion of this Section 2.9(f)(iii) related to Spin-Offs shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and such Trading Day in determining the Conversion Rate as of such Trading Day. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Conversion Rate shall be immediately decreased, effective as of the date the Borrower determines not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

For purposes of this Section 2.9(f) (and subject in all respect to Section 2.9(f)(ix)), rights, options or warrants distributed by the Borrower to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Borrower's capital stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be Transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 2.9(f)(iii) (and no adjustment to the Conversion Rate under this Section 2.9(f)(iii) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 2.9(f)(iii). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Agreement, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event

shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 2.9(f)(iii) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For the purposes of Section 2.9(f)(i), Section 2.9(f)(ii), and this Section 2.9(f)(iii), if any dividend or distribution to which this Section 2.9(f)(iii) applies also includes one or both of:

(1) a dividend or distribution of shares of Common Stock to which Section 2.9(f)(i) hereof applies (a "Clause A Distribution"); or

(2) a dividend or distribution of rights, options or warrants to which Section 2.9(f)(ii) hereof applies (a "Clause B Distribution")

(any such distribution, a "Multi-Clause Distribution"), then (i) the portion of such Multi-Clause Distribution that is not a Clause A Distribution or a Clause B Distribution will be deemed to be a dividend or distribution to which this Section 2.9(f)(iii) applies (a "Clause C Distribution"), and any Conversion Rate adjustment required by this Section 2.9(f)(iii) with respect to such Clause C Distribution shall then be made, (ii) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 2.9(f)(i) and Section 2.9(f)(ii) with respect thereto shall then be made, except that, if determined by the Borrower (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the Open of Business on such Ex-Dividend Date or Effective Date" within the meaning of Section 2.9(f)(i) or "outstanding immediately prior to the Open of Business on such Ex-Dividend Date" within the meaning of Section 2.9(f)(ii).

(iv) Cash Dividends or Distributions. If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

$CR_0$ = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution;

$CR_1$ = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution;

$SP_0$ = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Borrower distributes to all or substantially all holders of Common Stock.

Any increase pursuant to this Section 2.9(f)(iv) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "$SP_0$" (as defined above), in lieu of the foregoing increase, each Lender will receive, for each $1,000 principal amount of the aggregate Conversion Amount as would apply to the Loans held by such Lender on the record date for such cash dividend or distribution, at the same time and upon the same terms as holders of the Common Stock, the amount of cash that such Lender would have received if such Lender had owned a number of shares of Common Stock equal to the Conversion Rate in effect on such Ex-Dividend Date. If any such dividend or distribution is declared but not so paid or made, the Conversion Rate will be readjusted, effective as of the date the Borrower determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(v) Tender Offers or Exchange Offers. If the Borrower or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock (other than an odd lot tender offer), to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the Volume Weighted Average Price of the Common Stock for the five (5) consecutive Trading Day period commencing on, and including, the Trading Day immediately next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer (as it may be amended), the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where

$CR_0$ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

$CR_1$ = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

$OS_0$ = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

$OS_1$ = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

$SP_1$ = the Volume Weighted Average Price of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 2.9(f)(v) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such

tender or exchange offer expires; provided that for any Trading Day that falls within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to "10" or "10th" in this Section 2.9(f)(v) shall be deemed replaced with such lesser number of Trading Days as have elapsed between the expiration date of such tender or exchange offer and such Trading Day in determining the Conversion Rate as of such Trading Day.

(vi) Successive Adjustments. After an adjustment to the Conversion Rate under this Article II having been made, any subsequent event requiring an adjustment under this Article II will cause an adjustment to the Conversion Rate as so adjusted, without duplication.

(vii) Adjustments Not Yet Effective. If a Lender converts a Loan and, as of the Conversion Date for such Loan, any distribution or transaction that requires an adjustment to the Conversion Rate pursuant to Sections 2.9(f)(i) through (vi) hereof has occurred but has not yet resulted in an adjustment to the Conversion Rate and the shares of Common Stock, if any, that such Lender will receive upon settlement of its converted Loan are not entitled to participate in the relevant distribution or transaction (because they were not held on a related record date or otherwise), then the Borrower will adjust the number of shares of Common Stock that it delivers to such Lender to reflect the relevant distribution or transaction.

(viii) Conversion Rate Adjustments where Converting Lenders Participate in the Relevant Dividend, Distribution or other Transaction. Notwithstanding anything to the contrary herein, if a Conversion Rate adjustment becomes effective on any date pursuant to this Section 2.9(f), and a Lender that has converted its Loans on or after such date and on or prior to the related record date would be treated, on such record date, as the record holder of the shares of Common Stock, if any, issuable upon such conversion based on an adjusted Conversion Rate for such date, then the Conversion Rate adjustment relating to such date will not be made for such converting Lender. Instead, such Lender will be treated as if such Lender were, as of such record date, the record owner of such shares of Common Stock on an unadjusted basis and will participate in the related dividend, distribution or other event giving rise to such adjustment.

(ix) Stockholder Rights Plans. If the Borrower has a rights plan in effect when a Lender converts a Loan, the Borrower will deliver to such Lender, in addition to any shares of Preferred Stock otherwise issuable to such Lender upon conversion of such Loan, any rights that, under the rights plan, would be applicable to a share of Preferred Stock or Common Stock, unless prior to the Conversion Date for such Loan, the rights have separated from the Preferred Stock or Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to Section 2.9(f)(iii)(B) as if, at the time of such separation, the Borrower had distributed to all holders of the Preferred Stock or Common Stock shares of its Stock, evidences of its Indebtedness, other assets or property of the Borrower or rights, options or warrants to acquire its Stock, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(x) Other Adjustments. Whenever any provision of this Agreement requires the calculation of the Last Reported Sale Price, a Volume Weighted Average Price or a function thereof over a period of multiple days (including the Stock Price for purposes of a Fundamental Change), the Borrower will make appropriate adjustments to the Last Reported Sale Price, the Volume Weighted Average Price or such function thereof to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where dividend, Spin-Off or distribution date, Effective Date or expiration date of the event occurs, at any time during such period.

(xi) In addition to those adjustments required by clauses (i), (ii), (iii), (iv) or (v) of this Section 2.9(f), and subject to the applicable listing standards of the applicable Eligible Market, the Borrower is permitted to increase the Conversion Rate by any amount for a period of at least 20 business days if the Borrower determines that such increase would be in the Borrower's best interest. Subject to the applicable listing standards of the applicable Eligible Market, the Borrower may also (but is not required to) increase the applicable Conversion Rate to avoid or diminish income tax to

holders of the Common Stock or rights to purchase shares of our Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

(xii) Notwithstanding anything to the contrary in this Article 2, the Conversion Rate shall not be adjusted:

(A) upon the issuance (except as expressly set forth in clause (i), (ii) or (iii) of Section 2.9(f)) or sale of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities, except to the extent such issuance or sale constitutes a Fundamental Change and the Conversion Rate is subject to adjustment under Section 2.11;

(B) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (A) of this subsection and outstanding as of the date the Notes were first issued;

(C) upon the repurchase of shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described in Section 2.9(f)(v);

(D) solely for a change in the par value of the Common Stock so long as the Conversion Shares would be fully paid and nonassessable following the issuance hereunder; or

(E) for accrued and unpaid interest, if any.

(xiii) The Borrower shall not be required to make an adjustment pursuant to clauses (i), (ii), (iii), (iv) or (v) of this Section 2.9(f) unless such adjustment would result in a change of at least 0.5% of the then effective Conversion Rate. However, the Borrower shall carry forward any adjustment that the Borrower would otherwise have to make and take that adjustment into account in any subsequent adjustment. Notwithstanding the foregoing, all such carried-forward adjustments shall be made with respect to the Loans where the aggregate of all such carried-forward adjustments equals or exceeds 0.5% of the Conversion Rate. All calculations and other determinations under this Article 2 shall be made by the Borrower and shall be made to the nearest one-ten thousandth (1/10,000th) of a share.

(g) Notices. The Borrower will deliver to each Lender a written notice:

(i) promptly following the public announcement of any event that will require the Borrower to make an adjustment to the Conversion Rate pursuant to this Section 2.9, which notice will include (i) a brief description of such event, (ii) the date on which the Borrower anticipates that such event will occur, (iii) the date on which the Borrower anticipates that the adjustment to the Conversion Rate will become effective, and (iv) if any record date, expiration date or Effective Date is applicable to such event, such record date, expiration date, or Effective Date. Neither the failure to give such notice, nor any defect therein, will affect the legality or validity of such action by the Borrower;

(ii) in the case of an anticipated Fundamental Change, promptly following the entry into a definitive agreement relating to a Fundamental Change (and in any event on or before the 20th calendar day immediately preceding the effective date of a Fundamental Change, a "Fundamental Change Notice"), which notice will include (i) a brief description of such event, (ii) the date on which the Borrower anticipates that such event will occur, (iii) the date on which the Borrower anticipates that the adjustment to the Conversion Rate will become effective, (iv) the last date on which a Lender may exercise its right to require the Borrower to convert its Loans as a result of such Fundamental Change (which date shall be not more than 3 Business Days preceding the effective date of the applicable Fundamental Change); (v) the procedures that a Lender must follow to require the Borrower to convert its Loan; (vi) the Conversion Rate and Conversion Price as in effect on the date of such notice; and (vii) any adjustments that will be made to the Conversion Rate as a result of such Fundamental Change, including, if applicable, any Additional Shares by which the Conversion Rate will be increased pursuant to Section 2.11 hereof for a Lender that converts a Loan in connection with such Fundamental Change; and

(iii) following such time as the Borrower adjusts the Conversion Rate pursuant to this Section 2.9, which notice will include (i) a brief description of the event requiring adjustment to the Conversion Rate pursuant to this Section 2.9, (ii) the effective time of such adjustment, (iii) the Conversion Rate in effect immediately after such adjustment is made and (iv) a schedule explaining, in reasonable detail, how the Borrower calculated such adjustment. The failure to deliver such notice will not affect the legality or validity of any such adjustment.

(h) In the event that the Borrower provides both a Prepayment Notice to the Lenders and a Fundamental Change Notice to the Lenders, the Lenders who have elected to convert their Loans shall be entitled to a single adjustment to the Conversion Rate in connection therewith, with respect to the first to occur of the effective date of the relevant prepayment or Fundamental Change, and the later event will be deemed not to have occurred for purposes of the adjustment to the Conversion Rate; provided that, to the extent the Borrower delivers a Prepayment Notice and the relevant prepayment is part of the transaction underlying the Fundamental Change, the Conversion Rate will be adjusted based on the effective date of the Fundamental Change.

(i) Effect of Recapitalizations; Reclassifications; and Changes of the Preferred Stock or Common Stock.

(i) In the case of:

(A) any recapitalization, reclassification or change of the Preferred Stock and/or Common Stock (other than changes resulting from a subdivision, split, reverse split or combination),

(B) any consolidation, merger or combination involving the Borrower,

(C) any sale of all or substantially all of the consolidated assets of the Borrower and its Subsidiaries, taken as a whole, to any person other than one of the Borrower's Subsidiaries or

(D) any statutory share exchange,

in each case, as a result of which the Preferred Stock and/or Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "Merger Event"), then, at and after the effective time of such Merger Event, the right to convert each $1,000 principal amount of Loans (without regard to the Ownership Limitation or any other restriction or limitation on exercise) shall be changed into a right to convert such principal amount of Loans into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Preferred Stock (or, if so elected by the Required Lenders, Common Stock) equal to the Conversion Rate (including, as applicable, as adjusted pursuant to Section 2.11) immediately prior to such Merger Event would have owned or been entitled to receive (without regard to the Ownership Limitation or any other restriction or limitation on exercise) (the "Reference Property", with each "unit of Reference Property" meaning the kind and amount of Reference Property that a holder of one share of Preferred Stock (or Common Stock, if applicable) is entitled to receive) upon such Merger Event and to receive such Reference Property at the same times as the holders of Preferred Stock (or Common Stock, if applicable); provided, however, that at and after the effective time of the Merger Event any Conversion Shares that the Borrower would have been required to deliver upon conversion of the Loans in accordance with Section 2.9(c) shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Preferred Stock (or, if so elected by the Required Lenders, Common Stock) would have received in such Merger Event and the Volume Weighted Average Price shall be calculated based on the value of a unit of Reference Property.

(ii) If the Merger Event causes the Preferred Stock (or, if so elected by the Required Lenders, Common Stock) to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property into which the Loans will be convertible shall be deemed to be (x) the weighted average of the types and amounts of consideration received by the holders of Preferred Stock (or Common Stock, if applicable) that affirmatively make such an election or (y) if no holders of Preferred Stock (or Common Stock, if applicable) affirmatively make such an election, the types and amounts of

consideration actually received by the holders of Preferred Stock (or Common Stock, if applicable), and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Preferred Stock (or Common Stock, if applicable). If the holders of the Preferred Stock (or Common Stock, if applicable) receive only cash in such Merger Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Merger Event (A) the consideration due upon conversion of each $1,000 principal amount of Loans shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 2.11), *multiplied by* the price paid per share of Preferred Stock (or Common Stock, if applicable) in such Merger Event and (B) the Borrower shall satisfy the conversion obligation by paying cash to converting Lenders on the third Business Day immediately following the relevant Conversion Date. The Borrower shall notify Lenders of such weighted average as soon as practicable after such determination is made.

(iii) Upon the consummation of any Merger Event, references to "Preferred Stock" or "Common Stock" shall be deemed to refer to any Reference Property that constitutes capital stock after giving effect to such Merger Event.

(j) In the event that a Lender elects to convert Loans pursuant to Section 2.9(c) (other than in the case of a Change of Control or Fundamental Change) but does not receive the stock certificate for the Conversion Shares on or prior to the Conversion Delivery Deadline, such Conversion Notice may be revoked by such Lender up to but not including the time that it receives such stock certificates. In the event of such a revocation, the stock certificate for the applicable Conversion Shares shall be canceled by the Borrower and the Lender shall promptly return any such stock certificate that it received back to the Borrower.

(k) The Borrower hereby covenants and agrees that the Borrower will not undertake any action for the purpose of avoiding the performance of any of the terms of this Agreement.

(l) Notwithstanding anything herein to the contrary, the Borrower shall not issue to any Specified Lender, and no Specified Lender may acquire, a number of Conversion Shares or shares of Common Stock upon any conversion of Loans or Conversion Shares hereunder, to the extent that, upon such conversion, the number of shares of Common Stock or Preferred Stock (as applicable) then "beneficially owned" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act) by such Specified Lender and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock and/or Preferred Stock (as applicable) would be aggregated with such Specified Lender's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which such Specified Lender is a member, but excluding shares beneficially owned by virtue of the ownership of warrants and other securities or rights to acquire securities, in each case, that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 4.985% of the total number of shares of Common Stock and/or Preferred Stock (as applicable) then issued and outstanding (the "4.985% Cap"); provided, however, that the 4.985% Cap shall only apply to the extent that the Common Stock and/or Preferred Stock (as applicable) is deemed to constitute an "equity security" pursuant to Rule 13d-1(i) promulgated under the Exchange Act; provided, further that, other than in connection with a Successor Major Transaction, any Specified Lender shall be permitted to include in its Change of Control Conversion Notices, Fundamental Change Conversion Notices or Conversion Notices, as applicable, that it is electing to make successive conversions, which conversions shall occur (in each case by written notice from such Specified Lender to the Borrower) from time to time as determined by such Specified Lender at any time prior to the end of the Successive Conversion Period (each such conversion being subject to the 4.985% Cap). For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the SEC, and the percentage held by any Specified Lender shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. For purposes hereof, in determining the number of outstanding shares of Common Stock and/or Preferred Stock (as applicable), the Specified Lenders may rely on the number of outstanding shares of Common Stock and/or Preferred Stock (as applicable) as stated in the Borrower's most recent quarterly or annual report filed with the SEC, or any current report filed by the Borrower with the SEC subsequent thereto. Upon the written request of any Specified Lender, the Borrower

shall, within two (2) Trading Days, confirm orally and in writing to such Specified Lenders the number of shares of Common Stock and/or Preferred Stock (as applicable) then outstanding, and such Specified Lender shall be entitled to rely upon such confirmation for purposes hereof.

**Section 2.10 [Reserved]**

**Section 2.11 Adjustments Upon a Fundamental Change.**

(a) General. If a Fundamental Change occurs, and a Lender converts its Loans in connection with such Fundamental Change, the Borrower will, in the circumstances described in this Section 2.11, increase the Conversion Rate for such converted Loans by the number of additional shares of Preferred Stock (the "Additional Shares") set forth in this Section 2.11. Any Lender may notify the Borrower by delivering written notice to the Borrower (a "Fundamental Change Conversion Notice") at least three (3) Business Days prior to the anticipated occurrence of the Fundamental Change described in the Fundamental Change Notice that it elects to convert all or a portion of its outstanding Loans into Preferred Stock at the applicable Conversion Rate in accordance with Section 2.9 (such period from, and including the date such Fundamental Change Notice is received by the Lender up to, and including the date such Fundamental Change Conversion Notice is received by the Borrower in accordance with this Section 2.11(a), the "Fundamental Change Period"). For the avoidance of doubt, other than in connection with a Successor Major Transaction, in the event that any Specified Lender includes in a Fundamental Change Conversion Notice that such Specified Lender is electing to make successive conversions during the Successive Conversion Period, any such conversion shall be at a Conversion Rate that has been increased in accordance with this Section 2.11, subject to any further adjustments of the Conversion Rate in accordance herewith during the Successive Conversion Period. In connection with any conversion pursuant to a Fundamental Change Conversion Notice under this Article 2, the Borrower will, to the extent applicable, comply with any applicable United States federal or state securities laws so as to permit the Lenders to exercise their rights and obligations under this Article 2 in the time and in the manner specified in this Article 2.

(b) Determination of Additional Shares. The number of Additional Shares, if any, by which the Conversion Rate will be increased if a Lender converts a Loan in connection with a Fundamental Change will be determined by reference to the table below, and will be based on the Fundamental Change Effective Date and the Stock Price for such Fundamental Change. For any Fundamental Change, the "Fundamental Change Effective Date" will mean the date on which such Fundamental Change occurs or becomes effective. In the event that a Conversion Effective Date occurs during a Fundamental Change Period, a holder of any Loans to be converted will be entitled to a single increase to the Conversion Rate with respect to the first to occur of the receipt of the applicable Conversion Notice (which is not a Fundamental Change Conversion Notice) or the Fundamental Change Effective Date, and the later event shall be deemed not to have occurred for purposes of this Section 2.11.

(c) Adjustment of Stock Prices and Additional Shares. The Stock Prices set forth in the first row (i.e., the column headers) of the table below will be adjusted on each date on which the Conversion Rate must be adjusted pursuant to Section 2.9(f) (including, if applicable, as a result of the Reverse Stock Split). The adjusted Stock Prices will equal the Stock Prices in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the share price adjustment, and (ii) the denominator of which is the Conversion Rate in effect immediately after the adjustment. The numbers of Additional Shares set forth in the table below will be adjusted in the same manner, at the same time and for the same events for which the Conversion Rate is adjusted pursuant to Section 2.9.

(d) Additional Shares Table. The following table sets forth hypothetical Fundamental Change Effective Dates, Stock Prices and the number of Additional Shares by which the Conversion Rate will be increased per $1,000 principal amount of Loans for a Lender that converts a Loan in connection with a Fundamental Change having such Fundamental Change Effective Date and Stock Price.

| | Stock Price | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Effective Date | $ 1.15 | $ 1.25 | $ 1.40 | $ 1.60 | $ 1.80 | $ 2.00 | $ 2.50 | $ 3.00 | $ 3.50 | $ 4.00 | $ 5.00 | $ 6.00 | $ 8.00 |
| December 28, 2018 | 2.4456 | 2.1909 | 1.8846 | 1.5758 | 1.3435 | 1.1633 | 0.8526 | 0.6560 | 0.5208 | 0.4222 | 0.2879 | 0.2004 | 0.0924 |
| January 5, 2020 | 2.4456 | 2.1524 | 1.8350 | 1.5186 | 1.2840 | 1.1042 | 0.7996 | 0.6111 | 0.4837 | 0.3920 | 0.2685 | 0.1889 | 0.0913 |
| January 5, 2021 | 2.4456 | 2.1018 | 1.7696 | 1.4436 | 1.2059 | 1.0267 | 0.7306 | 0.5528 | 0.4353 | 0.3522 | 0.2421 | 0.1721 | 0.0868 |
| January 5, 2022 | 2.4456 | 2.0379 | 1.6851 | 1.3459 | 1.1043 | 0.9263 | 0.6419 | 0.4785 | 0.3740 | 0.3017 | 0.2080 | 0.1493 | 0.0783 |
| January 5, 2023 | 2.4456 | 1.9630 | 1.5800 | 1.2212 | 0.9740 | 0.7978 | 0.5305 | 0.3869 | 0.2994 | 0.2408 | 0.1666 | 0.1209 | 0.0659 |
| January 5, 2024 | 2.4456 | 1.8705 | 1.4396 | 1.0508 | 0.7964 | 0.6251 | 0.3874 | 0.2738 | 0.2097 | 0.1686 | 0.1179 | 0.0867 | 0.0490 |
| January 5, 2025 | 2.4456 | 1.7545 | 1.2311 | 0.7879 | 0.5282 | 0.3749 | 0.2028 | 0.1391 | 0.1073 | 0.0875 | 0.0625 | 0.0468 | 0.0273 |
| January 5, 2026 | 2.4456 | 1.7500 | 0.8929 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 |

(e) Use of Additional Shares Table. If the exact Stock Price and/or Fundamental Change Effective Date for a Fundamental Change are not set forth in the table above, then:

(i) if the Stock Price is between two Stock Prices in the table or the Fundamental Change Effective Date is between two Fundamental Change Effective Dates in the table, the number of Additional Shares by which the Conversion Rate will be increased for a Lender that converts a Loan in connection with such Fundamental Change will be determined by a straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices listed in the table and the earlier and later Fundamental Change Effective Dates listed in the table, as applicable, based on a 365- or 366-day year, as applicable;

(ii) if the Stock Price is greater than $8.00 per share, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table pursuant to subsection (c) above, no Additional Shares will be added to the Conversion Rate; and

(iii) if the Stock Price is less than $1.15 per share, subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table pursuant to subsection (c) above, no Additional Shares will be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate be increased as a result of this Section 2.11 to exceed 8.6956 shares of Common Stock per $1,000 principal amount of Loans, subject to adjustment in the same manner, at the same time and for the same events for which the Conversion Rate must be adjusted as set forth in Section 2.9 hereof.

(f) Application of Ceiling Rate. Notwithstanding anything to the contrary in this Agreement or in any other Loan Documents, to the extent the Conversion Rate would be increased pursuant to Section 2.9 or this Section 2.11 to an amount that would cause the number of underlying shares of Preferred Stock or Common Stock to exceed the amount of then available authorized shares, the Conversion Rate will initially be increased only to the maximum amount representing the number of authorized shares then available (the "Ceiling Rate") and the Borrower will seek to obtain Subsequent Stockholder Approval pursuant to Section 5.1(x) to increase the number of authorized shares to permit full conversion, at which time the Conversion Rate will be increased to the full amount originally required pursuant to Section 2.9 or Section 2.11. If such Subsequent Stockholder Approval is not obtained on or prior to the Subsequent Stockholder Approval Termination Date and Borrower does not otherwise obtain stockholder approval or take action that would permit the conversion in full of the Loans without the limitation of a Ceiling Rate, then in the event that a Lender elects to convert Loans, the balance of any Converted Loans (representing the amount above the then applicable Ceiling Rate) will be paid out in cash at the applicable Conversion Amount rather than settled in Conversion Shares to the extent permitted under the Senior Facility Subordination Agreement (and, for the avoidance of doubt, for any such conversion made in connection with a Change of Control, Fundamental Change or similar event that results in the occurrence of the

Facility Termination Date, the balance of any Converted Loans shall be permitted to be paid in cash). If such payment in cash is not permitted under the Senior Facility Subordination Agreement, the Borrower shall continue to use commercially reasonable efforts to seek Subsequent Stockholder Approval pursuant to Section 5.1(x) after the Subsequent Stockholder Approval Termination Date by calling additional meeting(s) of stockholders as necessary.

**Section 2.12 Borrower May Consolidate, Merge or Sell Its Assets Only on Certain Terms.** The Borrower shall not, in a single transaction or series of related transactions, consolidate or merge with or into any Person, or sell, assign, Transfer, lease, convey or otherwise Dispose of all or substantially all of the Borrower's assets whether as an entirety or substantially as an entirety to any Person (any such transaction, a "Reorganization Event") unless:

(a) either:

(i) the Borrower shall be the surviving or continuing corporation; or

(ii) the Person (if other than the Borrower) formed by such consolidation or into which the Borrower is merged or the Person which acquires by sale, assignment, Transfer, lease, conveyance or other Disposition the properties and assets of the Borrower (the "Reorganization Successor Corporation"):

(A) shall be a corporation organized and validly existing under the laws of the United States or any state thereof or the District of Columbia; and

(B) shall expressly assume, by supplemental agreement (in form and substance reasonably satisfactory to the Lenders), executed and delivered to the Lenders, the due and punctual payment of the principal of, and premium, if any, and interest on all of the Loans and the performance of every covenant of this Agreement and the Notes on the Borrower's part to be performed or observed;

(b) immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause (a)(ii)(B) of this Section 2.12, no Default or Event of Default shall have occurred or be continuing; and

(c) the Borrower or the Reorganization Successor Corporation shall have delivered to the Lenders an officers' certificate and an opinion of counsel, each in form and substance reasonably satisfactory to the Required Lenders, stating that such consolidation, merger, sale, assignment, Transfer, lease, conveyance or other Disposition complies with the applicable provisions of this Agreement and that all conditions precedent in this Agreement relating to such transaction have been satisfied.

**Section 2.13 Successor Substituted.** If any Reorganization Event occurs that complies with Section 2.12(a) hereof:

(a) from and after the date of such Reorganization Event, the Reorganization Successor Corporation for such Reorganization Event will succeed to, and be substituted for, and may exercise every right and power of, the Borrower under this Agreement with the same effect as if such Reorganization Successor Corporation had been named as the Borrower herein; and

(b) except in the case of a Reorganization Event that is a lease of all or substantially all of the Borrower's assets or any successor (other than such Reorganization Successor Corporation) that will thereafter have become such in the manner prescribed in this Section 2.13, the Borrower will be released from its obligations under this Agreement and may be dissolved, wound up and liquidated at any time.

**Section 2.14 Ownership Limitation.**

(a) No Lender (other than VHP, VIP and their respective Affiliates from time to time) will be entitled to receive shares of Common Stock or Preferred Stock upon conversion of Loans (or shares of Common Stock upon conversion of Preferred Stock) and no conversion of Loans shall take place to the extent (but only to the

extent) that such receipt (or conversion) would cause such Lender to exceed the Ownership Limitation or cause a Major Transaction. Any purported delivery of shares of Common Stock or Preferred Stock upon conversion of Loans (or shares of Common Stock upon conversion of Preferred Stock) shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the converting Lender violating the Ownership Limitation or causing a Major Transaction.

(b) Notwithstanding the foregoing, the limitations set forth in Section 2.14(a) shall not apply to any conversion made in connection with a Change of Control, Fundamental Change or similar event that results in the occurrence of the Facility Termination Date.

**Section 2.15 Section 16 Approvals.** The Board of Directors shall take such actions as are reasonably requested by the Lenders to approve any acquisition of any direct or indirect pecuniary interest of Loans, Preferred Stock and/or Common Stock in connection with the transactions contemplated by this Agreement or the Certificate of Designations, including as a result of any conversion (or a deemed conversion) of any Loans or Preferred Stock, or any adjustment in the Conversion Price or the Conversion Rate in accordance with the terms of this Agreement, or of the conversion price or the conversion rate in accordance with the terms of the Preferred Stock, by any officer or director, or any stockholder to the extent deemed a director for purposes of Section 16 of the Exchange Act as a so-called "director by deputization" (including, to the extent so deemed, VHP, VIP and their respective Affiliates from time to time), for the purpose of exempting, to the extent available under applicable law, any such acquisitions from Section 16(b) of the Exchange Act as permitted by Rule 16b-3(d)(1) promulgated under the Exchange Act.

**Section 2.16. Stockholder Approval.** Subject to VHP's reasonable determination that the conditions set forth in Section 4.1 and Section 4.2 will be satisfied as of the proposed date of the funding of the Initial Disbursement, VHP shall vote in favor of the Stockholder Approval matters at the Stockholder Meeting.

## ARTICLE 3

## REPRESENTATIONS AND WARRANTIES

**Section 3.1 Representations and Warranties of the Loan Parties.** In order to induce the Lenders to make the Loans pursuant to this Agreement and to induce the Lenders to enter into this Agreement, the Loan Parties, jointly and severally, represent and warrant as of the Agreement Date and on each Disbursement Date that:

(a) Each Loan Party is (i) conducting its business in all material respects in compliance with its Organizational Documents and (ii) not in violation in any material respect of its Organizational Documents. Each Loan Party's Organizational Documents are in full force and effect.

(b) No Default or Event of Default has occurred or will result from the transactions contemplated by the Loan Documents, subject to the satisfaction of the Approval Conditions.

(c) [Reserved]

(d) Except as otherwise expressly permitted by this Agreement, no Loan Party has taken any action, and no such action has been taken by a third party, for its winding up, dissolution or liquidation or similar executory or judicial proceeding or for the appointment of a liquidator, custodian, receiver, trustee, administrator or other similar officer for any Loan Party or any or all of its assets or revenues.

(e) No Lien exists on any Loan Party's assets, except for Permitted Liens.

(f) [Reserved]

(g) No Indebtedness of any Loan Party exists other than Permitted Indebtedness.

(h) Each Loan Party is validly existing as a corporation, limited liability company or limited partnership, as applicable, and is in good standing under the laws of the jurisdiction of its incorporation,

organization or formation, as applicable. Each Loan Party (i) has full power and authority to (A) own its properties, (B) conduct its business, (C) issue the Securities in accordance with the Loan Documents, (D) enter into, and perform its obligations under, the Loan Documents, including the issuance of the Securities, and (E) consummate the transactions contemplated under the Loan Documents, in the case of each of clauses (C), (D) and (E), subject to the satisfaction of the Approval Conditions, and (ii) is duly qualified as a foreign corporation, limited liability company or limited partnership, as applicable, and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification or license, in each case of this clause (ii), where the failure to be so qualified, licensed or in good standing would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(i) There is not any pending or, to the knowledge of the Loan Parties, threatened in writing, action, suit or other proceeding before any Governmental Authority (A) to which any Loan Party is a party (1) as of the Agreement Date or (2) at any time such representation and warranty is made, in each case, that would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, (B) which purports to affect or pertain to the Loan Documents or the Transactions, in each case, that would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect or (C) except as set forth in the SEC Documents of the Borrower filed after December 31, 2017 and prior to the Agreement Date or as otherwise disclosed to the Required Lenders, which has as the subject thereof any assets owned by any Loan Party or any of its Subsidiaries, in each case which would reasonably be expected to result in monetary judgments or relief, individually or in the aggregate, in excess of $250,000. There are no current or, to the knowledge of the Loan Parties, pending, legal actions, suits or other proceedings, in each case which would reasonably be expected to result in (A) except as set forth in the SEC Documents of the Borrower filed after December 31, 2017 and prior to the Agreement Date, as of the Agreement Date, monetary judgments or relief, individually or in the aggregate, in excess of $250,000 or (B) at any time that such representation or warranty is made, individually or in the aggregate, a Material Adverse Effect, in each case of clauses (A) and (B) of this sentence, to which any Loan Party or any of its Subsidiaries or any of their respective assets is subject. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document or directing that the transactions provided for herein or therein not be consummated as herein or therein provided.

(j) Subject to the satisfaction of the Approval Conditions, each of this Agreement and the other Loan Documents and the issuance of the Securities hereunder and thereunder, has been duly authorized, executed and delivered by each Loan Party and, to the extent applicable, the holders of the Borrower's Stock and no further consent or authorization is required by the Borrower, the Board of Directors or the holders of the Borrower's Stock, and this Agreement and the other Loan Documents constitute valid, legal and binding obligations of each Loan Party, enforceable in accordance with their terms, except as such enforceability may be limited by applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally. Subject to the satisfaction of the Approval Conditions, the execution, delivery and performance of the Loan Documents by each Loan Party party thereto and the consummation of the transactions (including the issuance of the Securities hereunder and thereunder) contemplated herein and therein will not (A) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien upon any assets of any such Loan Party pursuant to, any agreement, document or instrument to which such Loan Party is a party or by which any Loan Party is bound or to which any of the assets or property of any Loan Party is subject, except, with respect to this clause (A), as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (B) result in any violation of or conflict with the provisions of the Organizational Documents or (C) result in the violation of any Applicable Law, or of any judgment, order, rule, regulation or decree of any Governmental Authority, except, with respect to this clause (C), as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(k) No consent, approval, Authorization or order of, or registration or filing with any Governmental Authority or any other Person is required for (i) the execution, delivery and performance of this Agreement or

any of the other Loan Documents, and the issuance of the Securities hereunder and thereunder, and (ii) the consummation by any Loan Party of the Transactions or the other transactions contemplated hereby or thereby, except for (w) registrations and filings expressly contemplated by the Registration Rights Agreement, (x) filings of reports under the Exchange Act expressly contemplated by this Agreement and the other Loan Documents, (y) the satisfaction of the Approval Conditions, and (z) such other consents, authorizations and filings that have been obtained or made, or, with respect to clause (ii) only, which, if not obtained or made would not have a Material Adverse Effect.

(l) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (i) (A) each Loan Party holds, and is operating in compliance in all material respects with, all franchises, grants, Authorizations, licenses, permits, easements, consents, certificates and orders of any Governmental Authority (collectively, "Necessary Documents") required for the conduct of its business and (B) all Necessary Documents are valid and in full force and effect; (ii) no Loan Party has received written notice of any revocation, non-renewal, amendment or other modification of any of the Necessary Documents; and (iii) each Loan Party is in compliance in all respects with all applicable federal, state, local and foreign laws, regulations, orders and decrees applicable to the conduct of its business.

(m) As of the Agreement Date, the Real Estate listed in Schedule 3.1(m) constitutes all of the Real Estate of each Loan Party and each of its Subsidiaries. Each Loan Party has good and marketable title to all of its assets and property free and clear of all Liens, except Permitted Liens. Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, the property held under lease by each Loan Party is held under valid, subsisting and enforceable leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of such Loan Party.

(n) Each Loan Party owns, or has the right to use pursuant to a valid and enforceable license, free and clear of any Liens other than Permitted Liens, all Intellectual Property (as defined below) that is necessary for the conduct of its business as currently conducted (the "IP"). All IP that is owned by a Loan Party and registered with or issued by a Governmental Authority is currently in the name of such Loan Party, valid and, to the knowledge of the Loan Parties, enforceable. There is no pending or, to the knowledge of the Loan Parties, threatened action, suit, other proceeding or claim by any Person challenging or contesting the validity, ownership, or enforceability of any IP or the use thereof by any Loan Party, and no Loan Party has received any written notice regarding any such pending or threatened action, suit, other proceeding or claim except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. As of the Agreement Date, to the knowledge of the Loan Parties, neither the conduct of the business of any Loan Party, nor any Loan Party has infringed, misappropriated or otherwise violated in the last five years, or is infringing, misappropriating or otherwise violating, any Intellectual Property of any Person. As of the Agreement Date, there is no pending or, to the knowledge of the Loan Parties threatened, action, suit, other proceeding or claim by any Person alleging that any Loan Party is infringing, misappropriating or violating, or otherwise using without authorization, any Intellectual Property of any Person, and no Loan Party has received any written notice regarding, any such pending or threatened action, suit, other proceeding or claim. The term "Intellectual Property" as used herein means all (i) trademarks, service marks, trade dress, slogans, logos, trade names, corporate names, Internet domain names, and any other indicia of source, together with all goodwill associated with each of the foregoing, (ii) copyrights (whether or not registered or published) and works of authorship, (iii) registrations and applications for registration for any of the foregoing, (iv) patents (including all reissuances, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, patent disclosures and inventions (whether or not patentable or reduced to practice), (v) computer software (including but not limited to source code and object code), data, databases, and documentation thereof, (vi) trade secrets and other confidential information, know-how, protocols, processes, methodologies, techniques, strategies, and processes, (vii) other intellectual property and all rights associated with any of the foregoing, including without limitation the right to prosecute and recover monetary damages for any past, present and future infringements and other violations thereof, and (viii) copies and tangible embodiments of the foregoing (in whatever form and medium).

(o) No Loan Party is, except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, in breach of or otherwise in default under, and no event has occurred which, with notice or lapse of time or both, would constitute such breach or other default in the performance of any agreement or condition contained in any agreement under which it may be bound, or to which any of its assets is subject, in each case subject to the satisfaction of the Approval Conditions.

(p) All U.S. federal, state and local income and franchise and other material Tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliates have been filed with the appropriate Governmental Authorities, all such Tax Returns are true and correct in all material respects, and all Taxes, assessments and other governmental charges and impositions reflected therein or otherwise due and payable have been paid prior to the date on which any material Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. As of the Agreement Date, no material Tax Return is under audit or examination by any Governmental Authority, and no Tax Affiliate has received written notice from any Governmental Authority of any audit or examination or any assertion of any claim for material Taxes. To the extent material, proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in full and complete compliance with the Tax, social security and unemployment withholding provisions of Applicable Law and such withholdings have been timely paid to the respective Governmental Authorities. No Tax Affiliate has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2) or has been a member of an affiliated, combined or unitary group other than the group of which a Tax Affiliate is the common parent.

(q) Except as set forth on Schedule 3.1(q), no Loan Party is bound by any agreement that affects the exclusive right of each Loan Party to develop, license, market or sell its services.

(r) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect after the Agreement Date, each Loan Party: (A) at all times has complied with all Applicable Laws; (B) has not received any warning letter or other correspondence or notice from any Governmental Authority alleging or asserting noncompliance with any Applicable Laws or any Authorizations; (C) possesses and complies with the Authorizations, which are valid and in full force and effect; (D) has not received written notice that any Governmental Authority has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorization and has no knowledge that any Governmental Authority is considering such action; and (E) has filed, obtained, maintained or submitted all reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments as required by any Applicable Laws or Authorizations.

(s) The Borrower has filed all of the SEC Documents within the time frames prescribed by the SEC (including any available grace periods and extensions authorized by the SEC) for the filing of such SEC Documents such that each filing was timely filed with the SEC. The Borrower filed and made publicly available on the SEC's Electronic Data Gathering, Analysis, and Retrieval system (including any successor thereto, "EDGAR") on or prior to the date this representation is made, true, correct and complete copies of the SEC Documents. As of their respective dates, each of the SEC Documents complied in all material respects with the requirements of the Securities Act and/or the Exchange Act (as applicable) applicable thereto. None of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. Since the filing of the SEC Documents, no event has occurred that would require an amendment or supplement to any of the SEC Documents and as to which such an amendment or a supplement has not been filed and made publicly available on EDGAR prior to the date this representation is made. The Borrower has not received any written comments from the SEC staff that have not been resolved, to the knowledge of the Borrower, to the satisfaction of the SEC staff.

(t) As of their respective dates, the financial statements (consolidated, as applicable) of the Borrower and its Subsidiaries, any predecessor of the Borrower and any Person acquired by the Borrower or any of its

Subsidiaries included in the SEC Documents (including by way of incorporation by reference) complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with GAAP except as otherwise expressly noted therein, consistently applied (subject, in the case of unaudited quarterly financial statements, to normal year-end adjustments and lack of footnote disclosures), and fairly present in all material respects the financial position (on a consolidated basis, as applicable) of the Borrower and its Subsidiaries (or other acquired Persons, as applicable) as of the dates thereof and the consolidated results of their (or its) operations, cash flows and changes in stockholders equity (in each case, on a consolidated basis, as applicable) for the periods then ended (subject, in the case of unaudited quarterly financial statements, to normal year-end audit adjustments and lack of footnote disclosures). The accounting firm that expressed its opinion with respect to the consolidated financial statements included in the Borrower's most recently filed annual report on Form 10-K, and reviewed the consolidated financial statements included in the Borrower's most recently filed quarterly report on Form 10-Q, was independent of the Borrower pursuant to the standards set forth in Rule 2-01 of Regulation S-X promulgated by the SEC to the extent required by the applicable rules and guidance from the Public Company Accounting Oversight Board (United States). There is no transaction, arrangement or other relationship between the Borrower (or any of its Subsidiaries) and an unconsolidated or other off-balance-sheet Person that is required to be disclosed by the Borrower in the SEC Documents that has not been so disclosed in the SEC Documents. Neither the Borrower nor any of its Subsidiaries is required to file any agreement, note, lease, mortgage, deed or other instrument entered into prior to the date this representation is made and to which the Borrower or any of its Subsidiaries is a party that has not been previously filed as an exhibit (including by way of incorporation by reference) to the Borrower's reports filed or made with the SEC under the Exchange Act. Other than (i) the liabilities assumed or created pursuant to this Agreement and the other Loan Documents, (ii) liabilities accrued for in the latest balance sheet included in the Borrower's most recent periodic report (on Form 10-Q or Form 10-K) filed prior to the date this representation is made (the date of such balance sheet, the "Latest Balance Sheet Date") and (iii) liabilities incurred in the ordinary course of business since the Latest Balance Sheet Date, the Borrower and its Subsidiaries do not have any other liabilities (whether fixed or unfixed, known or unknown, absolute or contingent, asserted or unasserted, choate or inchoate, liquidated or unliquidated, or secured or unsecured, and regardless of when any action, claim, suit or proceeding with respect thereto is instituted). The pro forma financial statements included in the SEC Documents (including by way of incorporation by reference) comply, in all material respects, with the applicable requirements of Regulation S X promulgated by the SEC, the assumptions used in preparing such pro forma financial statements provide a reasonable basis for presenting the significant effects directly attributable to the transactions or events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma columns therein reflect the proper application of those adjustments to the corresponding historical financial statement amounts. Since December 31, 2017, there has been no Material Adverse Effect or any event or circumstance which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. All financial performance projections delivered to any Lender, including the financial performance projections delivered on or prior to the Agreement Date, represent the Borrower's and its Subsidiaries' good faith estimate of future financial performance and are based on assumptions believed by the Borrower and its Subsidiaries to be fair and reasonable in light of current market conditions, it being acknowledged and agreed by the Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ from the projected results and such differences may be material.

(u) The Borrower and its Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP in all material respects and to maintain asset and liability accountability, (iii) access to assets or incurrence of liability is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any differences (such internal accounting controls (including clauses (i) – (iv) above), collectively, "Internal Controls"). The Borrower and its

Subsidiaries have (A) timely filed and made publicly available on EDGAR all certifications, statements and documents required by Rule 13a-14 or Rule 15d-14 under the Exchange Act. The Borrower and its Subsidiaries maintain disclosure controls and procedures required by Rule 13a-15 or Rule 15d-15 under the Exchange Act; such controls and procedures are effective to ensure that the information required to be disclosed by the Borrower and its Subsidiaries in the reports that they file with or submit to the SEC (A) is recorded, processed, summarized and reported accurately within the time periods specified in the SEC's rules and forms and (B) is accumulated and communicated to the Borrower's (and, to the extent applicable, its Subsidiaries') management, including its or their principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure. The Borrower and its Subsidiaries maintain internal control (including Internal Controls) over financial reporting required by Rule 13a-15 or Rule 15d-15 under the Exchange Act; to the knowledge of the Loan Parties, such internal control (including Internal Controls) over financial reporting is effective and does not contain any material weaknesses.

(v) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (i) no Loan Party has engaged, and no other Person has engaged in any "prohibited transaction" as defined under Section 406 of ERISA or Section 4975 of the Code that is not exempt under ERISA Section 408 or Section 4975 of the Code, under any applicable regulations and published interpretations thereunder or under any applicable prohibited transaction, individual or class exemption issued by the Department of Labor, with respect to any Employee Benefit Plan, (ii) (A) at no time within the last seven years has the Borrower or any ERISA Affiliate maintained, sponsored, participated in, contributed to or had any Liability with respect to, and (B) no Loan Party or any ERISA Affiliate has any Liability or obligation in respect of, any Title IV Plan, Multiemployer Plan or any multiple employer plan for which the Borrower or any ERISA Affiliate has incurred or could incur Liability under Section 4063 or 4064 of ERISA, (iii) no Loan Party has any obligation or Liability with respect to post-termination or retiree health, life insurance or other retiree or post-termination welfare benefits except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state law or for which premiums therefor are paid solely by participants or their designated beneficiaries, (iv) each Employee Benefit Plan is and has been operated in compliance with its terms and all Applicable Laws, including ERISA and the Code, (v) (A) no ERISA Event has occurred and (B) no event or condition exists or existed that would reasonably be expected to subject the Borrower or any ERISA Affiliate to any tax, fine, lien, penalty or Liability imposed by ERISA, the Code or other Applicable Law, except for any such ERISA Event or tax, fine, lien, penalty or liability that would not be expected, individually or in the aggregate, to have a Material Adverse Effect and (vi) no Loan Party maintains or has any obligation or Liability with respect to any Foreign Benefit Plan.

(w) The Borrower's Subsidiaries are set forth in Schedule 3.1(w) (as such Schedule 3.1(w) may be updated from time to time in connection and accordance with Section 5.1(k)).

(x) Subsequent to December 31, 2017, the Borrower has not declared or paid any dividends or made any distribution of any kind with respect to its Stock other than those set forth on Schedule 3.1(x).

(y) All of the issued and outstanding shares of Stock of the Borrower are duly authorized and validly issued, fully paid and non-assessable, have been issued in compliance with all federal and state and foreign securities laws, and were not issued in violation of or subject to any preemptive rights or other rights to subscribe for or purchase securities that have not been waived in writing. Assuming the accuracy of the representations and warranties of the Lender set forth in Section 3.3, the issuance by the Borrower of the Securities is exempt from registration under the Securities Act and applicable state securities laws. Except for the Securities, the Conversion Shares (and the shares of Common Stock issuable upon conversion thereof), the convertible loans and notes under the Senior Facility Documents (and the shares of Common Stock issuable upon conversion thereof) and the Stock issuable pursuant to Borrower Stock Plans that may be authorized, issued and outstanding from time to time, all of the authorized, issued and outstanding shares of Stock of the Borrower and each of its Subsidiaries are set forth in Schedule 3.1(y), and, except as set forth in Schedule 3.1(y) and except for the Loan Documents, the Certificate of Designations, the Registration Rights Agreement, the Securities, the Conversion Shares (and the shares of Common Stock issuable upon conversion thereof), the Deerfield Registration Rights Agreement, the convertible loans and notes under the Senior Facility Documents (and the shares of Common

Stock issuable upon conversion thereof) and the Stock issuable pursuant to Borrower Stock Plans that may be authorized, issued and outstanding from time to time, there are no (i) Stock options or other Stock incentive plans, employee Stock purchase plans or other plans, programs or arrangements of the Borrower or any of its Subsidiaries under which Stock options, Stock or other Stock-based or Stock-linked awards are issued or issuable to officers, directors, employees, consultants or other Persons, (ii) outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exchangeable or exercisable for, any Stock of the Borrower or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Borrower or any of its Subsidiaries is or may become bound to issue additional Stock of the Borrower or any of its Subsidiaries, or options, warrants or scrip for rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into or exercisable or exchangeable for, any shares of Stock of the Borrower or any of its Subsidiaries, (iii) agreements or arrangements under which the Borrower or any of its Subsidiaries is obligated to register the sale of any of their securities or Stock under the Securities Act (except the Registration Rights Agreement), (iv) outstanding Stock, securities or instruments of the Borrower or any of its Subsidiaries that contain any redemption or similar provisions, or contracts, commitments, understandings or arrangements by which the Borrower or any of its Subsidiaries is or may become bound to redeem a security of the Borrower, (v) Stock or other securities or instruments containing anti-dilution or similar provisions that may be triggered by the issuance of securities of the Borrower or any of its Subsidiaries or (vi) stock appreciation rights or "phantom stock" plans or agreements or any similar plans or agreements to which Borrower or any of its Subsidiaries is a party or by which the Borrower or any of its Subsidiaries is otherwise subject or bound. There are no (X) stockholders' agreements, voting agreements or similar agreements to which Borrower or any of its Subsidiaries is a party or by which the Borrower or any of its Subsidiaries is otherwise subject or bound, (Y) preemptive rights or any other similar rights to which any Stock of the Borrower or any of its Subsidiaries is subject or (Z) except as set forth in the Loan Documents, the Certificate of Designations, the Senior Facility Documents or the Borrower Stock Plans, any restrictions upon the voting or Transfer of any Stock of the Borrower or any of its Subsidiaries (other than restrictions on Transfer imposed by U.S. federal and state securities laws and except as permitted pursuant to Section 5.2(m)). The issuance and delivery of the Preferred Stock does not and will not: (i) except for the Stockholder Approval, any Subsequent Stockholder Approval, the filing and effectiveness of the Certificate of Amendment and the Certificate of Designations and the approval of the Common Stock into which the Conversion Shares are convertible for listing on an Eligible Market, require approval from any Governmental Authority; (ii) subject to each Lender's compliance with the transfer restrictions of the Certificate of Designations and Sections 2.14 and 6.5 hereof, obligate the Borrower to issue Preferred Stock or other securities to any Person (other than the Lenders); and (iii) subject to each Lender's compliance with the transfer restrictions of the Certificate of Designations and Sections 2.14 and 6.5 hereof, will not result in a right of any holder of the Borrower's securities to adjust the exercise, conversion, exchange or reset price under and will not result in any other adjustments (automatic or otherwise) under, any securities of the Borrower; provided that the foregoing representation and warranty is not made with respect to any such adjustment that is based on the trading price of the Common Stock. The Borrower has furnished to each Lender true, correct and complete copies of each Loan Parties' Organizational Documents and any amendments, restatements, supplements or modifications thereto, and all documents, agreements and instruments containing the terms of all securities and Stock convertible into, or exercisable or exchangeable for, Common Stock or other Stock of any Loan Party or its Subsidiaries, and the material rights of the holders thereof in respect thereto.

(z) No Loan Party and no Subsidiary of any Loan Party is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. As of the Agreement Date, except as set forth on Schedule 3.1(z), no Loan Party and no Subsidiary of any Loan Party owns any Margin Stock.

(aa) To the extent and for so long as the Senior Facility Agreement, any Revolving Credit Facility and/or any Additional Permitted Debt is outstanding or otherwise in existence, (i) the Borrower has delivered to the Lenders a true, complete and correct copy of all of (x) the Senior Facility Documents, (y) the Revolving Credit Facility Documents and (z) the Additional Permitted Debt Documents, in each case of clauses (x), (y) and (z), including all schedules, exhibits, amendments, restatements, supplements, modifications, assignments and all

other agreements, instruments and documents delivered pursuant thereto or in connection therewith, and (ii) subject to the satisfaction of the Approval Conditions, all Obligations constitute permitted Indebtedness under the Senior Facility Agreement, the Revolving Credit Facility Documents and the Additional Permitted Debt Documents.

(bb) The proceeds of the Loans are intended to be and shall be used solely for the purposes set forth in and permitted by Section 2.1.

(cc) Except as set forth in Schedule 3.1(cc) and except where any failures to comply could not reasonably be expected to result in, either individually or in the aggregate, Material Environmental Liabilities to the Loan Parties and their Subsidiaries, each Loan Party and each Subsidiary of each Loan Party (a) are, and for the past five years have been in compliance with all applicable Environmental Laws, including obtaining and maintaining all permits required by any applicable Environmental Law, (b) is not party to, and no Real Estate currently (or to the knowledge of any Loan Party previously) owned, leased, subleased, operated or otherwise occupied by or for any such Person is subject to or the subject of, any contractual obligation or any pending or, to the knowledge of any Loan Party, threatened, order, action, investigation, suit, proceeding, audit, Lien, claim, demand, dispute or notice of violation or of potential liability or similar notice relating in any manner to any Environmental Law, (c) has not caused or suffered to occur a Release of Hazardous Materials at, to or from any Real Estate, (d) currently (or to the knowledge of any Loan Party, previously) own, lease, sublease, operate or otherwise occupy no Real Estate that is contaminated by any Hazardous Materials and (e) is not, and has not been, engaged in, and has not permitted any current or former tenant to engage in, operations in violation of any Environmental Law and knows of no facts, circumstances or conditions reasonably constituting notice of a violation of any Environmental Law, including receipt of any information request or notice of potential responsibility under the Comprehensive Environmental Response, Compensation and Liability Act or similar Environmental Laws.

(dd) None of any Loan Party, any Person controlling any Loan Party or any Subsidiary of any Loan Party is (a) an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act, or otherwise registered or required to be registered under, or subject to the restrictions imposed by, the Investment Company Act, or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute, rule or regulation limiting its ability to incur Indebtedness, pledge its assets or perform its obligations under the Loan Documents.

(ee) There are no strikes, boycotts, grievances, work stoppages, slowdowns, lockouts or other job actions existing, pending (or, to the knowledge of any Loan Party, threatened) against or involving any Loan Party or any Subsidiary of any Loan Party or any Target, except for those that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Except as set forth on Schedule 3.1(ee), as of the Agreement Date, (a) there is no memorandum of understanding, collective bargaining or similar agreement, and there is no ongoing negotiation or duty to negotiate, with any union, labor organization, works council or similar representative covering any Employee or otherwise binding any Loan Party or any Subsidiary of any Loan Party or any Target, (b) no petition for certification or election of any such representative is existing or pending with respect to any Employee, (c) to the knowledge of any Loan Party, no such representative has sought certification or recognition with respect to any Employee, and (d) to the knowledge of any Loan Party, no Employee or his or her representative is engaged in any organizing efforts. All current and former Employees are or were correctly classified as exempt or non-exempt under, and are and have been paid in accordance with, all applicable federal, state, and local wage and hour laws, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Further, all individuals who perform or have performed services for any Loan Party, any Subsidiary of any Loan Party, or any Target are or were correctly classified under each Employee Benefit Plan, ERISA, the Internal Revenue Code and other Applicable Law as common law employees, independent contractors or other non-employee basis, or leased employees, except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Each Loan Party, Subsidiary of any Loan Party, and Target are in material compliance with all Applicable Laws concerning employment, including without limitation hiring, background checks, compensation, benefits, wages (including

payment of overtime), wage deductions and withholdings, classification, immigration, work authorization, employment eligibility verification, reporting, taxation, occupational health and safety, equal rights, labor relations, accommodations, breaks, notices, employment policies, paid or unpaid time off work, accessibility, privacy, and workers' compensation, except for those that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(ff) Schedule 3.1(ff) lists each Loan Party's jurisdiction of organization, legal name and organizational identification number, if any, and the location of such Loan Party's chief executive office or sole place of business, in each case as of the Agreement Date.

(gg) [Reserved]

(hh) None of the statements contained in each exhibit, report, statement or certificate furnished by or on behalf of any Loan Party or any of their Subsidiaries in connection with the Loan Documents and the Transactions (including the offering and disclosure materials, if any, delivered by or on behalf of any Loan Party to any Lender prior to the Agreement Date, but excluding any financial performance projections), when taken as a whole, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not materially misleading as of the time when made or delivered.

(ii) Each Loan Party and each Subsidiary of each Loan Party is in compliance in all material respects with all U.S. economic sanctions laws, executive orders and implementing regulations ("Sanctions") as administered by the U.S. Treasury Department's Office of Foreign Assets Control and the U.S. State Department. No Loan Party and no Subsidiary of a Loan Party (i) is a Person on the list of the Specially Designated Nationals and Blocked Persons (the "SDN List"), (ii) is a Person who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such Person, (iii) is a Person organized or resident in a country or territory subject to comprehensive Sanctions (a "Sanctioned Country"), or (iv) is owned or controlled by (including by virtue of such Person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any Person on the SDN List or a government of a Sanctioned Country such that the entry into, or performance under, this Agreement or any other Loan Document would be prohibited by U.S. law. Each Loan Party and each Subsidiary of each Loan Party is in compliance with all laws related to terrorism or money laundering ("Anti-Money Laundering Laws") including: (i) all applicable requirements of the Currency and Foreign Transactions Reporting Act of 1970 (31 U.S.C. 5311 et. seq., (the Bank Secrecy Act)), as amended by Title III of the USA Patriot Act, (ii) the Trading with the Enemy Act, (iii) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (66 Fed. Reg. 49079), and any other enabling legislation, executive order or regulations issued pursuant or relating thereto and (iv) other applicable federal or state laws relating to (A) anti-money laundering rules and regulations or (B) in all material respects, "know your customer" rules and regulations. No action, suit or proceeding by or before any court or Governmental Authority with respect to compliance with such Anti-Money Laundering Laws is pending or threatened to the knowledge of each Loan Party and each Subsidiary of each Loan Party. Each Loan Party and each Subsidiary of each Loan Party is in compliance in all material respects with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010 ("Anti-Corruption Laws"). None of any Loan Party or any Subsidiary of a Loan Party, nor to the knowledge of any Loan Party or any Subsidiary thereof, any director, officer, agent, employee or other Person acting on behalf of the Loan Party or any Subsidiary of a Loan Party, has taken any action, directly or indirectly, that would result in a violation of applicable Anti-Corruption Laws. The Loan Party and each Subsidiary of a Loan Party maintains and implements policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws.

(jj) The Borrower and its Subsidiaries are in all material respects in compliance with applicable provisions of the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations thereunder (collectively, "Sarbanes-Oxley").

(kk) All Obligations constitute senior Indebtedness subject to the subordination provisions contained in the Senior Facility Subordination Agreement.

(ll) The Borrower is not, and never has been, a "shell company" (as defined in Rule 12b-2 under the Exchange Act).

(mm) Neither the Borrower, nor any of its Affiliates, nor any Person acting on its or their behalf, has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act) in connection with the offer, sale or issuance of the Securities.

(nn) Neither the Borrower, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made, or will make, any offers or sales of any security or Stock or solicited any offers to buy any security or Stock, under circumstances that would require registration of any of the Securities under the Securities Act or, except for issuances under the Senior Facility Documents, cause this offering of the Securities to be integrated with prior offerings by the Borrower for purposes of any applicable holder of Stock approval provisions of the Principal Market or any other authority.

(oo) The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and neither the Borrower nor any of its Subsidiaries has taken, or will take, any action designed to terminate, or which to the knowledge of the Borrower and its Subsidiaries is likely to have the effect of terminating, the registration of the Common Stock under the Exchange Act, nor has the Borrower or any of its Subsidiaries received any notification that the SEC is contemplating terminating such registration. Neither the Borrower nor any of its Subsidiaries is in violation of any of the rules, regulations or requirements of the Principal Market, and, to the knowledge of the Borrower and its Subsidiaries, there are no facts or circumstances that would reasonably be expected to lead to suspension or termination of trading of the Common Stock on the Principal Market. Since February 3, 2012, (i) the Common Stock has been listed or designated for quotation, as applicable, on the Principal Market, (ii) trading in the Common Stock has not been suspended or deregistered by the SEC or the Principal Market, and (iii) neither the Borrower nor any of its Subsidiaries has received any communication, written or oral, from the SEC or the Principal Market regarding the suspension or termination of trading of the Common Stock on the Principal Market which communication has not been addressed in accordance with the rules and regulations of such Principal Market so as to avoid any such suspension or termination of trading.

(pp) The Common Stock is eligible for clearing through The Depository Trust Company ("DTC"), through its Deposit/Withdrawal at Custodian (DWAC) system, and the Borrower is eligible for and participating in the Direct Registration System (DRS) of DTC with respect to the Common Stock. The transfer agent for the Common Stock is a participant in, and the Common Stock is eligible for Transfer pursuant to, DTC's Fast Automated Securities Transfer Program. The Common Stock is not, and has not at any time been, subject to any DTC "chill," "freeze" or similar restriction with respect to any DTC services, including the clearing of transactions in shares of Common Stock through DTC.

(qq) The Borrower and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination or other similar anti-takeover provision under the Borrower's Organizational Documents or the laws of the State of Delaware that is or could become applicable to any of the Lenders as a result of the transactions contemplated by the Loan Documents and the Borrower's fulfilling its obligations with respect thereto, including the Borrower's issuance of the Securities and any Lender's ownership of the Securities. The Borrower has not adopted a stockholders rights plan (or "poison pill") or similar arrangement relating to accumulations of beneficial ownership of Common Stock or a change in control of the Borrower.

(rr) It is understood and acknowledged by the Borrower that none of the Lenders nor holders of the Securities has been asked to agree, nor has any Lender agreed, to desist from purchasing or selling, long and/or short, Stock or other securities of the Borrower, or "derivative" securities or Stock based on Stock or other securities issued by the Borrower or to hold the Securities for any specified term; and no Lender nor holder of Securities shall be deemed to have any affiliation with or control over any arm's length counterparty in any "derivative" transaction. The Borrower further understands and acknowledges that (i) one or more Lenders or

holders of Securities may engage in hedging and/or trading activities at various times during the period that the Securities are outstanding, and (ii) such hedging and/or trading activities, if any, can reduce the value of the Stock held by the existing holders of Stock of the Borrower, both at and after the time the hedging and/or trading activities are being conducted. The Borrower acknowledges that any such hedging and/or trading activities do not constitute a breach of any Loan Document or affect the rights of any Lender or holder of Securities under any Loan Document.

(ss) The Borrower and the other Loan Parties are solely responsible for the payment of any fees, costs, expenses and commissions of any placement agent, broker or financial adviser relating to or arising out of the transactions contemplated by the Loan Documents. The Borrower and the other Loan Parties will pay, and hold each of the Lenders harmless against, any liability, loss or expense (including attorneys' fees, costs and expenses) arising in connection with any claim for any such payment.

(tt) [Reserved].

(uu) Schedule 3.1(uu) sets forth, as of the Agreement Date, a complete and correct list of all Registrations held by each Loan Party and its Subsidiaries. Such listed Registrations are the only Registrations that are required for the Loan Parties and their Subsidiaries to conduct their respective businesses as presently conducted or as proposed to be conducted. Each Loan Party and its Subsidiaries has, and it and its Products are in conformance with, all Registrations required to conduct its respective businesses as now or currently proposed to be conducted except where the failure to have such Registrations could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. To the knowledge of each Loan Party and its Subsidiaries, neither the FDA nor other Governmental Authority is considering limiting, suspending or revoking such Registrations or changing the marketing classification or labeling or other significant parameter affecting the Products of the Loan Parties or any of their respective Subsidiaries. To the knowledge of each Loan Party and its Subsidiaries, there is no false or misleading information or significant omission in any product application or other submission to the FDA or other Governmental Authority administering Public Health Laws. The Loan Parties and their respective Subsidiaries have fulfilled and performed their obligations under each Registration, and no event has occurred or condition or state of facts exists which would constitute a breach or default, or would cause revocation or termination of any such Registration. To the knowledge of each Loan Party and its Subsidiaries, no event has occurred or condition or state of facts exists which could present potential product liability related, in whole or in part, to Regulatory Matters. To the knowledge of each Loan Party and its Subsidiaries, any third party that is a manufacturer or contractor for the Loan Parties or any of their respective Subsidiaries is in compliance with all Registrations required by the FDA or comparable Governmental Authority and all Public Health Laws insofar as they reasonably pertain to the Products of the Loan Parties and their respective Subsidiaries.

(vv) All Products designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold or marketed by or on behalf of the Loan Parties or their respective Subsidiaries that are subject to Public Health Laws have been and are being designed, developed, investigated, manufactured, prepared, assembled, packaged, tested, labeled, distributed, sold and marketed in material compliance with the Public Health Laws and each other Applicable Law, including clinical and non-clinical evaluation, product approval or clearance, premarketing notification, good manufacturing practices, labeling, advertising and promotion, record-keeping, establishment registration and device listing, reporting of recalls and adverse event reporting.

(ww) Except as set forth on Schedule 3.1(ww), no Loan Party nor its Subsidiaries is subject to any obligation arising under an administrative or regulatory action, proceeding, investigation or inspection by or on behalf of a Governmental Authority, warning letter, notice of violation letter, consent decree, request for information or other notice, response or commitment made to or with a Governmental Authority with respect to Regulatory Matters, and, to the knowledge of each Loan Party and its Subsidiaries, no such obligation has been threatened. Each Loan Party and its Subsidiaries has made all notifications, submissions, and reports required by any such obligation, and all such notifications, submissions and reports were true, complete, and correct in all material respects as of the date of submission to FDA or any other Governmental Authority. There is no, and

there is no act, omission, event, or circumstance of which any Loan Party or any of its Subsidiaries has knowledge that could reasonably be expected, individually or in the aggregate, to give rise to or lead to, any material civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand letter, warning letter, proceeding or request for information against any Loan Party or its Subsidiaries, and, to each Loan Party's and its Subsidiary's knowledge, no Loan Party nor its Subsidiaries has any material liability (whether actual or contingent) for failure to comply with any Public Health Laws. There has not been any violation of any Public Health Laws by any Loan Party or its Subsidiaries in its product development efforts, submissions, record keeping and reports to the FDA or any other Governmental Authority that could reasonably be expected to require or lead to investigation, corrective action or enforcement, regulatory or administrative action that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. To the knowledge of each Loan Party and each of its Subsidiaries, there are no civil or criminal proceedings relating to any Loan Party or any of its Subsidiaries or any officer, director or employee of any Loan Party or Subsidiary of any Loan Party that involve a matter within or related to the FDA's or any other Governmental Authority's jurisdiction. No Loan Party nor any Affiliate thereof has received any material adverse notice (written or oral) from the FDA or any other Governmental Authority regarding the approvability or approval of any Product.

(xx) As of the Agreement Date, except as set forth on Schedule 3.1(xx), no Loan Party nor its Subsidiaries is undergoing any inspection related to Regulatory Matters or any other Governmental Authority investigation.

(yy) During the period of three calendar years immediately preceding the Agreement Date, no Loan Party nor any Subsidiary of any Loan Party has introduced into commercial distribution any Products manufactured by or on behalf of any Loan Party or any Subsidiary of a Loan Party or distributed any products on behalf of another manufacturer that were upon their shipment by any Loan Party or any of its Subsidiaries adulterated or misbranded in violation of 21 U.S.C. § 331. No Loan Party nor any Subsidiary of any Loan Party has received any notice of communication from any Governmental Authority alleging material noncompliance with any Applicable Law. No Product has been seized, withdrawn, recalled, detained, or subject to a suspension (other than in the ordinary course of business) of research, manufacturing, distribution or commercialization activity, and there are no facts or circumstances reasonably likely to cause (i) the seizure, denial, withdrawal, recall, detention, public health notification, safety alert or suspension of manufacturing or other activity relating to any Product; (ii) a change in the labeling of any Product suggesting a compliance issue or risk; or (iii) a termination, seizure or suspension of manufacturing, researching, distributing or marketing of any Product. No proceedings in the United States or any other jurisdiction seeking the withdrawal, recall, revocation, suspension, import detention or seizure of any Product are pending or threatened against any Loan Party or any of its Subsidiaries.

(zz) No Loan Party nor any Subsidiary of any Loan Party nor any of its officers, directors, employees, agents or contractors (i) have been excluded or debarred from any federal healthcare program (including Medicare or Medicaid) or any other federal program or (ii) have received notice from the FDA or any other Governmental Authority with respect to debarment or disqualification of any Person that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. No Loan Party nor any Subsidiary of any Loan Party nor any of its officers, directors, employees, agents or contractors have been convicted of any crime or engaged in any conduct for which (y) debarment is mandated or permitted by 21 U.S.C. § 335a or (z) such Person could be excluded from participating in the federal health care programs under Section 1128 of the Social Security Act or any similar law. No officer and to the knowledge of each Loan Party and its Subsidiaries, no employee or agent of any Loan Party or its Subsidiaries, has (A) made any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; (B) failed to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or (C) committed an act, made a statement or failed to make a statement that could reasonably be expected, individually or in the aggregate, to provide the basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991).

(aaa) Except as set forth on Schedule 3.1(aaa), no Loan Party nor any Subsidiary of any Loan Party has granted rights to design, develop, manufacture, produce, assemble, distribute, license, prepare, package, label, market or sell its Products to any other Person nor is any Loan Party or any of its Subsidiaries bound by any agreement that affects any Loan Party's exclusive right to design, develop, manufacture, produce, assemble, distribute, license, prepare, package, label, market or sell its Products.

(bbb) Except as set forth on Schedule 3.1(bbb): (i) each Loan Party and its Subsidiaries and, to their knowledge, their respective contract manufacturers are, and have been for the past three calendar years, in compliance with, and each Product in current commercial distribution is designed, manufactured, processed, prepared, assembled, packaged, labeled, stored, installed, serviced and held in compliance with, the current Good Manufacturing Practice regulations set forth in 21 C.F.R. Parts 210 and 211, as applicable, (ii) each Loan Party and its Subsidiaries is in compliance with the written procedures, record-keeping and reporting requirements required by the FDA or any comparable Governmental Authority pertaining to the reporting of adverse events and recalls involving the Products, (iii) all Products are and have been labeled, promoted, and advertised in accordance with their Registration and approved labeling or within the scope of an exemption from obtaining such Registration, and (iv) each Loan Party and its Subsidiaries' establishments are registered with the FDA, as applicable, and each Product is listed with the FDA under the applicable FDA registration and adverse event reporting regulations for pharmaceuticals.

(ccc) Each of the Subject Foreign Subsidiaries (i) have (A) no more than $55,000 in net income, revenue or operations for the most recent twelve month period for which financial statements have been provided or filed (or are required to be provided or filed) pursuant to Section 5.1(h) (or that are otherwise available prior to the Agreement Date) or (B) no assets or property with an aggregate fair market value (when taken together) in excess of $55,000 and (ii) do not own any assets or property that are material to the operation of the business (or the business) of the Loan Parties.

**Section 3.2 Loan Parties Acknowledgment.** The Loan Parties (on their behalf and on their Subsidiaries' behalf) acknowledge that they have made the representations and warranties referred to in Section 3.1 with the intention of persuading the Lenders to enter into the Loan Documents and that the Lenders have entered into the Loan Documents on the basis of, and in full reliance on, each of such representations and warranties, each of which shall survive the execution and delivery of this Agreement, the other Loan Documents, the making of any Disbursement and the issuance of the Securities until the later of (a) (i) all Obligations being repaid in full (or otherwise repaid through the issuance of Conversion Shares or a combination of cash and Conversion Shares), and (ii) all of the Disbursement Commitments being no longer available or terminated and (b) the end of the Reporting Period.

**Section 3.3 Representations and Warranties of the Lenders.** Each Lender, severally but not jointly, represents and warrants to the Borrower as of the Agreement Date that:

(a) Such Lender is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified, except where failure to be so qualified or in good standing would not reasonably be expected to materially and adversely affect such Lender's ability to perform its obligations under this Agreement or consummate the transactions contemplated hereby on a timely basis, and such Lender has the corporate or other power and authority and governmental authorizations to own its properties and assets and to carry on its business as it is now being conducted.

(b) Such Lender has the limited liability company, limited partnership or other entity (as applicable) power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery and performance of this Agreement by such Lender and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of such Lender, and no further approval or authorization by any of its stockholders, partners, members or other equity owners, as the case may be, is required. This Agreement has been duly and validly executed and delivered by such Lender and assuming

due authorization, execution and delivery by the Borrower, is a valid and binding obligation of such Lender, enforceable against such Lender in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or affecting creditors' rights or by general equity principles). Neither the execution and delivery by such Lender of this Agreement or the consummation of the transactions contemplated hereby, nor compliance by such Lender with any of the provisions hereof, will (A) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of any lien upon any of the material properties or assets of such Lender or any of its subsidiaries under any of the terms, conditions or provisions of, (i) any organizational documents of such Lender or (ii) any material contract to which such Lender or any of its subsidiaries is a party or by which it may be bound, or to which such Lender or any of its subsidiaries or any of the properties or assets of such Lender or any of its subsidiaries may be subject, or (B) violate any law applicable to such Lender or any of its subsidiaries or any of their respective properties or assets, except in the case of clauses (A)(ii) and (B) for such violations, conflicts, breaches, defaults, termination or acceleration as would not reasonably be expected to materially and adversely affect such Lender's ability to perform its obligations under this Agreement or consummate the transactions contemplated hereby on a timely basis. Other than filings with the SEC related to the making of the Loans or as required by the securities or blue sky laws of the various states, no notice to, registration, declaration or filing with, exemption or review by, or authorization, order, consent or approval of, any Governmental Authority, nor expiration or termination of any statutory waiting period, is necessary for the consummation by such Lender of the transactions contemplated by this Agreement.

(c) Such Lender (i) is acquiring the Loans provided by such Lender and the Notes (together with the related guaranties set forth in the Guaranty of the Guarantors) provided by the applicable Loan Party in connection with such Loan made by such Lender hereunder, and (ii) upon issuance thereof, will acquire Preferred Stock, in each case, for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered under, or exempted from, the registration requirements of the Securities Act; provided, however, that by making the representations herein, such Lender does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to assign, Transfer or otherwise Dispose of any of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act, subject to the limitations on Transfer set forth herein.

(d) Such Lender is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) or an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (7) or (8) under the Securities Act (provided that in the case of clause (8) all of the equity owners of such entity are accredited investors as defined in Rule 501(a)(1), (2), (3), (7) or (8) as modified by this parenthetical)).

(e) Such Lender understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of the United States federal and state securities laws and that the Borrower is relying in part upon the truth and accuracy of, and such Lender's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Lender set forth herein in order to determine the availability of such exemptions.

(f) Such Lender and its advisors, if any, have been furnished with all materials relating to the business, finances and operations of the Loan Parties and their Subsidiaries and materials relating to the offer and sale of the Securities that have been requested by such Lender. Such Lender and its advisors, if any, have been afforded the opportunity to ask questions of the Loan Parties. Neither such inquiries nor any other due diligence investigations conducted by such Lender or its advisors, if any, or its representatives shall modify, amend or otherwise affect such Lender's right to rely on the representations and warranties of the Loan Parties and their Subsidiaries contained in Article 3 and elsewhere in the Loan Documents. Such Lender can bear the economic risk of (x) an investment in the Securities indefinitely and (y) a total loss of its investment in the Securities being offered and has such knowledge and experience in business and financial matters so as to enable it to understand the risks of and investment decision with respect to its investment in the Securities.

(g) Such Lender understands that no United States federal or state agency or any other government or Governmental Authority has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

## ARTICLE 4

## CONDITIONS OF EFFECTIVENESS AND DISBURSEMENT

**Section 4.1 Conditions to the Agreement Date and the Disbursement Commitments.** The effectiveness of the Existing Loan Agreement and the Disbursement Commitments made by the Lenders on the Agreement Date shall each be subject to the fulfillment and satisfaction (or waiver by the Required Lenders) of all of the following conditions:

(a) the Lenders shall have received executed counterparts of the Existing Loan Agreement, the Notes (if any) requested by the Lenders, the Guaranty and each other Loan Document set forth on the closing checklist attached hereto as Exhibit H;

(b) the Lenders shall have received executed counterparts of the Senior Facility Subordination Agreement;

(c) [Reserved]

(d) [Reserved]

(e) in the reasonable judgment of the Required Lenders, since December 31, 2017, there has been no Material Adverse Effect or any event or circumstance which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;

(f) the Required Lenders shall not have become aware of any adverse information, fact or circumstance with respect to the Loan Parties that is inconsistent with the information available to the Required Lenders on the date of the Commitment Letter in any material respect;

(g) each representation and warranty by any Loan Party or any of its Subsidiaries contained in the Existing Loan Agreement or in any other Loan Document shall be true, correct and complete in all material respects (without duplication of any materiality or other qualifier contained therein) as of such date and time, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall have been true, correct and complete in all material respects (without duplication of any materiality or other qualifier contained therein) as of such earlier date);

(h) the payment by the Borrower of all fees required to be paid on the Agreement Date pursuant to this Agreement and the other Loan Documents and all costs and expenses required to be paid on the Agreement Date (including pursuant to Section 6.3) pursuant to this Agreement and the other Loan Documents, in the case of costs and expenses, to the extent invoiced at least two (2) Business Days prior to the Agreement Date;

(i) the Lenders shall have received at least five (5) Business Days prior to the Agreement Date all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act, that has been reasonably requested by any Lender at least ten (10) days in advance of the Agreement Date, including a duly executed IRS Form W-9 (or such other applicable tax form) of the Borrower; and

(j) the Lenders shall have received a certificate executed by an Authorized Officer of the Borrower, in form and substance reasonably satisfactory to the Required Lenders, certifying that the conditions in this Section 4.1 have been satisfied in all respects.

Notwithstanding anything to the contrary in the Loan Documents or otherwise, all of the conditions set forth in this Section 4.1 have been previously satisfied in all respects.

**Section 4.2 Conditions to the Initial Disbursement.** In addition to the fulfillment and satisfaction (or waiver by the Required Lenders) of each condition set forth in Section 4.4, the obligation of the Lenders to make the Initial Disbursement shall be subject to the fulfillment and satisfaction (or waiver by the Required Lenders) of all of the following conditions:

(a) the Lenders shall have received a duly executed written notice from the Borrower complying with the requirements of Section 2.2(a);

(b) the proceeds of the Initial Disbursement shall be directed and requested for use in accordance with Section 2.1;

(c) in the reasonable judgment of the Required Lenders, since December 31, 2017, there has been no Material Adverse Effect or any event or circumstance which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;

(d) no Default or Event of Default shall have occurred, or would be reasonably expected to occur, or would result from the Initial Disbursement or the use of the proceeds therefrom;

(e) no Default or Event of Default (each as defined in the Senior Facility Agreement) shall have occurred, or would be reasonably expected to occur, or would result from the Initial Disbursement or the use of the proceeds therefrom;

(f) at the time of and after giving effect to the Initial Disbursement and the use of proceeds thereof, each representation and warranty by any Loan Party or any of its Subsidiaries contained herein or in any other Loan Document shall be true, correct and complete in all material respects (without duplication of any materiality or other qualifier contained therein) as of such date and time, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall have been true, correct and complete in all material respects (without duplication of any materiality or other qualifier contained therein) as of such earlier date);

(g) the Lenders shall have received original Notes aggregating the amount of the Initial Disbursement, if requested;

(h) the conditions set forth in Section 2.2(a) have been satisfied and the terms set forth in Section 2.2(a) have been completely complied with;

(i) the payment by the Borrower of all fees required to be paid on such Disbursement Date pursuant to this Agreement and the other Loan Documents and all costs and expenses required to be paid on such Disbursement Date (including pursuant to Section 6.3) pursuant to this Agreement and the other Loan Documents, in the case of costs and expenses, to the extent invoiced at least two (2) Business Days prior to such date (which amounts, at the sole option of the Lenders, may be offset against the proceeds of the Initial Disbursement);

(j) the Common Stock shall continue to be listed on an Eligible Market;

(k) the Board of Directors shall have approved a go-forward operating plan, taking into account the funding of the Loans hereunder, that shall not reasonably be expected to result in a Default or Event of Default (each as defined in the Senior Facility Agreement) or a Default or Event of Default hereunder;

(l) the Stockholder Approval shall have been obtained and the Borrower shall have adopted and filed the applicable amendment(s) to the Certificate of Incorporation of the Borrower and a Certificate of Designations with respect to the Preferred Stock with the Secretary of State of the State of Delaware in substantially the applicable form(s) attached hereto as Exhibits F-1 (the "Reverse Split Amendment") and/or F-2 (the "Authorized Shares Amendment" and, together with the Reverse Split Amendment, the "Certificate Amendment") and Exhibit G (the "Certificate of Designations"), respectively, and the applicable Certificate Amendment and the Certificate of Designations shall each be in full force and effect;

(m) the Common Stock into which the Conversion Shares are convertible (based on the then applicable Conversion Rate) shall have been approved for listing on an Eligible Market, subject to official notice of issuance;

(n) John Johnson shall have been appointed chief executive officer of the Borrower;

(o) the Lenders shall have received a favorable written opinion of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel to the Loan Parties, addressed to the Lenders, dated the Amendment Date, in form and substance reasonably satisfactory to the Required Lenders; and

(p) the Lenders shall have received a certificate executed by an Authorized Officer of the Borrower, in form and substance reasonably satisfactory to the Required Lenders, certifying that the conditions in this Section 4.2 have been satisfied in all respects.

**Section 4.3 Conditions to the Subsequent Disbursements.** In addition to the fulfillment and satisfaction (or waiver by the Required Lenders) of each condition set forth in Sections 4.2 and 4.4, the obligation of the Lenders to make any Subsequent Disbursement shall be subject to the fulfillment and satisfaction (or waiver by the Required Lenders) of all of the following conditions:

(a) the Lenders shall have received a duly executed written notice from the Borrower complying with the requirements of Section 2.2(b) (in the case of the First Subsequent Disbursement) or Section 2.2(c) (in the case of the Second Subsequent Disbursement), as applicable;

(b) in the reasonable judgment of the Required Lenders, since December 31, 2017, there has been no Material Adverse Effect or any event or circumstance which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;

(c) the proceeds of such Subsequent Disbursement shall be directed and requested for use in accordance with Section 2.1;

(d) no Default or Event of Default shall have occurred, or would be reasonably expected to occur, or would result from such Subsequent Disbursement or the use of the proceeds therefrom;

(e) no Default or Event of Default (each as defined in the Senior Facility Agreement) shall have occurred, or would be reasonably expected to occur, or would result from the Subsequent Disbursement or the use of the proceeds therefrom;

(f) at the time of and after giving effect to such Subsequent Disbursement and the use of proceeds thereof, each representation and warranty by any Loan Party or any of its Subsidiaries contained herein or in any other Loan Document shall be true, correct and complete in all material respects (without duplication of any materiality or other qualifier contained therein) as of such date and time, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall have been true, correct and complete in all material respects (without duplication of any materiality or other qualifier contained therein) as of such earlier date);

(g) the Lenders shall have received original Notes aggregating the amount of the funded Subsequent Disbursement, if requested;

(h) (i) in the case of the First Subsequent Disbursement, the conditions set forth in Section 2.2(b) have been satisfied and the terms set forth in Section 2.2(b) have been completely complied with; or (ii) in the case of the Second Subsequent Disbursement, the conditions set forth in Section 2.2(c) have been satisfied and the terms set forth in Section 2.2(c) have been completely complied with;

(i) the payment by the Borrower of all fees required to be paid on such Disbursement Date pursuant to this Agreement and the other Loan Documents and all costs and expenses required to be paid on such Disbursement Date (including pursuant to Section 6.3) pursuant to this Agreement and the other Loan Documents, in the case of costs and expenses, to the extent invoiced at least two (2) Business Days prior to such date (which amounts, at the sole option of the Lenders, may be offset against the proceeds of such Subsequent Disbursement);

(j) in the case of the First Subsequent Disbursement, prior to such date the Initial Disbursement shall have been drawn in full by the Borrower in accordance with Section 2.2(a);

(k) in the case of the Second Subsequent Disbursement, the Borrower shall have obtained a Revolving Credit Facility and no less than $10,000,000 shall be available for drawing thereunder on and after such date (without giving effect to any repayment on such date with the proceeds of the Loans);

(l) in the case of the Second Subsequent Disbursement, prior to such date the First Subsequent Disbursement shall have been drawn in full by the Borrower in accordance with Section 2.2(b);

(m) the Common Stock shall continue to be listed on an Eligible Market; and

(n) the Lenders shall have received a certificate executed by an Authorized Officer of the Borrower, in form and substance reasonably satisfactory to the Required Lenders, certifying that the conditions in this Section 4.3 have been satisfied in all respects.

**Section 4.4 Conditions to the Amendment Date.** The effectiveness of this Agreement (as amended and restated on the Amendment Date) and the Disbursement Commitments (which, for the avoidance of doubt, are not required to be funded at any time) made by the Specified Lenders on the Amendment Date shall each be subject to the fulfillment and satisfaction (or waiver by the Required Lenders) of all of the following conditions:

(a) the Lenders shall have received executed counterparts of this Agreement (as amended and restated on the Amendment Date);

(b) in the reasonable judgment of the Required Lenders, since December 31, 2017, there has been no Material Adverse Effect or any event or circumstance which would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect;

(c) the Required Lenders shall not have become aware of any adverse information, fact or circumstance with respect to the Loan Parties that is inconsistent with the information available to the Required Lenders on the date of the Commitment Letter in any material respect;

(d) no Default or Event of Default shall have occurred, or would be reasonably expected to occur, or would result from the execution of this Agreement;

(e) no Default or Event of Default (each as defined in the Senior Facility Agreement) shall have occurred, or would be reasonably expected to occur, or would result the execution of this Agreement;

(f) each representation and warranty by any Loan Party or any of its Subsidiaries contained in this Agreement or in any other Loan Document shall be true, correct and complete in all material respects (without duplication of any materiality or other qualifier contained therein) as of such date and time, except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representations and warranties shall have been true, correct and complete in all material respects (without duplication of any materiality or other qualifier contained therein) as of such earlier date);

(g) the Lenders shall have received a duly executed copy of the Senior Facility Amendment; and

(h) the Lenders shall have received a certificate executed by an Authorized Officer of the Borrower, in form and substance reasonably satisfactory to the Required Lenders, certifying that the conditions in this Section 4.4 have been satisfied in all respects.

**Section 4.5 Determination by Required Lenders.** For the avoidance of doubt, a determination by the Required Lenders that any of the conditions precedent set forth in Sections 4.1, 4.2, 4.3 or 4.4 have been met, or any decision by the Required Lenders to waive any such condition, shall be binding upon all of the Lenders.

## ARTICLE 5

## PARTICULAR COVENANTS AND EVENTS OF DEFAULT

Prior to the date that the conditions to the Initial Disbursement set forth in Section 4.2 have been satisfied, to the extent that any of the provisions of this Article 5 conflicts with the Senior Facility Agreement, the

Organizational Documents or otherwise requires satisfaction of the Approval Conditions, such provision shall not be in effect until the conditions to the Initial Disbursement set forth in Section 4.2 have been satisfied.

**Section 5.1 Affirmative Covenants.**

(a) The Loan Parties shall and shall cause their Subsidiaries to (i) preserve and maintain in full force and effect its organizational existence and good standing under the Applicable Laws of its jurisdiction of incorporation, organization or formation, as applicable, and (ii) preserve and maintain all qualifications to do business in each other jurisdiction not covered by clause (i) above in which the failure to be so qualified would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(b) The Loan Parties shall, and shall cause their Subsidiaries to, (i) comply in all material respects with all Applicable Laws, except where the necessity of compliance therewith is contested in good faith by appropriate proceedings, and (ii) maintain in effect and enforce policies and procedures designed to ensure compliance by the Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(c) The Loan Parties shall, and shall cause their Subsidiaries to, obtain, make and keep in full force and effect all licenses, certificates, approvals, registrations, clearances, Authorizations and permits required to conduct their businesses, except where the failure to make and keep such licenses, certificates, approvals, registrations, clearances, authorizations and permits in full force and effect could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(d) Each Loan Party shall, except as otherwise permitted by this Agreement, maintain, and shall cause each of its Subsidiaries to maintain, and preserve all its assets and property which is used or useful in its business in good working order and condition, ordinary wear and tear excepted and shall make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(e) The Loan Parties shall, and shall cause each of their Subsidiaries to, maintain with financially sound and reputable insurance companies insurance with respect to their assets, properties and business, against such hazards and liabilities, of such types and in such amounts, as is customarily maintained by companies in the same or similar businesses similarly situated. A true and complete listing of such insurance, including issuers, coverages and deductibles, shall be provided to the Lenders promptly following any Lender's request.

(f) Each Loan Party shall, and shall cause each of its Subsidiaries to, pay, discharge and perform as the same shall become due and payable or required to be performed all Tax liabilities, assessments and governmental charges or levies upon it or its property, unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the enforcement of any Lien and for which adequate reserves in accordance with GAAP are being maintained by such Person.

(g) The Loan Parties shall promptly (and, in any event, within (y) with respect to clause (A) below, two (2) Business Days and (z) with respect to clause (B) below, ten (10) days) notify each Lender of the occurrence of (A) any Default or Event of Default and (B) any claims arising after the Agreement Date (or before the Agreement Date to the extent any action related thereto arises after the Agreement Date) (other than in connection with the denial of plan claims in the ordinary course of business), litigation, arbitration, mediation or administrative or regulatory proceedings that are instituted or threatened against any Loan Party requesting injunctive relief or damages in excess of $550,000.

(h) If the Borrower is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, the Loan Parties will provide to each Lender quarterly financial statements for the Borrower and its Subsidiaries within 45 days after the end of each fiscal quarter of the Borrower, and an audited annual financial statements within 120 days after the end of each fiscal year of the Borrower prepared in accordance with GAAP with a report thereon by the Borrower's independent certified public accountants, which accountants shall be reasonably acceptable to the Required Lenders. Any such report and any report of the Borrower's independent certified public accountants on any consolidated financial statements included in any SEC Document filed during the

Reporting Period (as defined below) shall (i) contain an unqualified opinion (subject to the exception set forth below in clause (ii) of this sentence), stating that such consolidated financial statements present fairly in all material respects the financial position and condition and results of operations of the Borrower and its Subsidiaries as of the dates and for the periods and have been prepared in conformity with GAAP applied on a basis consistent with prior years, and (ii) not include any explanatory paragraph expressing substantial doubt as to going concern status (other than any such paragraph (x) included in the Borrower's annual report on Form 10-K for the years ended December 31, 2017 or December 31, 2018 or (y) arising from the impending maturity of the Loans, the Loans (as defined in the Senior Facility Agreement) or the Revolving Credit Facility, in each case of this clause (y), solely in the case of the audit delivered with respect to the fiscal year immediately prior to the fiscal year during which the applicable maturity is scheduled). From the Agreement Date until the later of (i) the first date on which no Preferred Stock remains outstanding and (ii) the first date on which none of the Lenders owns any Securities (the period ending on such latest date, the "Reporting Period"), the Borrower and its Subsidiaries shall timely (without giving effect to any extensions pursuant to Rule 12b-25 of the Exchange Act) file all reports required to be filed with the SEC pursuant to the Exchange Act, and the Borrower and its Subsidiaries shall not terminate the registration of the Common Stock under the Exchange Act or otherwise terminate its status as an issuer required to file reports under the Exchange Act, even if the securities laws would otherwise permit any such termination. The Borrower hereby agrees that, during the Reporting Period, the Borrower shall send to each Lender copies of (i) any notices and other information made available or given to the holders of the Stock of the Borrower generally, contemporaneously with the Borrower's making available or giving such notices and other information to such holders of Stock and (ii) all other documents, reports, financial data and other information not available on EDGAR that does not contain any material non-public information of the Borrower that any Lender may reasonably request. At the same time as (A) to the extent the Borrower is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, the quarterly and annual financial statements are delivered or otherwise provided to each Lender pursuant to the first sentence of this Section 5.1(h) or (B) to the extent the Borrower is required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, any Form 10-Q or Form 10-K is filed with the SEC pursuant to the Exchange Act, in each case, a Compliance Certificate shall be delivered by the Borrower to each Lender; provided that, with respect to clause (B) only, solely to the extent any earnings report for the same period is publicly reported or is filed with the SEC prior to the time when any Form 10-Q or Form 10-K containing the applicable quarterly or annual financial statements is filed with the SEC and to the extent the earnings set forth in any such earnings report would result in a financial covenant default under Section 5.1(v), the Compliance Certificate shall instead be delivered by the Borrower to each Lender on the same day as such earnings report is publicly reported or is filed with the SEC. Upon the reasonable request of any Lender, the Loan Parties and their Subsidiaries shall promptly deliver to such Lender such information as such Lender may from time to time reasonably request. On the same day that the same are sent, the Loan Parties and their Subsidiaries shall deliver to the Lenders copies of all financial statements, reports, documents and other information which any Loan Party or any of its Subsidiaries sends to its holders of Stock.

(i) Each Loan Party shall, and shall cause each of its Subsidiaries to, with respect to each owned, leased or controlled property, during normal business hours and upon reasonable advance notice (unless an Event of Default shall have occurred and be continuing, in which event no notice shall be required and the Lenders and their representatives shall have access at any and all times during the continuance thereof): (a) provide access to such property to the Lenders and their representatives, as frequently as any Lender determines to be appropriate; and (b) permit the Lenders to conduct field examinations, appraise, inspect, and make extracts and copies (or take originals if reasonably necessary) from all of such Loan Party's and its Subsidiaries' books and records, and evaluate and conduct appraisals and evaluations in any manner and through any medium that the Lenders considers advisable, in each instance, at the Loan Parties' sole expense; provided the Loan Parties shall only be obligated to reimburse the Lenders for the expenses of one such appraisal, evaluation and inspection of the Lenders per calendar year unless an Event of Default has occurred and is continuing, in which case, the Loan Parties shall reimburse the Lenders for the expenses of all such appraisals, evaluations and inspections conducted by the Lenders and their representatives.

(j) Each Loan Party shall ensure that all written information, exhibits and reports furnished to any Lender, when taken as a whole, do not and will not, and that each SEC Document filed during the Reporting Period does not, contain any untrue statement of a material fact and do not and will not (or does not, as applicable) omit to state any material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made, and will promptly disclose to the Lenders and correct any defect or error that may be discovered therein or in any Loan Document or in the execution, acknowledgement or recordation thereof.

(k) [Reserved]

(l) Promptly (but in any event within ten (10) days of such request) upon request by the Required Lenders, the Loan Parties shall (and, subject to the limitations set forth herein and in the other Loan Documents, shall cause each of their Subsidiaries to) take such additional actions and execute such documents as the Required Lenders may reasonably require from time to time in order (i) to carry out more effectively the purposes of this Agreement or any other Loan Document, (ii) to maintain the validity and effectiveness of any of the Loan Documents, and (iii) to better assure, grant, preserve, protect and confirm to the Lenders the rights granted or now or hereafter intended to be granted to the Lenders under any Loan Document. Without limiting the generality of the foregoing, the Loan Parties shall cause each of their Subsidiaries (other than Excluded Foreign Subsidiaries) promptly after (and in any event within ten (10) days of) the formation or acquisition thereof, to guaranty the Obligations and to take such other actions reasonably requested by the Required Lenders with respect to making any such Subsidiary a Loan Party under the Loan Documents. The Loan Parties shall deliver, or cause to be delivered, promptly after (and in any event within ten (10) days of) such formation or acquisition of such Loan Party or Subsidiary, to the Lenders, appropriate resolutions, secretary certificates, certified Organizational Documents and, if requested by the Required Lenders, legal opinions relating to the matters described in this Section 5.1(l) (which opinions shall be in form and substance reasonably acceptable to the Required Lenders and, to the extent applicable, substantially similar to the opinions delivered on the Agreement Date), in each instance with respect to each Loan Party and each Subsidiary of a Loan Party (other than any Excluded Foreign Subsidiary) formed or acquired after the Agreement Date.

(m) Each Loan Party shall, and shall cause each of its Subsidiaries to, comply with, and maintain its Real Estate, whether owned, leased, subleased or otherwise operated or occupied, in compliance with all applicable Environmental Laws or as is required by orders and directives of any Governmental Authority except where the failure to comply could not reasonably be expected to, individually or in the aggregate, result in a Material Environmental Liability.

(n) Promptly upon any Authorized Officer becoming aware that any of the following has occurred that could reasonably be expected to result in material liability to a Loan Party, the Borrower will provide written notice to the Lenders specifying the nature of such event, what action the Loan Party or any ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, if applicable, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto: (i) any ERISA Event, or (ii) a "prohibited transaction" as defined under Section 406 of ERISA or Section 4975 of the Code that is not exempt under ERISA Section 408 or Section 4975 of the Code, under any applicable regulations and published interpretations thereunder or under any applicable prohibited transaction, individual or class exemption issued by the Department of Labor, with respect to any Employee Benefit Plan.

(o) The Borrower shall, on or before the Initial Disbursement Date, take such action as the Borrower shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of any such action so taken to the Lenders on or prior to the Initial Disbursement Date. The Borrower shall make all filings and reports relating to the offer and sale of the Securities required under applicable securities or "Blue Sky" laws of the states of the United States following the Initial Disbursement Date.

(p) The Borrower shall take all actions necessary to cause the Common Stock to remain listed on an Eligible Market at all times during the Reporting Period. The Borrower shall not, and shall cause each of the Subsidiaries not to, take any action that would be reasonably expected to result in the delisting or suspension or

termination of trading of the Common Stock on the Principal Market. Notwithstanding the foregoing, nothing contained herein shall prohibit the Borrower from effecting a transaction in which all shares of Common Stock outstanding immediately prior to such transaction are converted into the right to receive consideration consisting of cash or property other than Common Stock; provided that the Borrower complies with its obligations under this Agreement and the other Loan Documents in connection therewith. The Loan Parties shall pay all fees, costs and expenses in connection with satisfying its obligations under this Section 5.1(p).

(q) [Reserved]

(r) [Reserved]

(s) The Borrower acknowledges and agrees that the Securities may be pledged by a holder thereof in connection with a bona fide margin agreement or other loan, financing or Indebtedness secured by the Securities. The pledge of Securities shall not be deemed to be a Transfer, sale or assignment of the Securities under the Loan Documents, and no such holder effecting any such pledge of Securities shall be required to provide any Loan Party or any of its Subsidiaries with any notice thereof or otherwise make any delivery to any Loan Party pursuant to any Loan Document. The Borrower hereby agrees to execute and deliver such documentation as a pledgee of the Securities may reasonably request in connection with a pledge of the Securities to such pledgee by a holder of Securities.

(t) Without limiting the generality of the foregoing, each Loan Party and its Subsidiaries shall comply in all material respects with all Public Health Laws and their implementation by any applicable Governmental Authority and all lawful requests of any Governmental Authority applicable to its Products. All Products developed, manufactured, tested, distributed or marketed by or on behalf of any Loan Party or any of its Subsidiaries that are subject to the jurisdiction of the FDA or comparable Governmental Authority shall be developed, tested, manufactured, distributed and marketed in material compliance with the Public Health Laws and each other Applicable Law, including product approval or premarket notification, good manufacturing practices, labeling, advertising, record-keeping, and adverse event reporting, and shall be tested, investigated, distributed, marketed, and sold in material compliance with Public Health Laws and all other Applicable Laws.

(u) The Loan Parties shall promptly (and, in any event, within two Business Days) (i) notify each Lender of the occurrence of any breaches, defaults or events of default under, and any amendments, restatements, supplements, changes, consents, waivers, forbearances, joinders or other modifications to the Senior Facility Agreement, the Revolving Credit Facility Documents or the Additional Permitted Debt Documents or the entering into after the Agreement Date of any Revolving Credit Facility Documents or Additional Permitted Debt Documents and provide copies of any documentation related to any of the foregoing, in each case, except for any of the foregoing expressly contemplated by this Agreement and (ii) deliver true, correct and complete copies of any material notices, documents, instruments, agreements or other material written information provided or received pursuant to, or in connection with, the Senior Facility Agreement, the Revolving Credit Facility or any Additional Permitted Debt (including those delivered to any Loan Party or any of its Affiliates by any lender (or any agent of any lender) under the Senior Facility Agreement, the Revolving Credit Facility or any Additional Permitted Debt).

(v) Financial Covenants.

(i) Minimum Cash Balance. The Loan Parties covenant and agree that the Borrower and its Subsidiaries shall maintain, on a consolidated basis, a minimum aggregate amount of unrestricted cash in deposit accounts (and, solely with respect to unrestricted cash in an amount not to exceed $5,500,000, deposit accounts held by Foreign Subsidiaries that are not subject to Liens of any Person other than Liens of the type set forth in clause (a) or clause (f) of the definition of "Permitted Liens") equal to no less than (A) at all times on or prior to March 31, 2020, $36,000,000, and (B) at all times on and after April 1, 2020, $22,500,000.

(ii) Minimum Net Sales. The Loan Parties shall maintain LTM Net Sales of at least (A) $57,375,000 for the fiscal year ending December 31, 2019 and (B) $76,500,000 for the fiscal year ending December 31, 2020 and each fiscal year ending thereafter.

(w) [Reserved]

(x) The Borrower agrees to use its reasonable best efforts to call and hold as promptly as reasonably practicable following the Agreement Date (and in any event prior to the earlier of (x) twenty (20) days after the mailing of the definitive proxy and (y) February 20, 2019) a meeting of the stockholders of the Borrower (the "Stockholder Meeting") to obtain (i) the approval of the holders of a majority of the outstanding Common Stock, in accordance with Applicable Law and the bylaws of the Borrower, of a reverse stock split (the "Reverse Stock Split") and/or an increase in the number of authorized shares of Preferred Stock or Common Stock or some combination of the foregoing, as set forth in the applicable Certificate Amendment(s), which permit the Full Conversion Share Amount and (ii) the approval of the holders of a majority of the shares of Common Stock present and entitled to vote, in accordance with Applicable Law and the bylaws of the Borrower, of the issuance of Conversion Shares upon conversion of the Loans (and the issuance of Common Stock into which Conversion Shares are convertible) for purposes of applicable NASDAQ listing rules (collectively, the "Stockholder Approval"); provided that, to the extent the Stockholder Approval is not obtained at the first meeting date of the Stockholder Meeting for a reason that the Borrower reasonably determines to be the result of recommendations of Institutional Shareholder Services ("ISS") and/or a similar firm, the Borrower and the Required Lenders may mutually agree to modify clause (i) of the Stockholder Approval requirement above in a manner designed to obtain a positive recommendation from ISS and/or any similar firm. As promptly as reasonably practicable following the Agreement Date (and in any event within fifteen (15) calendar days after the Agreement Date), the Borrower will prepare and file with the SEC a revised preliminary proxy statement. The definitive form of such revised proxy statement shall be sent to the Borrower's stockholders in connection with the Stockholder Meeting (the "Proxy Statement"). The Proxy Statement shall include the recommendation of the Board of Directors that the stockholders vote in favor of the Stockholder Approval. The Borrower shall use commercially reasonable efforts to solicit from the stockholders proxies in favor of the Stockholder Approval and to obtain the Stockholder Approval. The Lenders agree to furnish to the Borrower all information concerning the Lenders and their respective Affiliates as the Borrower may reasonably request in connection with any stockholder meeting at which the Stockholder Approval is sought. The Borrower shall respond reasonably promptly to any comments received from the SEC with respect to any Proxy Statement. The Borrower shall provide to the Lenders, as promptly as reasonably practicable after receipt thereof, any written comments from the SEC or any written request from the SEC or its staff for amendments or supplements to the Proxy Statement or any preliminary proxy statement as it relates to the Stockholder Approval and shall provide the Lenders with copies of all correspondence between the Borrower, on the one hand, and the SEC and its staff, on the other hand, relating to the Proxy Statement as it relates to the Stockholder Approval. Notwithstanding anything to the contrary stated above, prior to filing or mailing the Proxy Statement (or, in each case, any amendment or supplement thereto) or responding to any comments of the SEC or its staff with respect thereto as it relates to the Stockholder Approval, the Borrower shall provide the Lenders with a reasonable opportunity to review and comment on such document or response. In the event that, due to the application of the Ceiling Rate pursuant to Section 2.11, any additional stockholder approval (the "Subsequent Stockholder Approval") of the Borrower is necessary in order to convert the Loans into Conversion Shares or the Conversion Shares into Common Stock (assuming all such conversions are settled delivering solely such shares and, except in connection with a Fundamental Change for which a definitive agreement has been entered into prior to such date, assuming no Additional Shares will be necessary to be issued), upon a receipt of the applicable notice of conversion, the Borrower shall use its commercially reasonable efforts to call and hold as promptly as reasonably practicable following such date (and in any event within forty five (45) days of such date (the "Subsequent Stockholder Approval Termination Date")) a meeting of the stockholders of the Borrower to obtain the approval of the holders of a majority of the outstanding Common Stock (or the requisite approval as of such time), in accordance with Applicable Law and the bylaws of the Borrower, of an amendment to the Certificate of Incorporation of the Borrower to increase the authorized Common Stock or Preferred Stock, as applicable, to an amount, or such other action, as would allow for the full conversion of Conversion Shares or Preferred Stock (assuming all such conversions are settled delivering solely such shares and, except in connection with a Fundamental Change for which a definitive agreement has been entered into prior to such date, assuming no Additional Shares will be necessary to be issued), as applicable, without application of the Ceiling Rate (the "Full Conversion Share Amount"). With respect to obtaining the

Subsequent Stockholder Approval, the Borrower shall follow the process set forth above required for the Stockholder Meeting, *mutatis mutandis*.

(y) Prior to the Initial Disbursement Date and subject to receipt of the Stockholder Approval, the Borrower shall file in the office of the Secretary of State of the State of Delaware the Certificate Amendment and the Certificate of Designations.

(z) Prior to the Initial Disbursement Date, the Borrower shall promptly apply to cause the Common Stock into which the Conversion Shares are convertible (based on the then applicable Conversion Rate) to be approved for listing on an Eligible Market, subject to official notice of issuance and subject to satisfaction of the Approval Conditions. Upon any increase in the Conversion Rate (or increase in the conversion rate applicable to the underlying Preferred Stock), the Borrower shall promptly apply to cause any additional number of shares of Common Stock into which the Conversion Shares are convertible (based on the then applicable Conversion Rate (or the conversion rate applicable to the underlying Preferred Stock)) to be approved for listing on an Eligible Market, subject to official notice of issuance and subject to satisfaction of the Approval Conditions.

(aa) From and after the Agreement Date until ninety (90) days after earlier to occur of (x) the Second Subsequent Disbursement and (y) the Remaining Second Subsequent Disbursement Commitment Termination Date, without the prior written consent of the Required Lenders, the Borrower will not, (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise Transfer or Dispose of, directly or indirectly, or file with the SEC a registration statement under the Securities Act relating to, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock, or publicly disclose the intention to make any offer, sale, pledge, Disposition or filing, other than grants of options or restricted stock units pursuant to the stock-based compensation plans of the Borrower and its Subsidiaries (the "Borrower Stock Plans") or (ii) enter into any swap or other agreement that Transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, in each case other than (A) the Securities, the Conversion Shares (or the Common Stock into which the Conversion Shares are convertible) hereunder, (B) any transactions contemplated by the Senior Facility Documents (including the convertible notes contemplated thereby (and the shares of Common Stock issuable upon conversion thereof)) or pursuant to the Borrower's obligations under the Warrants (as may be amended from time to time) or under any registration rights agreement in existence as of the Agreement Date (as may be amended from time to time), or (C) any shares of Common Stock of the Borrower issued upon the exercise of options or settlement of restricted stock units granted under the Borrower Stock Plans or upon the exercise of warrants issued prior to the Initial Disbursement, and in each case the filing of a registration statement with respect to any of the foregoing in clause (A), (B) or (C). This Section 5.1(aa) shall not restrict or prohibit negotiations or discussions with respect to, or the entering into any agreement for, or the filing of a registration statement with respect to, a merger or consolidation or any other combination of the Borrower with, or the acquisition of the Borrower by, another Person (including by tender or exchange offer), any sale or other transfer of all or substantially all of the consolidated assets of the Borrower or any other Acquisition or similar transaction.

(bb) Following the issuance of any shares of Common Stock upon conversion of the Conversion Shares, and subject to applicable SEC rules and regulations, the Lenders and any permitted assignee thereof (other than the Specified Lenders) shall be entitled to registration rights in respect of the Common Stock into which the Conversion Shares are convertible acquired by the Lenders or such assignee, as applicable, on the same terms and pursuant to and in accordance with the Registration Rights Agreement, provided that such shares of Common Stock constitute Registrable Securities (as defined in the Registration Rights Agreement) pursuant to the second sentence of the definition thereof. The Borrower hereby acknowledges and agrees that, provided that such shares of Common Stock constitute Registrable Securities, the Registration Rights Agreement shall apply with respect to the Common Stock into which the Conversion Shares are convertible held by the Lenders or such assignee (other than the Specified Lenders), as applicable (and provided that any assignee executes a joinder to the Registration Rights Agreement), and such Common Stock shall constitute Registrable Securities (as defined

in the Registration Rights Agreement) under the Registration Rights Agreement (for so long as they satisfy such definition of Registrable Securities pursuant to the second sentence of the definition thereof), *mutatis mutandis*.

(cc) For the avoidance of doubt, at any time following the issuance of any shares of Common Stock upon conversion of the Conversion Shares (or Loans, as applicable), and subject to applicable SEC rules and regulations, any Lender may request that the Borrower file a new shelf registration statement covering the re-sale of the Common Stock into which the Conversion Shares (or Loans, as applicable) are convertible in accordance with the Registration Rights Agreement, provided that such shares of Common Stock constitute Registrable Securities (as defined in the Registration Rights Agreement).

**Section 5.2 Negative Covenants.**

(a) No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, merge with, consolidate with or into, dissolve or liquidate into or convey, Transfers, lease or otherwise Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except (1) a Subsidiary that is not a Loan Party may merge into any Loan Party or any Subsidiary of a Loan Party, (2) a Subsidiary that is a Loan Party may merge into any other Loan Party (provided that, to the extent the Borrower is part of such transaction, unless such transaction is a Reorganization Event that complies with the requirements of Section 2.12, the Borrower must be the surviving Person), (3) any Subsidiary of the Borrower (other than, for the avoidance of doubt, the Borrower) may liquidate or dissolve if (i) the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and it is not materially disadvantageous to the Lenders and (ii) to the extent such Subsidiary is a Guarantor, any such assets or business held by such subject Subsidiary shall be transferred to, or otherwise owned or conducted by, a Loan Party after giving effect to such liquidation or dissolution, (4) Permitted Acquisitions (provided that, to the extent any such transaction involves (y) a Loan Party, the Loan Party is the surviving Person or (z) the Borrower, unless such transaction is a Reorganization Event that complies with the requirements of Section 2.12, the Borrower is the surviving Person), (5) the Transactions and the "Transactions" as defined in the Senior Facility Agreement, and (6) a Reorganization Event that complies with the requirements of Section 2.12. No Loan Party shall establish or form any Subsidiary, unless such Subsidiary complies with Section 5.1(l) and such Subsidiary executes and/or delivers all other documents, agreements and instruments reasonably requested by the Required Lenders to make such Subsidiary a Guarantor under the Loan Documents.

(b) No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, (i) enter into any partnership, joint venture, syndicate, pool, profit-sharing or royalty agreement or other combination, or engage in any transaction with any holder of Stock of the Borrower, any Affiliate of the Borrower or any equity holder of such Affiliate, whereby its income or profits are, or might be, shared with another Person other than a wholly owned Subsidiary, (ii) enter into any management contract or similar arrangement whereby all or a substantial part of its business is managed by another Person, or (iii) make any Restricted Payments, other than (v) cash payments in lieu of fractional shares in connection with the exercise of warrants or other securities convertible into or exchangeable for Common Stock or in connection with a reverse share split of the Common Stock, (w) cash payments required to be paid upon conversion of Loans or Preferred Stock as a result of the application of the Ceiling Rate or a similar limitation in the Certificate of Designations or otherwise made to the Lender under the Loan Documents or the Certificate of Designations or cash payments required to be paid upon conversion of the convertible loans or notes under the Senior Facility Documents, (x) when no Default or Event of Default has occurred and is continuing, the repurchase of the Borrower's Stock from current or former officers, employees or directors of the Borrower and its Subsidiaries (or their permitted transferees or estates) upon their death, disability or termination of employment in an aggregate amount not to exceed $275,000 in any fiscal year of the Borrower, (y) Restricted Payments to Loan Parties and (z) Restricted Payments consisting of Tax Distributions.

(c) No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, (i) make, create, incur, assume or suffer to exist any Lien upon or with respect to any of its assets or property, except Permitted Liens, or (ii) Dispose of (whether in one or a series of transactions) any assets or property (including

the Stock of any Subsidiary of any Loan Party, whether in a public or private offering or otherwise, and accounts and notes receivable, with or without recourse), except Permitted Dispositions.

(d) No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume, guarantee, permit to exist or be liable with respect to any Indebtedness, other than Permitted Indebtedness.

(e) No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, (i) purchase or acquire any Stock, or any obligations or other securities of, or any interest in, any other Person, including the establishment or creation of a Subsidiary, or (ii) make any Acquisitions, or any other acquisition of any of the assets of another Person, or of any business or division of any Person, including by way of merger, consolidation, other combination or otherwise, or (iii) make, purchase or acquire any advance, loan, extension of credit (other than trade payables in the ordinary course of business) or capital contribution to or any other investment in, any Person including the Borrower, any Affiliate of the Borrower or any Subsidiary of the Borrower (the items described in clauses (i), (ii) and (iii) are referred to as "Investments"), except for Permitted Investments.

(f) No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, issue, sell or otherwise Transfer or provide any interest in, any Stock of any Subsidiary of the Borrower.

(g) No Loan Party shall, and no Loan Party shall suffer or permit any of its Subsidiaries to, directly or indirectly, (w) enter into any transaction with any Affiliate of a Loan Party or of any Subsidiary of a Loan Party (other than, in each case, transactions between or among Loan Parties; provided that, if the Borrower is a party to such transaction, such transaction shall be on an arm's length basis or the terms of such transaction shall be more favorable to the Borrower than to such other Loan Party party to such transaction) or any officer, employee or director (or similar official or governing person) of any of the foregoing, (x) pay any management, consulting or similar fees to any of the foregoing, (y) pay or reimburse any of the foregoing for any costs, expenses and similar items or (z) pay any indemnification payments to any such Person, except (1) with respect to transactions between or among the Borrower and its Subsidiaries as expressly permitted by this Agreement and transactions with Affiliates that are Lenders pursuant to the Loan Documents and the Certificate of Designations and transactions with VHP, VIP and their respective Affiliates (to the extent they are at such time Affiliates of the Borrower or its Subsidiaries), (2) in the ordinary course of business and pursuant to the reasonable requirements of the business of such Loan Party or such Subsidiary upon fair and reasonable terms no less favorable to such Loan Party or such Subsidiary than would be obtained in a comparable arm's length transaction with a Person not an Affiliate of the Borrower or such Subsidiary and which are disclosed in advance in writing to the Lenders; provided, further, that in no event shall a Loan Party or any Subsidiary of a Loan Party perform or provide any management, consulting, administrative or similar services to or for any Person other than another Loan Party, a Subsidiary of a Loan Party or a customer who is not an Affiliate in the ordinary course of business, (3) payment of directors' fees and reimbursement of actual out-of-pocket expenses incurred in connection with attending board of director meetings not to exceed in the aggregate, with respect to all such items, $660,000 in any fiscal year of the Borrower, and (4) customary and reasonable compensation arrangements for officers and other employees of the Borrower and its Subsidiaries entered into in the ordinary course of business.

(h) No ERISA Affiliate shall cause or suffer to exist, directly or indirectly, (i) any event that could reasonably be expected to result in the imposition of a Lien on any asset of a Loan Party or a Subsidiary of a Loan Party with respect to any Title IV Plan or Multiemployer Plan, or (ii) any other ERISA Event, which other ERISA Event could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(i) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, engage in any line of business substantially different from those lines of business carried on by it on the Agreement Date and any business reasonably complementary or ancillary thereto.

(j) Except as expressly permitted under Section 5.2(a) and except as contemplated by the Approval Conditions, no Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, (i) amend the Revolving Credit Facility Documents, the Additional Permitted Debt Documents, any of its Organizational Documents or any agreements or documents evidencing or contemplating any Permitted Acquisition, in each

case, in any respect materially adverse to any Lender, or (ii) amend the Senior Facility Documents (other than pursuant to the Senior Facility Amendment) in a manner prohibited by the Senior Facility Subordination Agreement.

(k) No Loan Party shall, and no Loan Party shall suffer or permit any of its Subsidiaries to, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP, (ii) change the fiscal year or method for determining the fiscal quarters of any Loan Party or of any Subsidiary of any Loan Party, (iii) change its name as it appears in official filings in its jurisdiction of organization or formation, (iv) change its jurisdiction of organization or formation, (v) change its entity identity, (vi) change its organizational identification number (if any), or (vii) change the address of its chief executive office or principal place of business, in the case of clauses (iii), (iv), (v), (vi) and (vii), without at least ten (10) days' prior written notice to the Lenders (or such shorter period as may be agreed by the Required Lenders in their sole discretion).

(l) No Loan Party shall, nor shall it permit any of its Affiliates to, directly or indirectly, purchase, redeem or defease earlier than scheduled or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (i) the Obligations, (ii) Indebtedness under the Revolving Credit Facility and Indebtedness under the Senior Facility Agreement and (iii) Indebtedness secured by a Permitted Lien if the sole asset securing such Indebtedness has been sold or otherwise Disposed of as a Permitted Disposition.

(m) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any Loan Party or Subsidiary to pay dividends or make any other distribution on any of such Loan Party's or Subsidiary's Stock or to pay fees, including management fees, or make other payments and distributions to the Borrower or any other Loan Party, except for those in the Loan Documents, the Senior Facility Documents, the Revolving Credit Facility Documents or the Additional Permitted Debt Documents. No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, enter into, assume or become subject to any contractual obligation prohibiting or otherwise restricting the Disposition of any assets of any Loan Party or any of its Subsidiaries, except, in each case, (i) those in the Loan Documents, (ii) those in the Senior Facility Documents, (iii) in connection with any document or instrument governing Liens permitted pursuant to clauses (k) and (l) of the definition of "Permitted Liens;" provided that any such restriction contained therein relates only to the asset or assets subject to such permitted Liens, (iv) those in the Revolving Credit Facility Documents, and (v) those in the Additional Permitted Debt Documents.

(n) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, fail to comply with the laws, regulations and executive orders referred to in Section 3.1(jj). No Loan Party or Subsidiary of a Loan Party, nor, to the knowledge of any Loan Party or any of its Subsidiaries, any director, officer, agent, employee or other Person acting on behalf of any Loan Party or any such Subsidiary, will request or use the proceeds of any Loan, directly or indirectly, (i) for any payments to any Person, including any government official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, or otherwise take any action, directly or indirectly, that would result in a violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Person on the SDN List or a government of a Sanctioned Country, to the extent such activities, business or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States or in a European Union member state, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto. Furthermore, the Loan Parties will not, directly or indirectly, use the proceeds of the transaction, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person participating in the transaction of any Sanctions.

(o) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, engage in a sale leaseback, synthetic lease or similar transaction involving any of its assets.

(p) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, cause or suffer to exist any Release of any Hazardous Material at, to or from any Real Estate that would violate or form the basis of Liability under any Environmental Law, other than such violations or liabilities that could not reasonably be expected, individually or in the aggregate, to result in Material Environmental Liabilities.

(q) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, be an "investment company" or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act, or to otherwise be registered or required to be registered under, or be subject to the restrictions imposed by the Investment Company Act.

(r) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, (i) cause or suffer to exist the initiation by the FDA or any other Governmental Authority of any enforcement action against any Loan Party or any of its Subsidiaries, or any suppliers that causes such Loan Party or Subsidiary to recall, withdraw, remove or discontinue marketing any of its Products; (ii) cause or suffer to exist the issuance by the FDA or any other Governmental Authority of a warning letter to any Loan Party or any of its Subsidiaries with respect to any Regulatory Matter which could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; (iii) conduct a mandated or voluntary recall which could reasonably be expected to result in aggregate liability and expense to the Loan Parties and their Subsidiaries of $275,000 or more or that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; or (iv) enter into a settlement agreement with the FDA or any other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of $275,000 or more, or that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(s) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, directly or indirectly, allow any Subsidiary of any Loan Party that is not a Loan Party (including Rib-X Therapeutics Limited) to have (a) annual revenues or net income in excess of $110,000, (b) or assets or property (all taken together) with an aggregate fair market value in excess of $110,000 or (c) assets or property that are material to the operation of the business (or the business) of the Loan Parties.

(t) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, join any Subsidiary or any Affiliate of any Loan Party as a borrower, guarantor or obligor under the Senior Facility Documents, the Revolving Credit Facility Documents or the Additional Permitted Debt Documents, unless, in each case, the same Person becomes a Loan Party in the same capacity under the Loan Documents and such Person executes and delivers such agreements, instruments and documents reasonably requested by the Required Lenders to effectuate any of the foregoing.

(u) Notwithstanding anything to the contrary in this Agreement or in any other Loan Documents, no Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, create, incur or suffer to exist any Indebtedness which is subordinated or junior in right of payment to the Indebtedness under the Senior Facility Agreement, the Revolving Credit Facility or any Additional Permitted Debt unless, in each case, such Indebtedness is expressly subordinated or junior in right of payment to the Obligations on terms and conditions reasonably acceptable to the Required Lenders.

(v) No Loan Party shall, nor shall it permit any of its Subsidiaries to, use the proceeds of any Disbursement for any purpose other than as provided in Section 2.1 (and subject to any limitations set forth therein).

**Section 5.3 [Reserved].**

**Section 5.4 General Acceleration Provision upon Events of Default.** If one or more of the events specified in this Section 5.4 shall have happened or occurred and be continuing beyond any applicable cure period expressly provided in this Section 5.4 (each, an "Event of Default"), the Required Lenders may, by written notice to the Borrower (subject to Section 5.5(a), which, for the avoidance of doubt, shall not require any such notice and shall occur automatically), declare the principal of the Loans (together with any interest, other amounts and Obligations accrued or payable under this Agreement or the other Loan Documents (including any

Interim Exit Fees, Final Exit Fees or Prepayment Fees)) to be, and the same shall thereupon become, immediately due and payable and shall immediately terminate all of the remaining Disbursement Commitments, in each case, without any further notice and without any presentment, demand or protest of any kind, all of which are hereby expressly waived by the Borrower and the other Loan Parties, appoint a receiver for the Loan Parties and their Subsidiaries, and take any further action available at law or in equity or that are provided in the Loan Documents, including the sale or Transfer of the Loan, subject to the provisions of this Agreement, and other Obligations and all other rights acquired in connection with the Loan or the other Obligations or under the Loan Documents:

(a) The Borrower or any other Loan Party shall have failed (i) to pay when and as required to be paid herein or in any other Loan Document, any amount of principal of any Loan, including after maturity of the Loans, or (ii) to pay within three (3) Business Days after the same shall become due, interest on any Loan, any fee or any other amount or Obligation payable hereunder or pursuant to any other Loan Document.

(b) Any Loan Party shall have failed to comply with or observe (i) Section 2.1, Section 5.1(a), 5.1(b)(ii), 5.1(e), 5.1(f), 5.1(g), 5.1(h), 5.1(i), 5.1(l), 5.1(o), 5.1(p), 5.1(s), 5.1(t), 5.1(u), 5.1(v) or 5.1(aa) or Section 5.2 of this Agreement, or (ii) any covenant contained in any Loan Document (other than the covenants described in Section 5.4(a) or Section 5.4(b)(i) above), and such failure, with respect to this Section 5.4(b)(ii) only, shall not have been cured within thirty (30) days after the earlier to occur of (y) the date upon which any officer of any Loan Party or any of its Subsidiaries becomes aware of such failure and (z) the date upon which written notice thereof is given to any Loan Party or any of its Subsidiaries by any Lender; provided no such cure period in this Section 5.4(b)(ii) shall be provided or apply with respect to any provision or covenant that by its inherent nature cannot be cured upon being violated or breached.

(c) Any representation or warranty made by any Loan Party in any Loan Document shall have been incorrect, false or misleading in any material respect (except to the extent that such representation or warranty is qualified by reference to materiality or Material Adverse Effect, to which extent it shall have been incorrect, false or misleading in any respect) as of the date it was made.

(d) (i) Any Loan Party or any of its Subsidiaries shall generally be unable to pay its debts as such debts become due, or shall admit in writing its inability to pay its debts as they come due or shall make a general assignment for the benefit of creditors; (ii) any Loan Party or any of its Subsidiaries shall declare a moratorium on the payment of its debts; (iii) the commencement by any Loan Party or any of its Subsidiaries of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the commencement of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization, intervention or other similar relief under any Applicable Law, or the consent by it to the filing of any such petition or to the appointment of an intervenor, receiver, liquidator, assignee, trustee, sequestrator or other similar official of all or substantially all of its assets; (iv) the commencement against any Loan Party or any of its Subsidiaries of a proceeding in any court of competent jurisdiction under any bankruptcy or other Applicable Law (as now or hereafter in effect) seeking its liquidation, winding up, dissolution, reorganization, arrangement or adjustment, or the appointment of an intervenor, receiver, liquidator, assignee, trustee, sequestrator or other similar official, and any such proceeding shall continue undismissed, or any order, judgment or decree approving or ordering any of the foregoing shall continue unstayed or otherwise in effect, for a period of sixty (60) days; (v) the making by any Loan Party or any of its Subsidiaries of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debt generally as they become due; or (vi) any other event shall have occurred which under any Applicable Law would have an effect analogous to any of those events listed above in this subsection.

(e) One or more judgments, orders or decrees or settlements shall be rendered against any Loan Party or any Subsidiary of a Loan Party that exceeds by more than $275,000 any insurance coverage applicable thereto (to the extent the relevant insurer has been notified of such claim and has not denied coverage therefor) or one or more non-monetary judgments, orders or decrees or settlements shall be rendered against any Loan Party or any Subsidiary of a Loan Party that would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, and in either case (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order or decree or (ii) such judgment, order or decree shall not have been

vacated or discharged within ten (10) days of the entry thereof or there shall not be in effect (by reason of a pending appeal or otherwise) any stay of enforcement thereof.

(f) Any authorization of a Governmental Authority necessary for the execution, delivery or performance of any Loan Document or for the validity or enforceability of any of the Obligations under any Loan Document is not given, is withdrawn or ceases to remain in full force or effect.

(g) The validity of any Loan Document shall be contested by any Loan Party or any of its Subsidiaries, or any Applicable Law shall purport to render any material provision of any Loan Document invalid or unenforceable or shall purport to prevent or materially delay the performance or observance by any Loan Party or any of its Subsidiaries of the Obligations.

(h) Any Loan Party or any Subsidiary of any Loan Party (i) fails to make any payment in respect of the Senior Facility Agreement, the Revolving Credit Facility, any Additional Permitted Debt or any other Indebtedness (other than the Obligations) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than $275,000 (provided that no such threshold shall apply with respect to the Senior Facility Agreement, the Revolving Credit Facility or any Additional Permitted Debt) when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the documents relating thereto on the date of such failure, or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness, if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, such Indebtedness to be declared to be due and payable (or otherwise required immediately to be prepaid, redeemed, purchased or defeased) prior to its stated maturity (without regard to any subordination terms with respect thereto) or cash collateral in respect thereof to be demanded, and in each case of clauses (i) and (ii), in the case of the Senior Facility Agreement or the Revolving Credit Facility, such Indebtedness has been declared to be (or has otherwise become) due and payable (or otherwise required immediately to be prepaid, redeemed, purchased or defeased) as a result thereof.

(i) Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Loan Party or any Subsidiary of any Loan Party party thereto or any Loan Party or any Subsidiary of any Loan Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder.

(j) (i) The occurrence of any ERISA Event that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect or (ii) the imposition of a Lien on any asset of a Loan Party or a Subsidiary of a Loan Party with respect to any Title IV Plan or Multiemployer Plan.

(k) The Initial Disbursement Date does not occur on or prior to February 25, 2019.

**Section 5.5 Additional Remedies.**

(a) Automatic Acceleration on Dissolution or Bankruptcy. Notwithstanding any other provisions of this Agreement, if an Event of Default under Section 5.4(d) shall occur, the principal of the Loans (together with any interest, other amounts and Obligations accrued or payable under this Agreement or the other Loan Documents (including any Interim Exit Fees, Final Exit Fees or Prepayment Fees)) shall thereupon become immediately and automatically due and payable and any remaining Disbursement Commitments shall be immediately and automatically terminated, in each case, without any presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Borrower and the other Loan Parties.

(b) Power of Attorney. Notwithstanding anything to the contrary in this Agreement and the other Loan Documents, each Loan Party hereby irrevocably and unconditionally constitutes and appoints the Lenders and each of their respective Affiliates, attorneys, representatives or agents, with full power of substitution, as such Loan Party's true and lawful attorney-in-fact with full irrevocable and unconditional power and authority in the

place and stead of such Loan Party and in the name of such Loan Party or in its own name, for the purpose of carrying out the terms of this Agreement and the other Loan Documents, to take any appropriate steps or actions and to execute and deliver (and perform under on such Loan Party's behalf) any agreement, document or instrument that may be necessary or desirable to accomplish the purposes and/or effectuate the items and actions set forth in this Agreement and the other Loan Documents, including any actions that any such Loan Party fails to take that are required under such documents, agreements or instruments.

**Section 5.6 Recovery of Amounts Due.** If any Obligation or other amount payable hereunder or under any of the other Loan Documents is not paid as and when due, the Borrower and the other Loan Parties hereby authorize the Lenders to proceed, to the fullest extent permitted by Applicable Law, without prior notice, by right of set-off, banker's lien or counterclaim, against any moneys or other assets of the Borrower or any other Loan Party to the full extent of all Obligations or other amounts payable to the Lenders.

## ARTICLE 6

## MISCELLANEOUS

**Section 6.1 Notices.** Any notices or other information (including financial information) required or permitted to be given under the terms hereof shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile or by electronic mail and shall be effective five (5) days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile, or when received by electronic mail in each case addressed to a party as follows (or such other address, facsimile or electronic mail address provided by such party to such other parties in accordance herewith):

If to the Borrower or any other Loan Party:

Melinta Therapeutics, Inc.
300 George Street
Suite 301
New Haven, Connecticut 06511
E-mail: pmilligan@melinta.com
Attn: Peter Milligan

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

Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston St.
Boston, Massachusetts 02116
Facsimile No.: 617-305-4850; 213-621-5122; 312-827-9414
E-mail: graham.robinson@skadden.com; michelle.gasaway@skadden.com; darrin.halcomb@skadden.com
Attn: Graham Robinson; Michelle Gasaway; Darrin Halcomb

If to any Lender, the information for notices included on Schedule 2.4 or pursuant to any assignment agreement assigning any Obligations to any new Lender, with a copy to (which shall not be deemed to constitute notice):

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019-6099
Facsimile No.: 212-728-9507
E-mail: jgoldfarb@willkie.com
Attn: Jeffrey M. Goldfarb

**Section 6.2 Waiver of Notice.** Whenever any notice is required to be given to the Lenders or the Borrower under any of the Loan Documents, a waiver thereof in writing signed by the Person or Persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**Section 6.3 Cost and Expense Reimbursement.** The Loan Parties agree to pay on or prior to the Agreement Date and, within ten (10) Business Days after delivery of an invoice therefor, after the Agreement Date, (a) all costs and expenses of the Lenders of negotiation, preparation, execution, delivery, filing and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto, (b) all reasonable and documented out-of-pocket fees, costs and expenses of one legal counsel to the Lenders in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by the Borrower or any other Loan Party related thereto, (c) all costs and expenses, including fees, costs and expenses of legal counsel to the Lenders and all fees, costs and expenses of accountants, advisors and consultants and costs of settlement, incurred by the Lenders in enforcing any of the Loan Documents or any Obligations of, or in collecting any payments due from, any Loan Party hereunder or under the other Loan Documents (including in connection with the enforcement of the Loan Documents) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any proceeding or event of the type set forth in Section 5.4(d), and (d) all fees, costs and expenses (including costs and expenses of counsel) of any Lender incurred after the occurrence or during the continuance of an Event of Default. Without limiting any of the foregoing provisions of this Section 6.3, any action taken by any Loan Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of any Lender, shall be at the sole expense of such Loan Party, and no Lender shall be required under any Loan Document to reimburse any Loan Party or any Subsidiary of any Loan Party therefor. The obligations and provision contained in this Section 6.3 shall survive the termination of this Agreement and the repayment of the Obligations.

**Section 6.4 Governing Law; Venue; Jurisdiction; Service of Process; Waiver of Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Agreement, the Guaranty, the Notes and, unless otherwise expressly stated therein, the other Loan Documents shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed in such State. Each Party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and, unless otherwise expressly stated therein, the other Loan Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each Party hereby irrevocably submits to the exclusive jurisdiction of the Commercial Division, New York State Supreme Court and the federal courts, in each case, sitting in the City of New York, borough of Manhattan (and, in each case, the applicable state and federal appeals courts sitting in the City of New York or, if not available or applicable, the State of New York), for the adjudication of any dispute hereunder or under the other Loan Documents or in connection herewith or with the other Loan Documents or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, or that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding; provided that nothing in this Agreement or in any other Loan Document shall limit the right of any Lender to commence any suit, action or proceeding in federal, state or other court of any other jurisdiction to the extent such Lender determines that such suit, action or proceeding is necessary or appropriate to exercise its rights or remedies under this Agreement or any of the other Loan Documents. Each Party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such Party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to**

**serve process in any other manner permitted by law. THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE. EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO AGENT, REPRESENTATIVE OR OTHER PERSON AFFILIATED WITH OR RELATED TO ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS, AS APPLICABLE, BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 6.4.**

**Section 6.5 Successors and Assigns.** This Agreement shall bind and inure to the respective successors and permitted assigns of the Parties, except that no Loan Party may assign or otherwise Transfer all or any part of their rights or obligations (including the Obligations) under the Loan Documents other than as set forth in Section 2.12 without the prior written consent of the Required Lenders and the Specified Lenders, and any prohibited assignment by the Loan Parties shall be absolutely void *ab initio*, and any assignment or Transfer by a Lender of its rights or Obligations (including any Disbursement Commitment) under the Loan Documents shall be subject to this Section 6.5 and Section 2.14. Each assignment or Transfer described above shall be subject only to Section 2.14 and to the following conditions: (a) the parties to each assignment or Transfer shall execute and deliver to the Borrower an Assignment and Assumption (which shall include the name and address and e-mail address and contact of the Lender, as well as the name and address and e-mail address and contact of the transferee), (b) the assignee shall be an institutional accredited investor (as defined in Rule 501(a)(1), (2), (3), (7) or (8) under the Securities Act (provided that in the case of clause (8) all of the equity owners of such entity are accredited investors as defined in Rule 501(a)(1), (2), (3), (7) or (8) as modified by this parenthetical)) or a qualified institutional buyer (as defined in Rule 144A under the Securities Act) and shall not be a Competitor of the Borrower, and (c) the assignment or Transfer shall be effectuated in accordance with all applicable securities laws. Each assignment or Transfer of Conversion Shares shall be subject only to Section 2.14 and to the following conditions: (a) the assignee shall be an institutional accredited investor (as defined in Rule 501(a)(1), (2), (3), (7) or (8) under the Securities Act (provided that in the case of clause (8) all of the equity owners of such entity are accredited investors as defined in Rule 501(a)(1), (2), (3), (7) or (8) as modified by this parenthetical)) or a qualified institutional buyer (as defined in Rule 144A under the Securities Act) and shall not be a Competitor of the Borrower (unless otherwise consented to by the Borrower), and (b) the assignment or Transfer shall be effectuated in accordance with all applicable securities laws. Each assignment or Transfer of shares of Common Stock into which Conversion Shares are convertible shall be effectuated in accordance with Section 2.14 and all applicable securities laws.

Within one (1) Business Day of its receipt of a duly completed Assignment and Assumption executed by such Lender and an assignee or transferee, the Borrower shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register by the Borrower; provided that any such assignment shall be effective regardless of it is recorded in the Register by the Borrower if the Borrower does not timely record such assignment in the Register in accordance and compliance with the immediately preceding sentence. Once the assignment or Transfer has been recorded in the Register, the assignee or transferee shall (to the extent of the interests assigned or Transferred to such assignee or transferee) have all the rights and obligations of, and shall be deemed, a Lender with respect to the Loans and/or Disbursement Commitments (as applicable) hereunder or under the other Loan Documents. Notwithstanding anything to the contrary in any Loan Document, no Lender shall assign or Transfer, or provide any participation in, any of the Loans, other Obligations or Disbursement Commitments to any of the Loan Parties.

In addition to the other rights provided in this Section 6.5, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under the Loan Documents, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to any holder of, or trustee for the benefit of the holders of, such Lender's Indebtedness or equity securities.

With the prior written consent of each Lender in its sole discretion, at the request of the Borrower, any Person may join this Agreement as a new Lender subject to the following conditions: (a) such new Lender shall execute and deliver to the Borrower a joinder agreement (in form and substance reasonably satisfactory to the Borrower and the existing Lenders) pursuant to which such new Lender shall assume all rights and obligations of a Lender under this Agreement and the other Loan Documents, (b) such new Lender shall be an institutional accredited investor (as defined in Rule 501(a)(1), (2), (3), (7) or (8) under the Securities Act (provided that in the case of clause (8) all of the equity owners of such entity are accredited investors as defined in Rule 501(a)(1), (2), (3), (7) or (8) as modified by this parenthetical)) or a qualified institutional buyer (as defined in Rule 144A under the Securities Act) and shall not be a Competitor of the Borrower (unless otherwise consented to by the Borrower), (c) such joinder shall be effectuated in accordance with all applicable securities laws, and (d) other than with respect to any Specified Lender (and any successor or assign thereof), which has no Disbursement Commitment as of the Amendment Date, the Disbursement Commitment of such new Lender shall be in addition to the Disbursement Commitments of the existing Lenders in effect on the date of such joinder and the aggregate principal amount of the Disbursement Commitments shall be increased in a corresponding amount.

**Section 6.6 Entire Agreement; Amendments.**

(a) The Loan Documents contain the entire understanding of the Parties with respect to the matters covered thereby and supersede any and all other written and oral communications, negotiations, commitments and writings with respect thereto (other than those provisions of the Commitment Letter that expressly survive the termination of the Commitment Letter and the execution and delivery of this Agreement, including, for the avoidance of doubt, the "Right to Invest"). Notwithstanding the foregoing or anything else to the contrary (including in the Commitment Letter), the "Confidentiality" section of the Commitment Letter is superseded by the provision of this Agreement.

(b) Subject to the provisions of Section 6.6(c), no amendment, restatement, modification, supplement, change, termination or waiver of any provision of this Agreement or the other Loan Documents, and no consent to any departure by any Loan Party therefrom, shall in any event be effective without the written concurrence of the Borrower and the Required Lenders; provided that no such amendment, restatement, modification, change, termination, waiver or consent shall (y) without the consent of each Lender with Obligations directly and adversely affected thereby, do any of the following: (i) (A) reduce any Loan held by such Lender or (B) increase or add any Disbursement Commitment of such Lender or any other commitment of such Lender to lend or extend credit; (ii) postpone the Maturity Date or other scheduled final maturity date of any Loan, or postpone the date or reduce the amount of any scheduled payment (but not mandatory prepayment) of principal of any Loan; (iii) postpone the date on which any interest, premium or any fees are payable (other than default interest charged pursuant to Section 2.8(b)); (iv) decrease the interest rate borne by any Loan (other than any waiver of any increase in the interest rate applicable to any of the Loans pursuant to Section 2.8(b)) or the amount of any premium or fees payable hereunder; (v) amend this Section 6.6 or any provision of this Agreement or any other Loan Documents providing for consent or other action by all Lenders; (vi) amend, modify, change or waive the provisions contained in (A) Section 6.5 in a manner that would further restrict the rights of any Lender to assign all or any portion of its rights and obligations under this Agreement or (B) Section 6.6(c); (vii) change in any manner any provision of this Agreement that by its terms, expressly requires the approval or consent of all Lenders; (viii) release or contractually subordinate in right of payment (1) the guarantees of the Obligations provided by the Guarantors other than in accordance with the terms of the Loan Documents or (2) contractually subordinate in right of payment any of the Obligations; (ix) (A) change or have the effect of changing the priority or pro rata treatment of any payments (including voluntary and mandatory prepayments) or (B) advance the date fixed for, or increase, any scheduled installment of principal due to any of the Lenders under any Loan Document; or (x) adversely affect the contractual conversion rights of such Lender; it being agreed that all

Lenders shall be deemed to be directly and adversely affected by an amendment, waiver or supplement described in the preceding clauses (vi), (viii) or (ix) of this Section 6.6(b), or (z) in addition to the rights provided to the Specified Lenders in clause (y) directly above in this proviso to Section 6.6(b), unless in writing and signed by the Specified Lender, amend, restate, supplement, modify, waiver or consent to any provision of (i) Section 2.9(l), (ii) the definition of "4.985% Cap" or (iii) except for any provision that expressly provides for such disparate type of treatment that is in effect as of the Amendment Date, any Loan Document that would provide for disparate treatment of any Specified Lender vis-à-vis any other Lender.

(c) No consideration shall be offered or paid (in any form, whether cash, Stock, other property or otherwise) to any Loan Party to amend, restate, supplement, modify or change or consent to a waiver of (or a diversion from) any provision of any of the Loan Documents unless the same consideration also is offered to all of the Lenders under the Loan Documents. For clarification purposes, this provision constitutes a separate right granted to each Lender and is not intended for the Borrower or any other Loan Party to treat the Lenders as a class and shall not be construed in any way as the Lenders acting in concert or otherwise as a group with respect to the purchase, disposition or voting of securities or Stock or otherwise.

**Section 6.7 Severability.** If any provision of this Agreement or any of the other Loan Documents shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions hereof or thereof shall not in any way be affected or impaired thereby. The Parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

**Section 6.8 Counterparts.** This Agreement may be executed in several counterparts, and by each Party on separate counterparts, each of which and any photocopies, facsimile copies and other electronic methods of transmission thereof shall be deemed an original, but all of which together shall constitute one and the same agreement.

**Section 6.9 Survival.**

(a) In addition to Section 3.2, this Agreement and all agreements, representations and warranties and covenants made in the Loan Documents, and in any document, certificate or statement delivered pursuant thereto or in connection therewith shall be considered to have been relied upon by the other Parties and shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of the Loan (including any Subsequent Disbursement) hereunder or thereunder regardless of any investigation made by any such other Party or on its behalf, and shall continue in force until the later of (i)(A) all Obligations and other amounts payable under the Loan Documents shall have been fully paid in cash or through the issuance of Conversion Shares or a combination of cash and Conversion Shares in accordance with the provisions hereof and thereof and (B) any Disbursement Commitments have terminated and (ii) the end of the Reporting Period. the Lenders shall not be deemed to have waived, by reason of making the Loan (including any Subsequent Disbursement), any Event of Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that the Lenders may have had notice or knowledge of any such Event of Default or may have had notice or knowledge that such representation or warranty was false or misleading at the time the Disbursement was made.

(b) All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive (and shall continue to be made in accordance with the terms hereof and thereof after) the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lenders, regardless of any investigation made by the Lenders or on their behalf and notwithstanding that the Lenders may have had notice or knowledge of any Default or Event of Default at the time of any Loan, and shall continue in full force and effect (and shall continue to be made in accordance with the terms of the applicable Loan Documents) as long as any Loan or any other Obligation hereunder or under the other Loan Documents shall remain unpaid or unsatisfied.

(c) Notwithstanding anything to the contrary in the Loan Documents, the obligations of the Loan Parties under Sections 1.4 and 2.5 and any provisions that concern or are related to the Reporting Period and the obligations of the Loan Parties and the Lenders under this Article 6 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loan and the other Obligations, the termination of the Disbursement Commitments or the termination of this Agreement or any of the other Loan Documents or any provision hereof or thereof.

(d) For the avoidance of doubt and notwithstanding anything to the contrary in any Loan Documents, (a) all of the provisions (including the making of the representations and warranties) herein or in any other Loan Document that relate to the Preferred Stock or any securities laws shall survive the payment in full of the Loans and any other Obligations until such time that the Preferred Stock are fully and completely paid, performed, extinguished and terminated in accordance with their terms and the Reporting Period has ended, and (b) all representations and warranties with respect to the Registration Rights Agreement and the Preferred Stock shall continue to, and at all times, be made until (i) with respect to the Preferred Stock, such Preferred Stock are fully and completely paid, performed, extinguished and terminated in accordance with their terms and (ii) with respect to the Registration Rights Agreement, the Registration Rights Agreement is fully and completely terminated in accordance with its terms, if earlier, such time as all or any shares of Common Stock issued upon conversion of the Preferred Stock no longer constitute Registrable Securities, including, in each case, after all of the Loans and any other Obligations have been paid in full.

**Section 6.10 No Waiver.** Neither the failure of, nor any delay on the part of, any Party in exercising any right, power or privilege hereunder, or under any agreement, document or instrument mentioned herein or under any other Loan Document, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder, under any other Loan Document or under any other agreement, document or instrument mentioned herein, preclude other or further exercise thereof or the exercise of any other right, power or privilege; nor shall any waiver of any right, power, privilege or default hereunder, under any other Loan Document or under any agreement, document or instrument mentioned herein, constitute a waiver of any other right, power, privilege or default or constitute a waiver of any default of the same or of any other term or provision. No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to the Lenders upon any breach, Default or Event of Default under this Agreement, any other Loan Document or any other agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence therein; nor shall the action of the Lenders in respect of any such breach, Default or Event of Default or any acquiescence by it therein, affect or impair any right, power or remedy of the Lenders in respect of any other breach, Default or any Event of Default. All rights and remedies herein or in the other Loan Documents provided are cumulative and not exclusive of any rights or remedies otherwise provided by (or available at) law or in equity.

**Section 6.11 Indemnity.**

(a) The Loan Parties shall, at all times, jointly and severally indemnify and hold harmless (the "Indemnity") each of the Lenders and each of their respective directors, partners, members, managers, officers, employees, agents, counsel and advisors (each, an "Indemnified Person") in connection with any losses, claims (including the reasonable attorneys' fees incurred in defending against such claims), damages, liabilities, penalties or other expenses arising out of, or relating to, the Loan Documents, the extensions of credit hereunder or the Loans or the other Obligations, the providing of the Disbursement Commitments, the use or intended use of the Loans or the other Obligations, the Conversion Shares (or the shares of Common Stock into which the Conversion Shares are convertible) or the other transactions contemplated hereby, which an Indemnified Person may incur or to which an Indemnified Person may become subject, but excluding Excluded Taxes (each, a "Loss"). The Indemnity shall not be available to any Indemnified Person to the extent that a court or arbitral tribunal of competent jurisdiction issues a final and non-appealable judgment that such Loss resulted from the gross negligence or willful misconduct of such Indemnified Person. The Indemnity is independent of and in addition to any other agreement of any Party under any Loan Document to pay any amount to the Lenders, and any exclusion of any obligation to pay any amount under this Section 6.11(a) shall not affect the requirement to

pay such amount under any other section hereof or under any other agreement. For the avoidance of doubt, this Section 6.11 shall not apply to Indemnified Taxes.

(b) An Indemnified Person shall have the right to retain its own legal counsel with the fees, costs and expenses of such legal counsel and of such Indemnified Person to be paid by the Loan Parties. The indemnification required by this Section 6.11 shall be made and paid by the Loan Parties within ten (10) Business Days of written demand by such Indemnified Person.

(c) No settlement of any Loss shall be entered into by any Loan Party without the written consent of the applicable Indemnified Person.

(d) No Loan Party shall, nor shall it permit any of its Subsidiaries, assert, and each Loan Party on behalf of itself and its Subsidiaries, hereby waives, any claim, loss or amount against any Indemnified Person with respect to any special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or the other Loan Documents or any undertaking or transaction contemplated hereby or thereby. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Loan Documents or the transactions contemplated hereby or thereby.

The indemnification obligations contained in this Section 6.11 shall survive the termination of this Agreement and repayment of the Obligations.

**Section 6.12 No Usury.** The Loan Documents are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration or otherwise, shall the amount paid or agreed to be paid to the Lenders for the Loan or the other Obligations exceed the maximum amount permissible under Applicable Law. If from any circumstance whatsoever fulfillment of any provision hereof or any other Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Lenders shall ever receive anything which might be deemed interest under Applicable Law, that would exceed the highest lawful rate, such amount that would be deemed excessive interest shall be applied to the reduction of the principal amount owing on account of the Loan or the other Obligations, or if such deemed excessive interest exceeds the unpaid balance of principal of the Loan or the other Obligations, such deemed excess shall be refunded to the Borrower. All sums paid or agreed to be paid to the Lenders for the Loan or the other Obligations shall, to the extent permitted by Applicable Law, be deemed to be amortized, prorated, allocated and spread throughout the full term of the Loan and the other Obligations until payment in full so that the deemed rate of interest on account of the Loan and the other Obligations is uniform throughout the term thereof. The terms and provisions of this Section shall control and supersede every other provision of this Agreement, the Notes and the other Loan Documents.

**Section 6.13 Specific Performance.** The Loan Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of the Loan Documents is not performed in accordance with its specific terms or is otherwise breached, including if the Loan Parties hereto fail to take any action required of them hereunder or thereunder to consummate the transactions contemplated by the Loan Documents. In light of the foregoing, the Loan Parties hereby agree that (a) the Lenders shall be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of the Loan Documents and to enforce specifically the terms and provisions hereof and thereof in the courts described in Section 6.4 without proof of damages or otherwise and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by the Loan Documents and without that right, the Lenders would not have entered into the Loan Documents or have provided Loans or Disbursements hereunder or under the other Loan Documents or the Disbursement Commitments hereunder and under the other Loan Documents. The Loan Parties hereby agree not to assert (or have any of their Subsidiaries or their attorneys, agents or representatives assert or any other Person on their

behalf to assert) that a remedy of specific performance or other equitable relief is unenforceable, invalid, contrary to Applicable Law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. The Loan Parties hereby acknowledge and agree that any Lender seeking an injunction or injunctions to prevent breaches of, or defaults under, the Loan Documents, to prevent any Default or Event of Default and to enforce specifically the terms and provisions of the Loan Documents in accordance with this Section 6.13 shall not be required to provide any bond or other security in connection with any such injunction or other order or proceeding. The remedies available to the Lenders pursuant to this Section 6.13 shall be in addition to any other remedy which may be available under the Loan Documents, at law, in equity or otherwise.

**Section 6.14 Further Assurances.** From time to time, the Loan Parties shall perform any and all acts and execute and deliver to the Lenders such additional documents, agreements and instruments as may be necessary or as requested by any of the Lenders to carry out the purposes of any Loan Document or any or to preserve and protect the Lenders' rights as contemplated therein.

**Section 6.15 USA Patriot Act.** Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the USA Patriot Act.

**Section 6.16 Placement Agent.** The Borrower and the other Loan Parties shall be solely responsible for the payment of any fees, costs, expenses and commissions of any placement agent, broker or financial adviser relating to or arising out of the transactions contemplated by the Loan Documents. The Borrower and the other Loan Parties shall pay, and hold each of the Lenders harmless against, any liability, loss or expense (including attorneys' fees, costs and expenses) arising in connection with any claim for any such payment.

**Section 6.17 Independent Nature of Lenders.** The obligations of each Lender under the Loan Documents are several and not joint with the obligations of any other Lender, and no Lender shall be responsible in any way for the performance of the obligations of any other Lender under the Loan Documents. Each Lender shall be responsible only for its own representations, warranties, agreements and covenants under the Loan Documents. The decision of each Lender to acquire the Securities pursuant to the Loan Documents has been made by such Lender independently of any other Lender and independently of any information, materials, statements or opinions as to the business, affairs, operations, assets, properties, liabilities, results of operations, condition (financial or otherwise) or prospects of the Borrower or any of its Subsidiaries which may have been made or given by any other Lender or by any agent, attorney, advisor, representative or employee of any other Lender, and no Lender or any of its agents, attorneys, advisors, representatives or employees shall have any liability to any other Lender (or any other Person) relating to or arising from any such information, materials, statements or opinions. Nothing contained in the Loan Documents, and no action taken by any Lender pursuant hereto or thereto (including a Lender's acquisition of Obligations or Notes at the same time as any other Lender), shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Lenders are in any way acting in concert or as a group with respect to such Obligations or the transactions contemplated by any of the Loan Documents. Each Lender shall be entitled to independently protect and enforce its rights, including the rights arising out of the Loan Documents, and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**Section 6.18 Joint and Several.** The obligations of the Loan Parties hereunder and under the other Loan Documents are joint and several. Without limiting the generality of the foregoing, reference is hereby made to Section II of the Guaranty, to which the obligations of the Loan Parties are subject.

**Section 6.19 No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and legal benefit of the Loan Parties and the Lenders party hereto and the Indemnified Persons, and their successors and permitted assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have

any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. No Lender shall have any obligation to any Person not a party to this Agreement or the other Loan Documents.

**Section 6.20 Binding Effect.** This Agreement shall become effective when it shall have been executed by each of the Loan Parties party hereto, each Lender party hereto and such executed counterparts have been delivered to the Lenders pursuant to the terms of this Agreement. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of each Loan Party party hereto and each Lender party thereto and, in each case, their respective successors and permitted assigns and, for the purposes of Section 6.11, shall inure to the benefit of the Indemnified Persons.

**Section 6.21 Marshaling; Payments Set Aside.** No Lender shall be under any obligation to marshal any property in favor of any Loan Party or any other Person or against or in payment of any Obligation. To the extent that any Lender receives a payment from the Borrower, from any other Loan Party, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

**Section 6.22 No Waiver; Cumulative Remedies.** No failure to exercise and no delay in exercising, on the part of any Lender, any right, remedy, power or privilege under any Loan Document, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. No course of dealing between any Loan Party, any Affiliate of any Loan Party or any Lender shall be effective to amend, modify or discharge any provision of any of the Loan Documents.

**Section 6.23 Right of Setoff.** Each Lender and each of its Affiliates is hereby authorized, without notice or demand (each of which is hereby waived by each Loan Party), at any time and from time to time during the continuance of any Event of Default and to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other Indebtedness, claims or other obligations at any time owing by any Lender or any of its Affiliates to or for the credit or the account of the Borrower or any other Loan Party against any Obligation of any Loan Party now or hereafter existing, whether or not any demand was made under any Loan Document with respect to such Obligation and even though such Obligation may be unmatured. No Lender shall exercise any such right of setoff without the prior consent of the Required Lenders. Each Lender agrees promptly to notify each other Lender after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 6.23 are in addition to any other rights and remedies (including other rights of setoff) that any Lender or any of its Affiliates may have.

**Section 6.24 Sharing of Payments, Etc.** If any Lender, directly or through any of its Affiliates, obtains any payment of any Obligation of any Loan Party (whether voluntary, involuntary or through the exercise of any right of setoff) (and other than pursuant to Section 6.5) and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Lenders such participations in their Obligations as necessary for such Lender to share such excess payment with such Lenders to ensure such payment is applied as though it had been applied in accordance with this Agreement; provided, however, that (i) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (ii) such Lender shall, to the fullest extent permitted by Applicable Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the applicable Loan Party in the amount of such participation.

**Section 6.25 Other Services.**

(a) Nothing contained in this Agreement shall limit or preclude any Lender or any of its Affiliates from carrying on any business with, providing banking or other financial or equity services to, or from participating in any capacity, including as an equity investor, in any Person whatsoever, including, without limitation, any competitor, supplier or customer of the Borrower or any of its Affiliates, or any other Person that may have interests different than or adverse to such Person.

(b) In connection with all aspects of the Transactions, each Loan Party acknowledges and agrees that: (i) the Loans, Obligations, Disbursement Commitments and any related services contemplated in the Loan Documents constitute an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Lenders, on the other hand, and each Loan Party is capable of evaluating and understanding and understand and accept the terms, risks and conditions of the Transactions, (ii) in connection with the process leading to the Transactions, the Lenders are and have been acting solely as a principal and not as a financial advisor, agent or fiduciary, for any Loan Party or any of the Loan Parties' management, Affiliates, Stock holders, directors, officers, employees, creditors or any other Person, (iii) none of the Lenders nor any of their Affiliates has assumed or will assume an advisory, agency or fiduciary responsibility in any Loan Party or any of the Loan Parties' Affiliates' favor with respect to any of the Transactions or the process leading thereto (irrespective of whether any Lender or any of the Lenders' Affiliates have advised or are currently advising any Loan Party or any of the Loan Parties' Affiliates on other matters) and none of the Lenders or their Affiliates have any obligation to any Loan Party or any of the Loan Parties' Affiliates with respect to the Transactions, (iv) the Lenders and their Affiliates may be engaged in a broad range of transactions that involve interests that differ from the Loan Parties and their Affiliates and none of the Lenders or any of their Affiliates shall have any obligation to disclose any of such interests, and (v) none of the Lenders or any of their Affiliates have provided any legal, accounting, regulatory or tax advice with respect to any of the Transactions and the Loan Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent the Loan Parties have deemed appropriate. Each Loan Party waives and releases, to the fullest extent permitted by law, any claims that it may have against any Lender and their respective Affiliates with respect to any breach of fiduciary duty or alleged breach of fiduciary duty as a consequence of the Loan Documents.

**Section 6.26 Effect of Amendment and Restatement.** As of the Amendment Date, this Agreement shall amend, and restate as amended, the Existing Loan Agreement, but shall not constitute a novation thereof or in any way impair or otherwise affect the rights or obligations of the parties thereunder (including with respect to Loans and Disbursement Commitments and representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. The Existing Loan Agreement as amended and restated hereby shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Existing Loan Agreement not amended and restated in connection with the entry of the parties into this Agreement shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement to the same extent as if the modifications of the Existing Loan Agreement contained herein were set forth in an amendment to the Existing Loan Agreement in a customary form, unless such document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Agreement, the Existing Loan Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto. For the avoidance of doubt, the execution of this Agreement by any Person party to the Existing Loan Agreement immediately prior to the Amendment Date shall constitute the irrevocable consent, approval and agreement of such Person to the amendment and restatement of the Existing Loan Agreement as provided by this Agreement and to the consummation of the Transactions contemplated herein.

**Section 6.27 Senior Facility Subordination Agreement.** Notwithstanding anything to the contrary in the Loan Documents and the Senior Facility Subordination Agreement, the Loan Parties and the Lenders acknowledge and agree that the First Amendment to Facility Agreement, dated as of the Amendment Date (the "Senior Facility Amendment"), by and among the Borrower, the other "Loan Parties" party thereto, the lenders

party thereto and the Senior Facility Agent, and the Facility Agreement (as in effect on the Amendment Date after giving effect to the Senior Facility Amendment) shall be deemed to not be in violation (or be a breach) of the terms and provisions of this Agreement or the Senior Facility Subordination Agreement.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the first day written above.

**BORROWER:**

**MELINTA THERAPEUTICS, INC.,**
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**OTHER LOAN PARTIES:**

**MELINTA SUBSIDIARY CORP.**,
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**CEMPRA PHARMACEUTICALS, INC.**,
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**CEM-102 PHARMACEUTICALS, INC.**,
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**REMPEX PHARMACEUTICALS, INC.**,
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**TARGANTA THERAPEUTICS CORPORATION**,
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**"REQUIRED LENDERS":**

**VATERA HEALTHCARE PARTNERS LLC**

By: Vatera Capital Management LLC, as manager

By: /s/ Kevin Ferro
Name: Kevin Ferro
Title: CEO and Managing Member

**"REQUIRED LENDERS" (CONTINUED):**

**DEERFIELD SPECIAL SITUATIONS FUN, L.P.**

By: Deerfield Mgmt, L.P.
General Partner

By: J.E. Flynn Capital, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN FUND III, L.P.**

By: Deerfield Mgmt III, L.P.
General Partner

By: J.E. Flynn Capital III, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN FUND IV, L.P.**

By: Deerfield Mgmt IV, L.P.
General Partner

By: J.E. Flynn Capital IV, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

**ANNEX A**

DISBURSEMENT COMMITMENTS

| Lender | Initial Disbursement Commitment | % of Total Initial Disbursement Commitment | Pro Rata Initial Disbursement Share | First Subsequent Disbursement Commitment | % of Total First Subsequent Disbursement Commitment | Second Subsequent Disbursement Commitment | % of Total Second Subsequent Disbursement Commitment |
|---|---|---|---|---|---|---|---|
| Vatera Healthcare Partners LLC | $75,000,000 | 93.75% | 100% | $ 25,000,000 | 100% | $ 0 | 0% |
| Vatera Investment Partners LLC | $ 0 | 0% | 0% | $ 0 | 0% | $35,000,000 | 100% |
| Deerfield Private Design Fund IV, L.P. | $ 3,437,500 | 4.296875% | 0% | $ 0 | 0% | $ 0 | 0% |
| Deerfield Private Design Fund III, L.P. | $ 1,041,500 | 1.301875% | 0% | $ 0 | 0% | $ 0 | 0% |
| Deerfield Special Situations Funds, L.P. | $ 521,000 | 0.65125% | 0% | $ 0 | 0% | $ 0 | 0% |
| **Total** | **$80,000,000** | **100%** | **100%** | **$ 25,000,000** | **100%** | **$35,000,000** | **100%** |

**EXHIBIT B**

FORM OF GUARANTY

**GUARANTY**

THIS GUARANTY (AND THE OBLIGATIONS EVIDENCED HEREBY) ARE SUBORDINATE IN THE MANNER, AND TO THE EXTENT, SET FORTH IN THAT CERTAIN SUBORDINATION AGREEMENT DATED AS OF DECEMBER 31, 2018 (AS AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "SUBORDINATION AGREEMENT") BY AND AMONG MELINTA THERAPEUTICS, INC., A DELAWARE CORPORATION, THE OTHER "OBLIGORS" FROM TIME TO TIME PARTIES THERETO, VATERA HEALTHCARE PARTNERS LLC, VATERA INVESTMENT PARTNERS, LLC AND THE OTHER "SUBORDINATED CREDITORS" FROM TIME TO TIME PARTIES THERETO, AND CORTLAND CAPITAL MARKET SERVICES LLC, AS AGENT, TO THE SENIOR DEBT (AS DEFINED IN THE SUBORDINATION AGREEMENT); AND EACH GUARANTOR UNDER THIS GUARANTY (AND THE OBLIGATIONS EVIDENCED HEREBY), BY ITS ACCEPTANCE HEREOF, SHALL BE BOUND BY THE TERMS AND PROVISIONS OF THE SUBORDINATION AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS AND PROVISIONS OF THE SUBORDINATION AGREEMENT, ON THE ONE HAND, AND THIS GUARANTY, ON THE OTHER HAND, THE TERMS AND PROVISIONS OF THE SUBORDINATION AGREEMENT SHALL GOVERN AND CONTROL.

December 31, 2018

**I. RECITALS**

Reference is made to that certain Senior Subordinated Convertible Loan Agreement of even date herewith (as the same may be amended, restated, modified or supplemented and in effect from time to time, the "Loan Agreement"), among Melinta Therapeutics, Inc., a Delaware corporation (the "Borrower"), the other Loan Parties from time to time party thereto, and the Lenders from time to time party thereto. As one of the conditions to making Loans to Borrower under the Loan Agreement, the Lenders have required that the undersigned (collectively, the "Guarantors", and each individually a "Guarantor"), guaranty the obligations, liabilities and indebtedness of Borrower to the Lenders. Capitalized terms used and not otherwise defined herein shall have the respective meanings provided for in the Loan Agreement.

**II. GUARANTY**

Therefore, for value received, and in consideration of any loan, advance or financial accommodation of any kind whatsoever heretofore, now or hereafter made, given or granted to Borrower by any Lender under the Loan Agreement and the other Loan Documents, each Guarantor jointly and severally hereby unconditionally guaranties the full and prompt payment and performance when due, whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter, of all of the Obligations. Without limiting the foregoing, the Obligations guaranteed hereby include all fees, costs and expenses (including attorneys' fees and expenses) incurred by any Lender in attempting to collect any amount due under this Guaranty or in prosecuting any action against the Borrower, any Guarantor or any other guarantor of all or part of the Obligations and all interest accruing and fees, costs and expenses owing to any Lender after the commencement of bankruptcy proceedings with respect to Borrower, any Guarantor or any other guarantor of all or part of the Obligations (whether or not the same may be collected while such proceedings are pending).

Each Guarantor hereby agrees that this Guaranty is a present and continuing guaranty of payment and not of collection and that its obligations hereunder shall be unconditional, irrespective of (i) the validity or enforceability of the Obligations or any part thereof, or of any of the Loan Documents, (ii) the waiver or consent by any Lender with respect to any provision of any Loan Document, or any amendment, modification or other change with respect to any Loan Document (including without limitation any change in the manner, place, time or terms of payment of any Obligation), (iii) any merger or consolidation, of Borrower, any Guarantor or any other guarantor of all or part of the Obligations into or with any Person or any change in the structure or

ownership of the equity of Borrower, any Guarantor or any other guarantor of all or part of the Obligations, (iv) any dissolution of Borrower, any Guarantor or any other guarantor of all or part of the Obligations or any insolvency, bankruptcy, liquidation, reorganization or similar proceedings with respect to Borrower, any Guarantor or any other guarantor of all or part of the Obligations, (v) any action or inaction on the part of any Lender, including without limitation the absence of any attempt to collect the Obligations from Borrower, any Guarantor or any other guarantor of all or part of the Obligations or other action to enforce the same, (vi) any Lender's election, in any proceeding instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. Section 101 et seq.), as amended (the "Bankruptcy Code") of the application of Section 1111(b)(2) of the Bankruptcy Code, (vii) any borrowing by Borrower, any Guarantor or any other guarantor of all or part of the Obligations, as debtor-in-possession, under Section 364 of the Bankruptcy Code, (viii) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of any Lender's claims for repayment of the Obligations, (ix) any Lender's inability to enforce the Obligations of Borrower as a result of the automatic stay provisions under Section 362 of the Bankruptcy Code, (x) the discharge or release by any Lender of any Guarantor's or any other guarantor's obligations and/or liabilities under this Guaranty, (xi) any failure by the Lenders to give notice of the existence, creation or incurrence by any Loan Party other than such Guarantor of any new or additional indebtedness or obligation under or with respect to the Obligations, (xii) any subordination by any Lender of the payment of any Obligation to the payment of any other liability (whether matured or unmatured) of any Loan Party other than such Guarantor to its creditors, (xii) any act or failure to act by the Lenders under this Guaranty or otherwise which may deprive any Guarantor of any right to subrogation, contribution or reimbursement against any Loan Party other than such Guarantor or any right to recover full indemnity for any payments made by such Guarantor in respect of the Obligations, or (xiv) any other defense, setoff, counterclaim or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of Borrower, any Guarantor or any other guarantor of all or part of the Obligations.

Notwithstanding any provision of this Guaranty to the contrary, it is intended that this Guaranty not constitute a "Fraudulent Conveyance" (as defined below). Consequently, each Guarantor agrees that if this Guaranty would, but for the application of this sentence, constitute a Fraudulent Conveyance, this Guaranty shall be valid and enforceable only to the maximum extent that would not cause this Guaranty to constitute a Fraudulent Conveyance, and this Guaranty shall automatically be deemed to have been amended accordingly at all relevant times. For purposes hereof, "Fraudulent Conveyance" means a fraudulent conveyance or fraudulent transfer under Section 548 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the provisions of any applicable fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

No payment made by or for the account or benefit of any Guarantor (including, without limitation, (i) a payment made by Borrower in respect of the Obligations, (ii) a payment made by any Person under any other guaranty of the Obligations or (iii) a payment made by means of set-off or other application of funds by any Lender) pursuant to this Guaranty shall entitle any Guarantor, by subrogation or otherwise, to any payment by Borrower or from or out of any property of Borrower, and no Guarantor shall exercise any right or remedy against Borrower or any property of Borrower including, without limitation, any right of contribution or reimbursement by reason of any performance by any Guarantor under this Guaranty, until the Obligations have been Paid in Full and the Loan Agreement has been terminated. "Paid in Full" or "Payment in Full" (or words of similar context, whether lowercase or capitalized) means (a) all Obligations (including any Interim Exit Fee, Final Exit Fee or Prepayment Fee) have been repaid in full in cash or through the issuance of Conversion Shares and have been fully performed, (b) all Obligations (other than contingent claims for indemnification to the extent no claim giving rise thereto has been asserted) under the Loan Agreement and the other Loan Documents have been completely discharged, and (c) all commitments of Lenders (including Subsequent Disbursement Commitments), if any, to extend credit under the Loan Documents have been terminated or have expired.

Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by any Lender, no Guarantor shall be entitled to be subrogated to any of the rights of any

Lender against Borrower or any Guarantor or any guaranty or right of offset held by any Lender for the payment of the Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from Borrower or any Guarantor in respect of payments made by such Guarantor hereunder, until all of the Obligations are Paid in Full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been Paid in Full, such amount shall be held by such Guarantor in trust for the Lenders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Lenders in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Lenders, if required by the Lenders), to be applied against the Obligations, whether matured or unmatured, in a manner consistent with the provisions of the Loan Agreement.

Each Guarantor hereby guaranties that payments hereunder will be paid to the Lenders without set-off or counterclaim in Dollars in accordance with Section 2.4 of the Loan Agreement.

Each Guarantor hereby waives, to the extent permitted by law, diligence, presentment, demand of payment, filing of claims with a court in the event of any bankruptcy proceeding (or other insolvency proceeding) of Borrower, protest or notice with respect to the Obligations and all demands whatsoever, and covenants that this Guaranty will not be discharged, except by the Payment in Full of the obligations and liabilities contained herein. No notice to any Guarantor or any other party shall be required for any Lender to make demand hereunder. Such demand shall constitute a mature and liquidated claim against any Guarantor. Upon the occurrence and during the continuance of any Event of Default, any Lender may, at its sole election, proceed directly and at once, without notice, against any Guarantor to collect and recover the full amount or any portion of the Obligations owed to such Lender, without first proceeding against Borrower, any other guarantor or any other Person. The Lenders shall, in accordance with the Loan Agreement, have the exclusive right to determine the application of payments and credits, if any, from any Guarantor, Borrower, any other Person, on account of the Obligations or of any other liability of any Guarantor to the Lenders arising hereunder, all in accordance with the Loan Agreement.

The Lenders are hereby authorized, without notice or demand to any Guarantor and without affecting or impairing the liability of any Guarantor hereunder, to, from time to time, (i) renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, the Obligations or otherwise modify, amend or change the terms of any Loan Document and (ii) accept partial payments on the Obligations.

At any time after maturity of the Obligations, the Lenders may, in their sole discretion, but in each case in accordance with the Loan Agreement, and without notice to any Guarantor, appropriate and apply toward payment of the Obligations any indebtedness due or to become due from any Lender to any Guarantor.

Each Guarantor hereby assumes responsibility for keeping itself informed of the financial condition of Borrower, and any and all endorsers and other guarantors of all or any part of the Obligations and of all other circumstances bearing upon the risk of nonpayment of the Obligations or any part thereof that diligent inquiry would reveal, and each Guarantor hereby agrees that no Lender shall have any duty to advise any Guarantor of information known to such Lender regarding such condition or any such circumstances. Each Guarantor hereby acknowledges familiarity with Borrower's financial condition and that it has not relied on any statements by any Lender in obtaining such information. In the event any Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to any Guarantor, no Lender shall be under any obligation (i) to undertake any investigation with respect thereto, (ii) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such Lender wishes to maintain confidential or (iii) to make any other or future disclosures of such information, or any other information, to any Guarantor.

Each Guarantor consents and agrees that no Lender shall be under any obligation to marshal any assets in favor of any Guarantor or against it or in payment of any or all of the Obligations. Each Guarantor further agrees that, to the extent that Borrower makes a payment or payments to any Lender, which payment or

payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrower, its estate, trustee, receiver or any other party, including without limitation any Guarantor, under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the Obligations or the part thereof which has been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction or satisfaction occurred, and this Guaranty shall continue to be in existence and in full force and effect, irrespective of whether any evidence of indebtedness has been surrendered or cancelled.

To the extent permitted by law, each Guarantor also waives all set-offs and counterclaims and all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty. Each Guarantor further waives (i) all notices of the existence, creation or incurring of new or additional indebtedness, arising either from additional loans extended to Borrower or otherwise, (ii) all notices that the principal amount, or any portion thereof, or any interest under or on any Loan Document is due, and (iii) notices of any and all proceedings to collect from the maker, any endorser or any other guarantor of all or any part of the Obligations, or from anyone else. Each Guarantor further waives any rights (including rights to notice) which such Guarantor might otherwise have as a result of or in connection with any of the following:

(i) any renewal, extension, modification, increase, decrease, alteration or rearrangement of all or any part of the Obligations or any instrument executed in connection therewith, or any contract or understanding with any Loan Party other than such Guarantor, any Lender, or any of them, or any other Person, pertaining to the Obligations;

(ii) any adjustment, indulgence, forbearance or compromise that might be granted or given by any Lender to any Loan Party other than such Guarantor or any other Person liable on the Obligations; or the failure of any Lender to assert any claim or demand or to exercise any right or remedy against any Loan Party other than such Guarantor under the provisions of any Loan Document or otherwise; or any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any Loan Party other than such Guarantor under this Guaranty;

(iii) the insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any Loan Party other than such Guarantor or any other Person at any time liable for the payment of all or part of the Obligations; or any dissolution of any Loan Party other than such Guarantor, or any change, restructuring or termination of the corporate structure or existence of any Loan Party other than such Guarantor, or any sale, lease or transfer of any or all of the assets of any Loan Party other than such Guarantor, or any change in the shareholders, partners, or members of any Loan Party other than such Guarantor; or any default, failure or delay, willful or otherwise, in the performance of the Obligations;

(iv) the invalidity, illegality or unenforceability of all or any part of the Obligations, or any document or agreement executed in connection with the Obligations, for any reason whatsoever, including the fact that the Obligations, or any part thereof, exceed the amount permitted by law, the act of creating the Obligations or any part thereof is ultra vires, the officers or representatives executing the documents or otherwise creating the Obligations acted in excess of their authority, the Obligations violate applicable usury laws, any Loan Party other than such Guarantor has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Obligations wholly or partially uncollectible from such other Loan Party, the creation, performance or repayment of the Obligations (or the execution, delivery and performance of any document or instrument representing part of the Obligations or executed in connection with the Obligations or given to secure the repayment of the Obligations) is illegal, uncollectible, legally impossible or unenforceable, or the documents or instruments pertaining to the Obligations have been forged or otherwise are irregular or not genuine or authentic;

(v) any full or partial release of the liability of any Loan Party other than such Guarantor or of any other Person now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Obligations or any part thereof, it being recognized, acknowledged and agreed by each Guarantor that such Guarantor may be required to pay the Obligations in full without assistance or support of any other Person, and such Guarantor has not been induced to enter into this Agreement on the basis of a contemplation, belief, understanding or agreement that any party other than the Borrower will be liable to perform the Obligations, or that the Secured Parties will look to any other party to perform the Obligations;

(vi) the taking or accepting of any other security, collateral or guarantee, or other assurance of payment, for all or any part of the Obligations;

(vii) any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including negligent, willful, unreasonable or unjustifiable impairment) of any letter of credit or property, at any time existing in connection with all or any part of the Obligations;

(viii) any payment by any Loan Party other than such Guarantor to the Lenders being held to constitute a preference under Title 11 of the United States Code or any similar Federal, foreign or state Law, or for any reason any Lender being required to refund such payment or pay such amount to any Loan Party other than such Guarantor or someone else;

(ix) any other action taken or omitted to be taken with respect to the Obligations, whether or not such action or omission prejudices any Guarantor or increases the likelihood that any Guarantor will be required to pay the Obligations pursuant to the terms hereof, it being the unambiguous and unequivocal intention of each Guarantor that such Guarantor shall be obligated to pay the Obligations when due, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether or not contemplated, and whether or not otherwise or particularly described herein, except for the full and final payment and satisfaction of the Obligations in cash;

(x) the fact that all or any of the Obligations cease to exist by operation of Law, including by way of a discharge, limitation or tolling thereof under applicable insolvency, bankruptcy or debtor relief laws;

(xi) the existence of any claim, set-off or other right which any Guarantor may have at any time against any Loan Party other than such Guarantor, the Lenders or any other Person, whether in connection herewith or any unrelated transactions; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; or

(xii) any other circumstance that might in any manner or to any extent otherwise constitute a defense available to, vary the risk of, or operate as a discharge of, such Guarantor as a matter of law or equity.

**III. MISCELLANEOUS**

Each Guarantor hereby represents and warrants to the Lenders that (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) its execution, delivery and performance of this Guaranty and the other Loan Documents to which it is a party are within its powers, have been duly authorized by all necessary action pursuant to its Organizational Documents, require no further action by or in respect of, or filing with, any governmental body, agency or official and do not violate, conflict with or cause a breach or a default under any provision of applicable law or regulation, any of its Organizational Documents or any agreement, judgment, injunction, order, decree or other instrument binding upon it and (iii) this Guaranty, and each other Loan Document to which it is a party, constitutes a valid and binding agreement or instrument of each Guarantor, enforceable against it in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles. In addition to and without

limitation of the foregoing, each Guarantor hereby confirms that it has reviewed the representations and warranties contained in Article 3 of the Loan Agreement and agrees that such representations and warranties shall be deemed to have been made by itself herein and shall be fully incorporated in this Guaranty by reference thereto (provided, that each Guarantor shall only be deemed to have made such representations and warranties with respect to itself and its Subsidiaries).

No delay on the part of any Lender in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by any Lender of any right or remedy shall preclude any further exercise thereof; nor shall any modification or waiver of any of the provisions of this Guaranty be binding upon the Lenders, except as expressly set forth in a writing duly signed and delivered on the behalf of the Lenders by an authorized officer or agent of the Lenders. Any Lender's failure at any time or times hereafter to require strict performance by any Guarantor of any of the provisions, warranties, terms and conditions contained in this Guaranty shall not waive, affect or diminish any right of the Lenders at any time or times hereafter to demand strict performance thereof and such right shall not be deemed to have been waived by any act or knowledge of any Lender, or its respective agents, officers or employees, unless such waiver is contained in an instrument in writing signed by an officer or agent of the Lenders, and directed to the Guarantor or Guarantors specifying such waiver. No failure or delay by any Lender in exercising any right, power or privilege under this Guaranty shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

This Guaranty shall be binding upon each Guarantor and its respective successors and assigns and shall inure to the benefit of the Lenders and their respective successors and permitted assigns, except that no Guarantor may assign its obligations hereunder without the written consent of all Lenders. This Guaranty may only be amended or otherwise modified by a writing duly signed and delivered by all Lenders and each Guarantor. All notices, approvals, requests, demands and other communications hereunder shall be given in accordance with the notice provision of the Loan Agreement.

All questions concerning the construction, validity, enforcement and interpretation of this Guaranty and, unless otherwise expressly stated therein, the other Loan Documents shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed in such State. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Guaranty and, unless otherwise expressly stated therein, the other Loan Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the Commercial Division, New York State Supreme Court and the federal courts, in each case, sitting in the City of New York, borough of Manhattan (and, in each case, the applicable state and federal appeals courts sitting in the City of New York or, if not available or applicable, the State of New York), for the adjudication of any dispute hereunder or under the other Loan Documents or in connection herewith or with the other Loan Documents or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, or that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding; provided that nothing in this Guaranty or in any other Loan Document shall limit the right of any Lender to commence any suit, action or proceeding in federal, state or other court of any other jurisdiction to the extent such Lender determines that such suit, action or proceeding is necessary or appropriate to exercise its rights or remedies under this Guaranty or any of the other Loan Documents. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Guaranty and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in

any way any right to serve process in any other manner permitted by law. **THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS GUARANTY, THE OTHER LOAN DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE. EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO AGENT, REPRESENTATIVE OR OTHER PERSON AFFILIATED WITH OR RELATED TO ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS, AS APPLICABLE, BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

This Guaranty may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The delivery of an executed counterpart of a signature page to this Guaranty by telecopier or any other electronic means, including email attachment, shall be effective as delivery of a manually executed counterpart of this Guaranty.

In addition to and without limitation of any of the foregoing, this Guaranty shall be deemed to be a Loan Document and shall otherwise be subject to all of general terms and conditions contained in Article 6 of the Loan Agreement, *mutatis mutandi*.

[signature pages follow]

IN WITNESS WHEREOF, this Guaranty has been duly executed by each Guarantor on the date first written above.

**GUARANTORS:**

**MELINTA SUBSIDIARY CORP.**,
a Delaware corporation

By: _____
Name:
Title:

**CEMPRA PHARMACEUTICALS, INC.**,
a Delaware corporation

By: _____
Name:
Title:

**CEM-102 PHARMACEUTICALS, INC.**,
a Delaware corporation

By: _____
Name:
Title:

**REMPEX PHARMACEUTICALS, INC.**,
a Delaware corporation

By: _____
Name:
Title:

**TARGANTA THERAPEUTICS CORPORATION**,
a Delaware corporation

By: _____
Name:

**LENDERS:**

**VATERA HEALTHCARE PARTNERS LLC**

By: _____
Name:
Title:

**VATERA INVESTMENT PARTNERS LLC**

By: _____
Name:
Title:

**EXHIBIT F-1**

**FORM OF AMENDMENT TO CERTIFICATE OF INCORPORATION**

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
MELINTA THERAPEUTICS, INC.

Pursuant to Section 242 of the General
Corporation Law of the State of Delaware

Melinta Therapeutics, Inc., a Delaware corporation (hereinafter called the "Corporation"), does hereby certify as follows:

FIRST: The first paragraph of Article IV of the Corporation's Certificate of Incorporation, as amended to date, is hereby amended to read in its entirety as set forth below:

"That, at 5:00 p.m., Eastern time, on the date of filing of this Certificate of Amendment of the Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time"), each [●] (the "Conversion Number") shares of the Corporation's common stock, par value $0.001 (the "Common Stock") (including treasury shares) issued and outstanding as of the Effective Time shall be reclassified and combined into one validly issued, fully paid and non-assessable share of Common Stock, automatically and without any action by the holder thereof (the "Reverse Stock Split"). The par value of the Common Stock following the Reverse Stock Split shall remain at $0.001 per share. No fractional shares of Common Stock shall be issued as a result of the Reverse Stock Split. In lieu of any fractional shares to which a stockholder would otherwise be entitled (after taking into account all fractional shares of Common Stock otherwise issuable to such holder), the Corporation shall, with no further action required on the part of the holder, pay cash in an amount equal to such fractional shares of Common Stock multiplied by the average last reported sales price of the Common Stock at 4:00 p.m., Eastern time, end of regular trading hours on the Nasdaq Global Market during the ten consecutive trading days ending on the last trading day prior to the effective date of the Reverse Stock Split."

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be duly executed in its corporate name this [●] day of [●], 2019.

MELINTA THERAPEUTICS, INC.

By: _____
Name:
Title:

**EXHIBIT F-2**

**FORM OF AMENDMENT TO CERTIFICATE OF INCORPORATION**

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
MELINTA THERAPEUTICS, INC.

Pursuant to Section 242 of the General
Corporation Law of the State of Delaware

Melinta Therapeutics, Inc., a Delaware corporation (hereinafter called the "Corporation"), does hereby certify as follows:

FIRST: The third paragraph of Article IV of the Corporation's Certificate of Incorporation, as amended to date, is hereby amended to read in its entirety as set forth below:

"The total number of shares that the Corporation will have authority to issue is [●] ([●]), consisting of (i) [●] ([●]) shares of common stock, $0.001 par value per share, and (ii) five million (5,000,000) shares of preferred stock, $0.001 par value per share."

SECOND: The foregoing amendment was duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be duly executed in its corporate name this [●] day of [●], 2019.

MELINTA THERAPEUTICS, INC.

By: _____
Name:
Title:

**Exhibit G**

FORM OF CERTIFICATE OF DESIGNATIONS

OF

SERIES A CONVERTIBLE PREFERRED STOCK

OF

MELINTA THERAPEUTICS, INC.

Melinta Therapeutics, Inc. (the "Company"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), hereby certifies, pursuant to Section 151 of the DGCL, that the following resolutions were duly adopted by its Board of Directors (the "Board") on [●], 2019 (the "Effective Date"):

WHEREAS, the Company's Certificate of Incorporation, as amended, including any amendment or supplement thereto (including any Certificate of Amendment or Certificate of Designations) (the "Certificate of Incorporation"), authorizes [●] ([●]) shares of preferred stock, par value $0.001 per share (the "Preferred Stock"), issuable from time to time in one or more series; and

WHEREAS, the Certificate of Incorporation authorizes the Board to establish from time to time the number of shares to be included in each series of Preferred Stock, and to fix the designation, powers, preferences and rights of the shares of each such series and qualifications, limitations or restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that a series of Preferred Stock with the powers, designations, preferences, rights, qualifications, limitations and restrictions as provided herein is hereby authorized and established as follows:

Section 1. Number; Designation; Rank.

(a) This series of convertible Preferred Stock is designated as the "Series A Convertible Preferred Stock" (the "Series A Convertible Preferred Stock"). The number of shares constituting the Series A Convertible Preferred Stock is [●] shares, par value $0.001 per share. The Series A Convertible Preferred Stock shall only be issued upon conversion of Loans pursuant to the Loan Agreement.

(b) The Series A Convertible Preferred Stock ranks, with respect to rights upon liquidation, dissolution or winding up of the Company senior in preference and priority to the Common Stock (as defined in Section 10 hereof) of the Company, and each other class or series of capital stock of the Company the terms of which do not expressly provide that it ranks senior in preference or priority to (the "Senior Securities"), or on parity with (the "Parity Securities"), the Series A Convertible Preferred Stock with respect to rights upon liquidation, dissolution or winding up of the Company (collectively with the Common Stock, the "Junior Securities").

Section 2. Dividends.

(a) Each holder of issued and outstanding Series A Convertible Preferred Stock will be entitled to receive, when, as and if declared by the Board, out of funds of the Company legally available therefor, for each share of Series A Convertible Preferred Stock, dividends of the same type as any dividends, whether cash or other property, paid on all of the outstanding shares of the Common Stock, as a class, equal to the amount of such dividends as would be paid on the number of shares of Common Stock into which such share of Series A Convertible Preferred Stock could be converted on the date of payment of such dividends on the Common Stock (without giving effect to the 4.985% Cap, to the extent otherwise applicable), assuming such shares of Common Stock were outstanding on the applicable record date for such dividend or other distribution (the "Participating

Dividends"), and any such Participating Dividends shall be payable to the Person in whose name the Series A Convertible Preferred Stock is registered at the close of business on the applicable record date; provided, however, "Participating Dividends" shall not include dividends paid on Common Stock in the form of additional shares of Common Stock.

(b) Participating Dividends are payable at the same time as and when dividends on the Common Stock are paid to the holders of Common Stock.

(c) Prior to declaring any dividend on the shares of Series A Convertible Preferred Stock, the Company shall take all actions necessary or advisable under the DGCL to permit the payment of Participating Dividends to the holders of Series A Convertible Preferred Stock. Holders of Series A Convertible Preferred Stock are not entitled to any dividend, whether payable in cash, in kind or other property, in excess of the Participating Dividends provided for in this Section 2.

Section 3. Liquidation Preference.

(a) Upon any liquidation, dissolution or winding up, or any other distribution of the assets, of the Company (whether voluntary or involuntary), each holder of Series A Convertible Preferred Stock shall be entitled to be paid, before any distribution or payment is made upon any Junior Securities but after payment is made on any Senior Securities, an amount equal to the greater of (i) the aggregate Liquidation Preference (as defined in Section 10 hereof) of all shares of Series A Convertible Preferred Stock held by such holder and (ii) such amount as would have been payable in respect of all shares of Series A Convertible Preferred Stock held by such holder had all such shares of Series A Convertible Preferred Stock been converted into Common Stock pursuant to Section 5 immediately prior to (and on the date fixed for) the liquidation, dissolution or winding up of the Company (without giving effect to the 4.985% Cap, to the extent otherwise applicable), and the holders of Series A Convertible Preferred Stock shall not be entitled to any further payment in respect thereof or have any claim or right to any assets of the Company. If upon any such liquidation, dissolution or winding up of the Company the Company's assets to be distributed among the holders of the Series A Convertible Preferred Stock and any Parity Securities are insufficient to permit payment to such holders of the Series A Convertible Preferred Stock of the aggregate amount which they are entitled to be paid under this Section 3 and such holders of Parity Securities of the aggregate amount which they are entitled to be paid in accordance with the terms of such Parity Securities, then the entire assets available to be distributed to the Company's stockholders shall be distributed pro rata among the holders of the Series A Convertible Preferred Stock (based on the respective Liquidation Preferences thereof) and any Parity Securities in accordance with the full respective preferential payments that would be payable on such shares of Series A Convertible Preferred Stock and such shares of Parity Securities if all amounts payable thereon were payable in full.

(b) The value of any property not consisting of cash that is distributed by the Company to the holders of the Series A Convertible Preferred Stock will equal the fair market value as determined by the Board of Directors of the Company in good faith. For the avoidance of doubt, the amount deemed distributed to the holders of Series A Preferred Stock upon any liquidation, dissolution or winding up, or any other distribution of the assets, of the Company in consideration for the shares of Series A Preferred Stock held by such holders shall be the cash or fair market value of the securities or other property as determined by the Board in good faith distributed to such holders in such liquidation, dissolution or winding up, or other distribution of the assets, of the Company.

(c) For purposes of this Section 3, the merger or consolidation of the Company with any other corporation or other entity or the sale or exchange (for cash, securities or other property) of all or substantially all of the assets of the Company shall be deemed to constitute a liquidation of the Company and the proceeds thereof shall be distributed in accordance with this Section 3.

(d) In the event of a liquidation, dissolution or winding up in accordance with Section 3(a) (subject to Section 3(c)) if any portion of the consideration payable to the stockholders of the Company is payable only upon satisfaction of contingencies (the "Additional Consideration"), (i) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated

among the holders of capital stock of the Company in accordance with this Section 3 as if the Initial Consideration were the only consideration payable in connection with such liquidation, dissolution or winding up; and (ii) any Additional Consideration which becomes payable to the stockholders of the Company upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Company in accordance with this Section 3 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 3(d), consideration placed into escrow or retained as a holdback to be available for satisfaction of indemnification or similar obligations in connection with such liquidation, dissolution or winding up shall be deemed to be Additional Consideration.

(e) The Company shall not effectuate any exclusive issuance to all or substantially all holders of the Common Stock shares of Common Stock as a dividend or distribution on shares of the outstanding Common Stock or any share split of the Common Stock (including, if applicable, the Reverse Stock Split (as defined in the Loan Agreement)) or a share combination of Common Stock (each, a "Common Stock Change") unless, simultaneously in connection therewith, the Company effectuates the same dividend, distribution, split or combination, as applicable, to the Series A Convertible Preferred Stock, *mutatis mutandis*. The Company shall not effectuate any exclusive issuance to all or substantially all holders of the Series A Convertible Preferred Stock shares of Series A Convertible Preferred Stock as a dividend or distribution on shares of the outstanding Series A Convertible Preferred Stock or any share split of the Series A Convertible Preferred Stock (including, if applicable, the Reverse Stock Split) or a share combination of Series A Convertible Preferred Stock (each, a "Preferred Stock Change") unless, simultaneously in connection therewith, the Company effectuates the same dividend, distribution, split or combination, as applicable, to the Common Stock, *mutatis mutandis*.

Section 4. Voting Rights.

(a) The holders of Series A Convertible Preferred Stock shall have no right to vote on any matters to be voted on by the stockholders of the Company except as required by the DGCL.

(b) No amendment, modification, alteration, repeal or waiver of any provision of Sections 1 to 10 hereof shall be binding or effective without the prior written consent of the holders of a majority of the Liquidation Preference (as defined in Section 10 hereof) of the shares of Series A Convertible Preferred Stock outstanding at the time such action is taken.

Section 5. Conversion. Each share of Series A Convertible Preferred Stock is convertible into shares of Common Stock as provided in this Section 5.

(a) Optional Conversion. Each holder of Series A Convertible Preferred Stock shall be entitled in its sole discretion to convert at any time all or any part of its Series A Convertible Preferred Stock into Common Stock, in accordance with this Section 5, at the Conversion Rate. The Company shall not issue any fractional shares of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, then the Company shall round such fraction of a share of Common Stock up or down to the nearest whole share (with 0.5 rounded up).

(b) Conversion Rate. The number of shares of Common Stock issuable upon a conversion of all or any portion of the Series A Convertible Preferred Stock pursuant to this Section 5 shall be determined according to the following formula:

Number of shares of Common Stock = Conversion Rate * Number of shares of Series A Convertible Preferred Stock

(c) Mechanics of Conversion. The conversion of any shares of Series A Convertible Preferred Stock shall be conducted in the following manner:

(i) Holder Delivery Requirements. To convert Series A Convertible Preferred Stock into Common Stock on any date (the "Conversion Date"), the applicable holder of such Series A Convertible Preferred Stock shall (x) provide written notice (any such notice, a "Conversion Notice"), to the Company setting forth the number of shares of Series A Convertible Preferred Stock, and to the extent that any shares of Common Stock are to be issued in a name other than the holder's name, the names and addresses of such Person and the number of shares issuable in the name of such Person and (y) surrender to the Company for

cancellation any Series A Convertible Preferred Stock certificate representing the converted shares of the Series A Convertible Preferred Stock. For purposes of this Section 5(c), subject to any stockholder approval pursuant to Section 5(k), conversion shall occur immediately prior to the close of business on the date (the "Conversion Effective Date") that the Company receives both (A) the Conversion Notice and (B) the certificate (if any) representing the converted shares of Series A Convertible Preferred Stock.

(ii) Company's Response. Following receipt by the Company of the Conversion Notice and, if applicable, the certificate(s) representing the converted Series A Convertible Preferred Stock, the Company (x) shall promptly send a confirmation of receipt of such Conversion Notice to the applicable holder and the Company's designated transfer agent (the "Transfer Agent"), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein, and (y) shall use commercially reasonable efforts to, on or before the second (2nd) Business Day (and in any event on or before the fifth (5th) Business Day (such fifth (5th) Business Day, the "Conversion Delivery Deadline") following the Conversion Effective Date with respect to which such notice was delivered, as applicable, (A) provided that the Transfer Agent is participating in DTC's Fast Automated Securities Transfer Program and provided that such holder is eligible to receive the Common Stock through DTC, credit such aggregate number of shares of Common Stock to which such holder shall be entitled to such holder's or its designee's balance account with DTC through its Deposit Withdrawal Agent Commission system, or (B) if the foregoing clause (A) shall not apply, issue and deliver to the address specified in the Conversion Notice, a share or stock certificate (as the case may be), registered in the name of such holder or its designee, for the number of shares of Common Stock to which such holder shall be entitled.

(iii) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of any Series A Convertible Preferred Stock shall be treated for all purposes as the legal and record holder or holders of such Common Stock upon delivery of the Conversion Notice in accordance with the terms hereof.

(iv) Taxes. The Company shall pay any and all Other Taxes that may be payable with respect to the issuance and delivery of Common Stock upon the conversion of any Series A Convertible Preferred Stock, except to the extent the Other Tax is due because the holder requests any such shares to be issued in a name other than the holder's name, in which case the holder will pay such Other Tax (and the Company shall not be required to issue or deliver any such shares of Common Stock unless and until the holder shall have paid to the Company such Other Tax). For greater certainty, the provisions of Section 5(c)(iv) shall apply with respect to any and all taxes with respect to payments by the Company (or any other applicable credit party) hereunder, including with respect to the delivery of Common Stock upon the conversion of any Series A Convertible Preferred Stock.

(d) While any shares of Series A Convertible Preferred Stock are outstanding the Company shall have reserved out of its authorized but unissued shares of Common Stock, for delivery upon conversion of the Series A Convertible Preferred Stock, a number of shares of Common Stock equal to the amount of Common Stock that would be issuable if the then outstanding shares of Series A Convertible Preferred Stock were converted in full.

(e) Any shares of Common Stock delivered upon the conversion of the Series A Convertible Preferred Stock will be newly issued shares or treasury shares, duly and validly issued, fully paid, nonassessable, free from preemptive rights and free of any lien, encumbrance or adverse claim (except to the extent of any lien, encumbrance or adverse claim created by the action or inaction of any holder, or otherwise created by the holder holding the applicable Series A Convertible Preferred Stock).

(f) Prior to consummating the applicable action, the Company shall promptly notify each holder of Series A Convertible Preferred Stock (and in no event less than five (5) Business Days prior to the occurrence of the applicable action) in the event the Company undergoes any action that would require an adjustment to the Loan Conversion Rate pursuant to Section 2.9 of the Loan Agreement, whether or not any Loan is still outstanding.

Section 6. Transfer Restrictions; Share Register.

(a) None of the shares of Series A Convertible Preferred Stock may be offered, sold or otherwise transferred except to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act")) or to "accredited investors" (as defined in Rule 501(a)(1), (2), (3), (7) or (8) under the Securities Act (provided that in the case of clause (8) all of the equity owners of such entity are accredited investors as defined in Rule 501(a)(1), (2), (3), (7) or (8) as modified by this parenthetical)), in each case, in compliance with the registration requirements of the Securities Act and any other applicable securities laws, or pursuant to an exemption therefrom, and the terms of this Certificate of Designations and the restrictions set forth in the text of the restrictive legend required to be set forth on the shares pursuant to Section 6(b). Any attempt to Transfer the Series A Convertible Preferred Stock or any rights hereunder in violation of the preceding sentence shall be null and void, and the Company shall not register any such Transfer. The Company shall be entitled to give stop transfer orders to its transfer agent with respect to the shares of Series A Convertible Preferred Stock in order to enforce the foregoing restrictions. Upon the Transfer of the Series A Convertible Preferred Stock, in whole or in part, through the use of an assignment form in a form (including having the name and address and e-mail address and contact of the Persons in whose name the shares of Series A Convertible Preferred Stock have been issued, as well as the name and address and e-mail address and contact of the transferee) reasonably satisfactory to the Company, and in accordance with applicable law or regulation, and the payment by the holder of funds sufficient to pay any transfer tax, the Company shall issue and register in the Share Registry the Series A Convertible Preferred Stock in the name of the new holder or, in the event the Series A Convertible Preferred Stock is transferred in part, the Company shall deliver new certificates of like tenor registered in the names of each of the current holder and the transferee in amounts that give effect to such partial Transfer. If requested by the Company in its reasonable judgment, the holder shall supply to the Company a written statement, in such form as the Company may reasonably request, certifying that the Transfer complies with the foregoing requirements.

(b) Each certificate representing shares of Series A Convertible Preferred Stock shall contain a legend substantially to the following effect (in addition to any legends required under applicable securities laws):

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE DIRECTLY OR INDIRECTLY OFFERED, SOLD, TRANSFERRED, ENCUMBERED, ASSIGNED OR OTHERWISE DISPOSED OF EXCEPT (A) TO "QUALIFIED INSTITUTIONAL BUYERS" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR TO "ACCREDITED INVESTORS" (AS DEFINED IN RULE 501(A)(1), (2), (3), (7) OR (8) UNDER THE SECURITIES ACT (PROVIDED THAT IN THE CASE OF CLAUSE (8) ALL OF THE EQUITY OWNERS OF SUCH ENTITY ARE ACCREDITED INVESTORS AS DEFINED IN RULE 501(A)(1), (2), (3), (7) OR (8) AS MODIFIED BY THIS PARENTHETICAL)), IN EACH CASE, (B) PURSUANT TO (I) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, OR (II) AN APPLICABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, INCLUDING RULE 144, SUBJECT TO THE COMPANY'S AND THE TRANSFER AGENT'S RIGHT PRIOR TO ANY SUCH OFFER, SALE, TRANSFER, ENCUMBRANCE, ASSIGNMENT OR OTHER DISPOSITION TO REQUIRE THE DELIVERY OF REASONABLE AND CUSTOMARY CERTIFICATIONS AND/OR OTHER INFORMATION REASONABLY SATISFACTORY TO EACH OF THEM.

(c) The Company will maintain a register for the shares of Series A Convertible Preferred Stock (the "Share Registry"), in which the Company will record the share certificate numbers and the name and address and e-mail address and contact of the Persons in whose name the shares of Series A Convertible Preferred Stock have been issued and the Liquidation Preference of such shares, as well as the name and address and e-mail address and contact of any transferee. The Company may treat the Person in whose name any Series A Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made Transfers.

(d) Ownership Limitation.

(i) No holder (other than VHP, VIP and their respective Affiliates from time to time) will be entitled to receive shares of Common Stock upon conversion of Series A Convertible Preferred Stock and no conversion of Series A Convertible Preferred Stock shall take place to the extent (but only to the extent) that such receipt (or conversion) would cause such holder to exceed the Ownership Limitation or cause a Major Transaction. Any purported delivery of shares of Common Stock upon conversion of Series A Convertible Preferred Stock shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the converting holder violating the Ownership Limitation or causing a Major Transaction.

(ii) Notwithstanding the foregoing, the limitations set forth in Section 6(d)(i) shall not apply to any conversion made in connection with a Fundamental Change (as defined in the Loan Agreement) or similar event that would result in the occurrence of the Facility Termination Date (as defined in the Loan Agreement).

(iii) Notwithstanding anything herein to the contrary, the Company shall not issue to any Specified Holder, and no Specified Holder may acquire, a number of shares of Common Stock upon any conversion of the Series A Convertible Preferred Stock to the extent that, upon such conversion, the number of shares of Common Stock then "beneficially owned" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act (as defined in the Loan Agreement)) by such Specified Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with such Specified Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which such Specified Holder is a member, but excluding shares beneficially owned by virtue of the ownership of warrants and other securities or rights to acquire securities, in each case, that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 4.985% of the total number of shares of Common Stock then issued and outstanding (the "4.985% Cap"); provided, however, that the 4.985% Cap shall only apply to the extent that the Common Stock is deemed to constitute an "equity security" pursuant to Rule 13d-1(i) promulgated under the Exchange Act; provided, further that, other than in connection with a Successor Major Transaction (as defined in the Loan Agreement), any Specified Holder shall be permitted to include in its Conversion Notices that it is electing to make successive conversions, which conversions shall occur (in each case by written notice from such Specified Holder to the Borrower) from time to time as determined by such Specified Holder at any time prior to the end of the Successive Conversion Period (as defined in the Loan Agreement) (each such conversion being subject to the 4.985% Cap). For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the SEC (as defined in the Loan Agreement), and the percentage held by any Specified Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. For purposes hereof, in determining the number of outstanding shares of Common Stock, the Specified Holders may rely on the number of outstanding shares of Common Stock as stated in the Company's most recent quarterly or annual report filed with the SEC, or any current report filed by the Company with the SEC subsequent thereto. Upon the written request of any Specified Holder, the Company shall, within two (2) Trading Days, confirm orally and in writing to such Specified Holder the number of shares of Common Stock then outstanding, and such Specified Holder shall be entitled to rely upon such confirmation for purposes hereof.

Section 7. Headings and Subdivisions. The headings of various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

Section 8. Severability. If any right, preference or limitations of the Series A Convertible Preferred Stock set forth in this Certificate of Designations (as this Certificate of Designations may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule or law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designations, as amended, which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

Section 9. Mutilated or Missing Series A Convertible Preferred Stock Certificates. If any of the Series A Convertible Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and substitution for and upon cancellation of the mutilated Series A Convertible Preferred Stock certificate, or in lieu of and in substitution for the Series A Convertible Preferred Stock certificate lost, stolen or destroyed, a new Series A Convertible Preferred Stock certificate of like tenor and representing an equivalent amount of shares of Series A Convertible Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Series A Convertible Preferred Stock certificate and indemnity reasonably satisfactory to the Company in amount and form, if requested by the Company.

Section 10. Additional Definitions. For purposes of these resolutions, the following terms shall have the following meanings:

(a) "4.985% Cap" shall have the meaning set forth in Section 6(d)(iii).

(b) "accredited investor" shall have the meaning set forth in Section 6(a) hereof.

(c) "Affiliate" means, with respect to any Person, any other Person that directly or indirectly:

(i) controls, or is controlled by, or is under common control with, such Person; or

(ii) is a general partner, manager or managing member of such Person.

Without limiting the foregoing, a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, no holder shall be deemed an Affiliate of the Company or any of its Subsidiaries. With respect to any Specified Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Specified Holder will be deemed to be an Affiliate of such Specified Holder.

(d) "Board" means, unless otherwise specified hereunder, the Board of Directors of the Company.

(e) "Business Day" means a day other than Saturday or Sunday on which banks are open for business in New York, New York.

(f) "capital stock" means any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of capital stock, partnership interests (whether general or limited) or equivalent ownership interests in or issued by such Person, and with respect to the Company includes, without limitation, any and all shares of Common Stock and Preferred Stock.

(g) "Certificate of Incorporation" shall have the meaning set forth in the Preamble.

(h) "Common Stock" means the common stock, par value $0.001 per share, of the Company.

(i) "Company" shall have the meaning set forth in the Preamble.

(j) "Conversion Amount" shall have the meaning set forth in the Loan Agreement.

(k) "Conversion Date" shall have the meaning assigned to such term in Section 5(c)(i).

(l) "Conversion Delivery Deadline" shall have the meaning assigned to such term in Section 5(c)(ii).

(m) "Conversion Effective Date" shall have the meaning assigned to such term in Section 5(c)(i).

(n) "Conversion Notice" shall have the meaning assigned to such term in Section 5(c)(i).

(o) "Conversion Rate" means, initially, 100 shares of Common Stock per one share of Series A Convertible Preferred Stock.

(p) "DGCL" means the General Corporation Law of the State of Delaware.

(q) "DTC" means The Depository Trust Company.

(r) "Facility Termination Date" shall have the meaning set forth in the Loan Agreement.

(s) "Fundamental Change" shall have the meaning set forth in the Loan Agreement.

(t) "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

(u) "hereof", "herein" and "hereunder" and words of similar import refer to these resolutions as a whole and not merely to any particular clause, provision, section or subsection.

(v) "Junior Securities" shall have the meaning assigned to such term in Section 1(b) hereof.

(w) "Liquidation Preference" means, with respect to a share of Series A Convertible Preferred Stock issued upon conversion of Loans, the Conversion Amount for such converted Loans divided by the number of shares of Series A Convertible Preferred Stock issued upon conversion of such Loans pursuant to the Loan Agreement, as thereafter adjusted pursuant to Section 3(e) (plus, if applicable, the amount of any declared but unpaid dividends on such share of Series A Convertible Preferred Stock). Such "Liquidation Preference" shall be recorded in the Share Registry pursuant to Section 6(c) and placed on each certificate representing shares of Series A Convertible Preferred Stock.

(x) "Loan" shall have the meaning assigned to such term in the Loan Agreement.

(y) "Loan Agreement" means that certain Senior Subordinated Convertible Loan Agreement, dated as of December 31, 2018, by and among Melinta Therapeutics, Inc., as the Borrower, the other Loan Parties thereto from time to time and the Lenders party thereto, as amended and restated as of January __, 2019, and as may be further amended, restated, supplemented or otherwise modified from time to time.

(z) "Loan Conversion Rate" shall mean the Conversion Rate (as defined in the Loan Agreement).

(aa) "Loan Documents" means the Loan Agreement, the Notes, the Guaranty, each Compliance Certificate, the Senior Facility Subordination Agreement, any solvency certificate and other documents, agreements and instruments delivered in connection with any of the foregoing and dated the Loan Agreement Date or subsequent thereto, whether or not specifically mentioned herein or therein, in each case, as amended, restated, supplemented or otherwise modified from time to time.

(bb) "Loan" means any loan made available from time to time by the Lenders to the Borrower pursuant to the Loan Agreement.

(cc) "Other Taxes" means any and all present or future stamp, court or documentary, intangible, recording, filing or similar taxes arising from any payment made hereunder or from the execution, delivery, registration, Transfer or enforcement of, or otherwise with respect to, any Loan Document.

(dd) "Ownership Limitation" means, other than with respect to VHP, VIP and their respective Affiliates from time to time (who shall not be subject to the Ownership Limitation), the "beneficial ownership" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act except that a person or group shall be deemed to have "beneficial ownership" of all stock that such person or group has the right to acquire pursuant to an option right), directly or indirectly, by a holder and its Affiliates and any other Persons whose beneficial ownership of Common Stock would be aggregated with such holder's or any such Affiliate's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which such holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) of 29.9% on an issued and outstanding basis of the voting interests in the Company's stock.

(ee) "Parity Securities" shall have the meaning set forth in Section 1(b) hereof.

(ff) "Participating Dividends" shall have the meaning set forth in Section 2(a) hereof.

(gg) "Person" means any individual, corporation, limited liability company, partnership, trust, association, trust or business trust, unincorporated organization or joint venture, Governmental Authority or other entity of any nature whatsoever.

(hh) "Preferred Stock" shall have the meaning set forth in the Preamble.

(ii) "Reverse Stock Split" shall have the meaning set forth in the Loan Agreement.

(jj) "Securities Act" shall have the meaning set forth in Section 6(a) hereof.

(kk) "Senior Securities" shall have the meaning set forth in Section 1(b) hereof.

(ll) "Series A Convertible Preferred Stock" shall have the meaning set forth in Section 1(a) hereof.

(mm) "Subsidiary" or "Subsidiaries" means, as to any Person, any entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person.

(nn) "Share Registry" shall have the meaning assigned to such term in Section 6(c).

(oo) "Specified Holder" means any holder of the Series B Convertible Preferred Stock that is managed on a discretionary basis by, or is otherwise an Affiliate of, Deerfield Management Company, L.P. (including, without limitation, Deerfield Private Design Fund IV, L.P., Deerfield Private Design Fund III, L.P. or Deerfield Special Situations Fund, L.P.) or any successor, assign or transferee of any such holder.

(pp) "Transfer" means directly or indirectly, sell, give, assign, hypothecate, pledge, encumber, grant a security interest in or otherwise dispose of (whether by operation of law or otherwise).

(qq) "Transfer Agent" shall have the meaning assigned to such term in Section 5(c)(ii).

(rr) "VHP" means Vatera Healthcare Partners LLC.

(ss) "VIP" means Vatera Investment Partners LLC (to be re-named Oikos Investment Partners LLC after the date hereof).

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be executed by a duly authorized officer of the Company as of [●], 2019.

MELINTA THERAPEUTICS, INC.

By: _____

Name:

Title:

**Exhibit 10.2**

**FIRST AMENDMENT TO FACILITY AGREEMENT**

This FIRST AMENDMENT TO FACILITY AGREEMENT (this "Amendment") is entered into as of January 14, 2019, by and among MELINTA THERAPEUTICS, INC., a Delaware corporation (the "Borrower"), the other Loan Parties party hereto, the Lenders party hereto and Cortland Capital Market Services LLC, as agent for itself and the Secured Parties (in such capacity, together with its successors and assigns in such capacity, "Agent").

W I T N E S S E T H:

WHEREAS, the Borrower, the other Loan Parties party thereto, Agent and the Lenders party thereto are parties to that certain Facility Agreement dated as of January 5, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the "Facility Agreement"); and

WHEREAS, the Borrower has requested that Agent and the Lenders amend certain provisions of the Facility Agreement, Schedule 3.1(y) to the Facility Agreement, Exhibit I to the Facility Agreement, Exhibit 2.7 to the Facility Agreement, the Loan Notes, the Warrants and the Registration Rights Agreement, and, subject to the satisfaction of the conditions set forth herein, Agent and the Lenders are willing to do so, on the terms set forth herein.

WHEREAS, contemporaneously herewith, that certain Senior Subordinated Convertible Loan Agreement, dated as of December 31, 2018, by and among the Borrower, the other Loan Parties party thereto from time to time, and the Subordinated Lenders (as defined therein) is being amended and restated to be in the form attached as Exhibit A hereto (as so amended and restated, without any other amendment, restatement, supplement or modification, the "Subordinated Loan Agreement").

WHEREAS, the foregoing amendments, agreements, instruments and documents are being entered into by the Borrower as part of and pursuant to a plan of recapitalization and reorganization described in Section 368(a)(1)(E) of the Code.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. Defined Terms.** Capitalized terms used herein (including in the preamble and recitals above) but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Facility Agreement.

**SECTION 2. Amendment of the Facility Agreement (including certain Schedule and Exhibits thereto), the Loan Notes, the Warrants and the Registration Rights Agreement.** Subject to, and effective immediately upon, the satisfaction (or waiver by all of the Lenders) of the conditions precedent set forth in Section 3 hereof (the date all such conditions are first satisfied or waived (which for the avoidance of doubt, shall also be the "Initial Disbursement Date" (as defined in the Subordinated Loan Agreement)) being referred to as the "First Amendment Effective Date"), the Facility Agreement, Schedule 3.1(y) to the Facility Agreement, Exhibit I to the Facility Agreement, Exhibit 2.7 to the Facility Agreement, the Loan

Notes, the Warrants and the Registration Rights Agreement shall be hereby amended as follows (provided, however, that the amendment of Section 5(a) of Exhibit 2.7 to the Facility Agreement set forth in Section 2(kkk) and the amendment of each of the Warrants set forth in Section 2(mmm) (collectively, the "Immediately Effective Amendments") shall be effective immediately upon the execution and delivery of this Amendment):

(a) Section 1.1 of the Facility Agreement shall be hereby amended by adding the following new definitions in the appropriate alphabetical order:

""Additional Unsecured Permitted Debt" has the meaning set forth in clause (n) of the definition of "Permitted Indebtedness.""

""Additional Unsecured Permitted Debt Documents" means the agreements, instruments and documents evidencing any Additional Unsecured Permitted Debt expressly permitted by clause (n) of the definition of "Permitted Indebtedness," in each case, that is in form and substance reasonably satisfactory to the Required Lenders."

""Approval Conditions" means the receipt of stockholder approval necessary (x) to increase the number of authorized shares of Common Stock or to effect a reverse stock split and (y) under the rules and regulations of the applicable Eligible Market, in each case as necessary to permit the issuance of the Subordinated Notes and the full amount of shares of Preferred Stock and Common Stock, as applicable, upon conversion of the Convertible Notes, the Subordinated Notes and the Preferred Stock, in each case in accordance with the terms thereof (as expressly contemplated by the Convertible Notes, the Subordinated Loan Agreement and the Certificate of Designations, as applicable, and including the making of any required filings with the SEC or the applicable Eligible Market in connection with obtaining such stockholder approval), the filing of and effectiveness of the Certificate of Designations and any amendment of the Certificate of Incorporation of the Borrower effecting any such increase in authorized shares or reverse stock split and the approval of the additional shares of Common Stock for listing on an Eligible Market in connection with such conversion."

""Borrower Stock Plans" means stock-based compensation plans (that do not include Disqualified Stock) of the Borrower and its Subsidiaries, pursuant to which equity compensation in the form of Borrower's Stock (that does not include Disqualified Stock) may be awarded to officers, directors, employees and/or consultants of the Borrower and its Subsidiaries."

""Certificate of Designations" has the meaning given to such term in Section 3(h) of the First Amendment."

""Conversion Shares" has the meaning set forth in the Convertible Notes."

""Convertible Notes" means any Convertible Note issued to any of the Lenders evidencing any Loan or Disbursement funded by them, each in the form attached as Exhibit B to the First Amendment, in each case, as amended, restated, supplemented or otherwise modified from time to time; provided that the maximum principal amount of Loans and Disbursements in respect of which Convertible Notes shall be convertible (including by amendment and restatement of the Loan Notes) shall not exceed $74,000,000 pursuant to the terms of the Convertible Notes."

““First Amendment” means the First Amendment to Facility Agreement, entered into as of January 14, 2019, by and among the Borrower, the other Loan Parties party thereto, the Lenders party thereto and Cortland Capital Market Services LLC, as Agent.”

““First Amendment Effective Date” has the meaning given to such term in the First Amendment.”

““First Amendment Transactions” means the entering into of the First Amendment by the Persons party thereto and the consummation of the other transactions contemplated by the First Amendment.

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

““Preferred Stock” has the meaning given to such term in the Subordinated Loan Agreement (which, for the avoidance of doubt, does not include any Disqualified Stock).”

““S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.”

““Specified Acquisition Payment Obligations” has the meaning set forth in the definition of “Indebtedness.””

““Specified Acquisition Payment Obligations Documents” has the meaning set forth in the definition of “Indebtedness.””

““Subordinated Lenders” means, collectively, the Subordinated Creditors (as defined in the Subordination Agreement).”

““Subordinated Loan Agreement” means that certain Amended and Restated Senior Subordinated Convertible Loan Agreement, originally dated as of December 31, 2018 and amended and restated as of January 14, 2019, by and among the Borrower, the other Loan Parties party thereto from time to time, and the Subordinated Lenders, as the same may be further amended, restated, supplemented or otherwise modified from time to time in accordance and compliance with the terms thereof, of this Agreement and of the Subordination Agreement.”

““Subordinated Loan Documents” means the Subordinated Debt Documents (as defined in the Subordination Agreement).”

““Subordinated Notes” means the Loans (as defined in the Subordinated Loan Agreement) or the Notes (as defined in the Subordinated Loan Agreement), in each case, as amended, restated, supplemented or otherwise modified from time to time in accordance and compliance with the terms of the Subordinated Loan Agreement, this Agreement and the Subordination Agreement.”

""Subordination Agreement" means that certain Subordination Agreement, dated as of December 31, 2018, by and among Borrower, the other Loan Parties party thereto from time to time, the Subordinated Lenders and the Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof."

""Transfer" means directly or indirectly, sell, give, assign, hypothecate, pledge, encumber, grant a security interest or Lien in, transfer or otherwise dispose of (whether by operation of law, other action or otherwise)."

(b) Section 1.1 of the Facility Agreement shall be hereby amended to amend and restate the definition of "Change of Control" to read as follows:

""Change of Control" means (a) except as otherwise expressly permitted under this Agreement, at any time the Borrower shall cease to own, directly or indirectly, one hundred percent (100%) of the issued and outstanding Stock of any of its Subsidiaries (measured both on a fully diluted basis and not on a fully diluted basis), (b) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than Vatera Healthcare Partners LLC, Vatera Investment Partners LLC and their respective Affiliates from time to time, is or shall at any time become the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all Stock that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "Option Right")), directly or indirectly, of 30% or more on an issued and outstanding basis of the voting interests in the Borrower's Stock (taking into account all such securities that such person or group has the right to acquire pursuant to any Option Right), (c) a sale of all or substantially all of the assets of the Borrower (including, for the avoidance of doubt, the sale of all or substantially all of the assets of the Subsidiaries of the Borrower) or of the Borrower's Stock shall occur or be consummated, (d) the consummation of a purchase, tender or exchange offer made to and accepted by the holders of more than 50% of the outstanding Stock of the Borrower; provided, however, that none of the transactions with respect to the Obligations included in this Agreement, the Convertible Notes, the Subordinated Loan Agreement (as in effect on the date of the First Amendment) or the Certificate of Designations, including a repayment, repurchase, redemption or conversion (or a deemed repayment, repurchase, redemption or conversion) of any Loans, the Convertible Notes, the Subordinated Notes (under the Subordinated Loan Agreement as in effect on the date of the First Amendment) or the Preferred Stock, or any adjustment in the Conversion Price (as defined in the Convertible Note) or the Conversion Rate (as defined in the Convertible Note) (or of the conversion price or the conversion rate of the Preferred Stock or the Subordinated Notes under the Subordinated Loan Agreement (as in effect on date of the First Amendment), in the case of each of the foregoing in this proviso, in accordance and compliance with the terms and conditions of this Amendment, the Subordinated Loan Agreement, the Subordinated Notes (under the Subordinated Loan Agreement as in effect on the date of the First Amendment), the Certificate of

Designations, the Subordinated Loan Documents and the Subordination Agreement, as applicable, shall constitute a purchase, tender offer or exchange offer for purposes of this clause (d), or (e) a "change of control" however so defined in any document, agreement or instrument governing or evidencing any Indebtedness (including a "Change of Control" (as defined in the Subordinated Loan Agreement)) or, in each case, any term of similar effect, shall occur."

(c) Section 1.1 of the Facility Agreement shall be hereby amended to amend and restate the definitions of "Dispose" and "Disposition" to read as follows:

""Dispose" and "Disposition" mean (a) the sale, lease, conveyance or other disposition of any assets or property (including any transfer or conveyance of any assets or property pursuant to a division or split of a limited liability company or other entity or Person into two or more limited liability companies or other entities or Persons) and (b) the sale or Transfer by the Borrower or any Subsidiary of the Borrower of any Stock issued by any Subsidiary of the Borrower."

(d) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "DTC" by deleting the "(qq)" referenced therein and replacing it with "(pp)."

(e) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "EBITDA" by (i) deleting the reference to "FASB" in clause (e) thereof and replacing it with "Financial Accounting Standards Board," (ii) deleting the reference to "Plus" in clause (h) thereof and replacing it with "plus," and (iii) deleting the two references to "disposition" in the last paragraph of such definition and replacing them with "Disposition."

(f) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "FCPA" to remove the reference to "(jj)" and replace it with "(ii)."

(g) Section 1.1 of the Facility Agreement shall be hereby amended to remove the definition of "HSR Act" in its entirety.

(h) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "Indebtedness" by adding the following sentence immediately after the end thereof:

"Notwithstanding the foregoing, Indebtedness shall not include any payment obligations of the Borrower and its Subsidiaries existing as of the date of the First Amendment that relate to Acquisitions consummated prior to the date of the First Amendment and are specifically described (and due and payable) as set forth in Schedule I to the First Amendment (such obligations, the "Specified Acquisition Payment Obligations," and the agreements, instruments and documents evidencing such Specified Acquisition Payment Obligations, the "Specified Acquisition Payment Obligations Documents"), but only so long as such Specified Acquisition Payment Obligations and the Specified Acquisition Payment Obligations Documents are not amended, restated, supplemented, changed, increased, accelerated or otherwise modified in any manner after the date of the First Amendment that (1) increases the aggregate amount payable by the Loan Parties and their Subsidiaries in respect of the Specified Acquisition Payment Obligations (other than (x) payments that are made in the form of Stock of the Borrower (other than Disqualified

Stock) and (y) payments made in consideration for any extension of the due dates of any Specified Acquisition Payment Obligations in the form of interest and fees on the extended amounts in an amount not to exceed five percent (5%) per annum while such amounts remain outstanding), (2) provides that any of the Specified Acquisition Payment Obligations are secured by Liens on any asset or property of any Loan Party or any of its Subsidiaries, (3) provides that any Subsidiary of any Loan Party shall guarantee, or otherwise become obligated (whether unconditionally or upon any condition) to make any payment of or in respect of, or have any other direct or indirect liability for, any of the Specified Acquisition Payment Obligations or provide any asset or property or distribution therefor, (4) shortens the weighted average life to maturity (or otherwise shortens the maturity) of any of the Specified Acquisition Payment Obligations, unless the aggregate amount of the outstanding Specified Acquisition Payment Obligations is permanently reduced in connection therewith in a manner where the shorter maturity (and/or the shorter weighted average life to maturity, as applicable) is reasonable (as determined in good faith by the board of directors of the Borrower) in relation to such reduced aggregate amount provided in exchange therefor, (5) restricts any Loan Party or any Subsidiary from performing, or otherwise adversely affects the performance by any Loan Party or any of its Subsidiaries of, any of its material obligations (including the Obligations) under the Loan Documents, (6) has the effect of putting the Loan Parties in a worse (or less favorable) position than the Specified Acquisition Payment Obligations and the Specified Acquisition Payment Obligations Documents in effect on the date of the First Amendment, as determined in good faith by the board of directors of the Borrower, (7) results in a Material Adverse Effect, or (8) results in any breach of, or Default or Event of Default under, any of the Loan Documents. For the avoidance of doubt, if such Specified Acquisition Payment Obligations are amended, restated, supplemented, changed, increased, accelerated, waived, consented to or otherwise modified in any manner that is not permitted by the immediately preceding sentence, then such Specified Acquisition Payment Obligations shall automatically on the date of such amendment, restatement, supplement, change, increase, acceleration or modification be deemed to have been Indebtedness retroactively to and from the date such Specified Acquisition Payment Obligations were first incurred."

(i) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "Initial Disbursement Date" by deleting the reference to "Distribution" and replacing it with "Disbursement."

(j) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "Latest Balance Sheet" by adding the word "Date" immediately after the word "Sheet" immediately before the closed quotation mark.

(k) Section 1.1 of the Facility Agreement shall be hereby amended to amend and restate the definition of "Loan Documents" to read as follows:

""Loan Documents" means this Agreement, the First Amendment, the Notes, the Security Agreement, the Initial Disbursement Request, each Perfection Certificate, each Compliance Certificate, any Revolving Credit Facility Intercreditor Agreement, the Subordination Agreement (and any other subordination or intercreditor agreement

entered into by any Secured Party with respect to any Indebtedness permitted under the Loan Documents), the Stock Purchase Agreement, the Warrants, the Registration Rights Agreement, the Royalty Agreement, the Agent Fee Letter, any solvency certificate and other documents, agreements and instruments delivered in connection with any of the foregoing and dated the Agreement Date or subsequent thereto, whether or not specifically mentioned herein or therein, in each case, as amended, restated, supplemented or otherwise modified from time to time."

(l) Section 1.1 of the Facility Agreement shall be hereby amended to amend and restate the definition of "Loan Notes" to read as follows:

""Loan Notes" means (a) prior to the First Amendment Effective Date, any Loan Note issued to any of the Lenders evidencing any Initial Disbursement funded by such Lenders in the form attached hereto as Exhibit A-1, in each case, as amended, restated, supplemented or otherwise modified from time to time, and (b) on or after the First Amendment Effective Date, (i) any Loan Note mentioned in clause (a) above, as amended and restated to be (and as set forth) in a Convertible Note, (ii) any other Convertible Notes or (iii) any other promissory note evidencing any Initial Disbursement in form acceptable to the Lenders holding such Initial Disbursements.

(m) Section 1.1 of the Facility Agreement shall be hereby amended to amend and restate the definition of "Material Adverse Effect" to read as follows:

""Material Adverse Effect" means (i) a material adverse effect on (a) the business, results of operations, financial condition or assets of the Loan Parties and their Subsidiaries, taken as a whole, (b) the validity or enforceability of any material provision of this Agreement, the Notes, the Security Agreement, the Stock Purchase Agreement, the Warrants, the Registration Rights Agreement, the Royalty Agreement, the Agent Fee Letter, the Subordination Agreement, any Revolving Credit Facility Intercreditor Agreement, any other subordination or intercreditor agreement that is a Loan Document or any other material Loan Document, (c) the ability of the Loan Parties to timely perform the Obligations, (d) the creation, perfection or, subject to Permitted Liens (solely to the extent any such Permitted Liens are expressly permitted under this Agreement to have priority over the Liens granted under the Loan Documents), priority of any of the Liens granted under the Loan Documents (other than as a result of the failure of Agent to take any action within its control), or (e) any of the rights and remedies of the Secured Parties under the Loan Documents, or (ii) any "Material Adverse Effect" (as defined in the Subordinated Loan Agreement)."

(n) Section 1.1 of the Facility Agreement shall be hereby amended to amend and restate the definition of "Notes" to read as follows:

""Notes" means the Convertible Notes, the Loan Notes and the Subsequent Disbursement Notes."

(o) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "Obligations" by deleting the word "interests" and replacing it with "interest."

(p) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "OFAC" to remove the reference to "(jj)" and replace it with "(ii)."

(q) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "Permitted Disposition" to:

(i) amend and restate clause (e) thereof as follows:

"(e) the sale or issuance of Stock (other than Disqualified Stock) in the Borrower or pursuant to (A) the Loan Documents, (B) the Subordinated Notes in accordance and compliance with the Subordinated Loan Agreement, the Subordination Agreement and the Certificate of Designations or (C) any Borrower Stock Plans approved by the board of directors of the Borrower (or any changes thereto that are not material);",

(ii) remove the "and" after clause (k) of such definition,

(iii) remove the "." after clause (l) of such definition and replace it with a ";", and

(iv) add the following two new clauses (m) and (n) immediately after clause (k) of such definition:

"(m) the granting of Permitted Liens; and

(n) the transactions expressly permitted by Section 5.2(b)(iii).".

(r) Section 1.1 of the Facility Agreement shall be hereby amended to amend the definition of "Permitted Indebtedness" to (i) remove the "and" after the end of clause (m) of such definition, (ii) amend and restate clause (n) of such definition as set forth below and (iii) add the new clause (o) below after clause (n) and before the ".":

"(n) other unsecured Indebtedness not exceeding in the aggregate at any time outstanding $65,000,000, which Indebtedness shall (i) bear interest not in excess of then applicable market rates, (ii) have a maturity no earlier than one year and one day after the earlier of (A) the payment in full of the Obligations and (B) the latest Maturity Date, (iii) shall not provide for any cash payments of any type before one year and one day after the earlier of (A) the payment in full of the Obligations and (B) the latest Maturity Date and (iii) be payment subordinated in a manner reasonably acceptable to Agent and the Required Lenders (the "Additional Unsecured Permitted Debt"); and

(o) Indebtedness under the Subordinated Loan Agreement in an aggregate principal amount not to exceed the amount permitted under the Subordination Agreement (for the avoidance of doubt, including the capped amount set forth in Section 2.7(a)(ix) of the Subordination Agreement; provided that the Agent and the Lenders hereby consent to the such capped amount being increased from "$135,000,000" therein to "$140,000,000" but without any other change or modification being made to (or consented to with respect to) the Subordination Agreement)."

(s) Section 1.1 of the Facility Agreement is hereby amended to amend and restate the definition of "Pro Rata Loan Share" as follows:

""Pro Rata Loan Share" means, with respect to any Lender, the applicable amount (as adjusted, increased or decreased from time to time in accordance with the terms hereof or any assignment or transfer of such amount and the actual principal amount outstanding related thereto) specified opposite such Lender's name on Annex A under the column "Initial Disbursement Amounts" and the applicable amount (as adjusted, increased or decreased from time to time in accordance with the terms hereof or any assignment or transfer of such amount and the actual principal amount outstanding related thereto) of Loans funded by such Lender pursuant to its Subsequent Disbursement Commitment."

(t) Section 1.1 of the Facility Agreement is hereby amended to amend and restate the definition of "Pro Rata Share" as follows:

""Pro Rata Share" means, with respect to any Lender, the applicable percentage (as adjusted, increased or decreased from time to time in accordance with the terms hereof or any assignment or transfer thereof) obtained by dividing (a) the sum of (i) such Lender's Pro Rata Subsequent Disbursement Share of the Subsequent Disbursement Commitment (to the extent not terminated or used in its entirety), and (ii) such Lender's Pro Rata Loan Share of the outstanding Loans, by (b) the sum of (i) the total amount of remaining Subsequent Disbursement Commitments held by all Lenders, and (ii) the total outstanding amount of Loans held by all Lenders."

(u) Section 1.1 of the Facility Agreement is hereby amended to amend and restate the definition of "Pro Rata Subsequent Disbursement Share" as follows:

""Pro Rata Subsequent Disbursement Share" means, with respect to any Lender, in respect of unfunded Subsequent Disbursement Commitments, the applicable percentage ((a) as adjusted from time to time in accordance with the terms hereof, (b) as adjusted, increased or decreased from time to time in accordance with the terms hereof or any assignment or transfer thereof and (c) as decreased as such Subsequent Disbursement Commitments are funded) specified opposite such Lender's name on Annex A under the column "Subsequent Disbursement Commitment."

(v) Section 1.1 of the Facility Agreement shall be amended to amend the definition of "Registration Rights Agreement" to add to the end of such definition immediately before the "." the following: ", as amended, restated, supplemented or otherwise modified from time to time".

(w) Section 1.1 of the Facility Agreement shall be amended to amend the definition of "Revolving Credit Facility Documents" to remove the word "permited" and replace it with "permitted."

(x) Section 1.1 of the Facility Agreement shall be amended to amend the definition of "Sanctioned Country" to remove the reference to "(jj)" and replace it with "(ii)."

(y) Section 1.1 of the Facility Agreement shall be amended to amend the definition of "Sanctions" to remove the reference to "(jj)" and replace it with "(ii)."

(z) Section 1.1 of the Facility Agreement shall be amended to amend the definition of "Sarbanes-Oxley" to remove the reference to "(kk)" and replace it with "(jj)."

(aa) Section 1.1 of the Facility Agreement shall be amended to amend the definition of "SDN List" to remove the reference to "(jj)" and replace it with "(ii)."

(bb) Section 1.1 of the Facility Agreement shall be amended to amend and restate the definition of "Securities" to read as follows:

""Securities" means the Loans, the Subsequent Disbursement Commitments, the Notes, the related guaranties set forth in the Security Agreement of the Guarantors, the Interest Payment Shares, the Purchased Shares, the Conversion Shares, the Warrants, the Warrant Shares and the right to receive the Royalty pursuant to the Royalty Agreement."

(cc) Section 1.1 of the Facility Agreement shall be amended to amend the definition of "Stock" to add the following sentence at the end of such definition: "The term "Stock" shall not include any Loans, Notes or Disbursements (or any Subordinated Loans or Subordinated Notes under the Subordinated Loan Agreement incurred or issued in accordance and compliance with the Subordination Agreement)."

(dd) Section 1.2 of the Facility Agreement shall be hereby amended to:

(i) amend and restate the 20th sentence thereof as follows:

"Any reference to "payment in full", "payment in full in cash", "paid in full", "paid in full in cash", "repaid in full", "repaid in full in cash", "prepaid in full", "prepaid in full in cash", "redeemed in full", "redeemed in full in cash" or any other term or word of similar effect used in this Agreement or any other Loan Document with respect to the Loans or the Obligations shall mean all Obligations (including any Prepayment Fees or any other amount required by Section 5.3) (excluding contingent claims for indemnification to the extent no claim giving rise thereto has been asserted) have been repaid in full in cash (or partially paid in cash and partially satisfied through the issuance of Conversion Shares in accordance and compliance with the terms and provisions of the Convertible Notes, this Agreement and the other Loan Documents, but, for the avoidance of doubt, solely to the extent that, after giving effect to both the payment in cash and such payment through the issuance of Conversion Shares, the full amount of all such Obligations have been fully and completely satisfied) and have been fully performed; provided that reference otherwise to "payment", "paid", "repaid", "prepaid", "redeem", "purchase", "defease", "prepayment" or "redemption" or any term or word of similar effect used in this Agreement or any other Loan Document with respect to the Loans or the Obligations shall mean in cash and not by conversion into Conversion Shares;" and

(ii) add the following sentences at the end of such Section 1.2:

"The terms "shall" and "will" are used interchangeably in this Agreement and the other Loan Documents and mean for the Loan Parties and their Subsidiaries to have an absolute obligation to perform or do (or not perform or not do) a certain action or event, as the context may require. Any action or event that is prohibited by the terms of the Loan

Documents shall mean that such action or event is not directly or indirectly permitted to be taken or consummated. Notwithstanding anything to the contrary in this Agreement or any other Loan Document (but subject in all respects to Section 5.4(h) and no Default or Event of Default occurring, continuing or existing thereunder shall be deemed to be cured, waived or no longer occurring, continuing or existing by anything in this sentence), to the extent any Revolving Credit Facility is in existence and the Revolving Credit Facility Documents contain representations, warranties, covenants or events of default (other than representations, warranties, covenants or events of default that are customary for revolving credit facilities of the same type (including, if applicable, asset-based revolving credit facilities of the same type) to include that are not customarily included in a senior secured term loan facility existing at the same time of such revolving credit facility) that are more favorable to the lenders and other secured parties under such Revolving Credit Facility (the "More Restrictive Provisions") than the applicable representations, warranties, covenants or events of default under the Loan Documents (the "Comparable Provisions"), no action or inaction that would otherwise be permitted under the Comparable Provisions to the extent such Revolving Credit Facility was not in existence at such time shall be permitted (and will be deemed to be prohibited) under such Comparable Provisions if such action or inaction is not permitted (or is prohibited) under any More Restrictive Provisions (without giving effect to any consent or waiver thereto obtained from the lender or lenders (and/or agent for such lender or lenders) under such Revolving Credit Facility if either (y) a consent fee, waiver fee or other fee or payment or any other type of consideration (cash, non-cash or otherwise) is paid, made or provided by the Loan Parties or any of their Affiliates for such consent or waiver (unless, with respect to this clause (y), the same fee, payment or consideration is also paid, made or provided by the Loan Parties to the Lenders in connection with such consent or waiver) or (z) such consent or waiver is not expressly permitted by the terms and provisions of the Revolving Credit Facility Intercreditor Agreement and this Agreement)."

(ee) Section 1.5 of the Facility Agreement shall be hereby amended to amend and restate the penultimate sentence thereof as follows:

"Notwithstanding any other provision contained herein or in any other Loan Document, all terms of an accounting or financial nature used herein and in the other Loan Documents shall be construed, and all computations of amounts and ratios referred to herein and in the other Loan Documents shall be made, without giving effect to (a) any election under Statement of Financial Accounting Standards No. 159 (Codification of Accounting Standards 825-10) (or any other Codification of Accounting Standards or Statement of Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party or any Subsidiary at "fair value," as defined therein, or (b) any treatment of Indebtedness in respect of convertible debt instruments under Codification of Accounting Standards 470-20 (or any other Codification of Accounting Standards or Statement of Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof."

(ff) Section 2.3(c) of the Facility Agreement shall be hereby amended to amend and restate the last paragraph of such section to read as follows:

"Notwithstanding anything to the contrary in the Loan Documents, at the time any of the Loans are paid, repaid, redeemed or prepaid (whether before, at the time of or after the Maturity Date or any acceleration, bankruptcy or otherwise), the Borrower shall pay to the Agent for the sole benefit of the Lenders (based on their respective Pro Rata Shares of such Loans) (with the Agent making such payment on the same day to the Lenders) a non-refundable exit fee (the "Exit Fee") equal to 4% of the amount of Loans paid, repaid, redeemed or prepaid, which shall be due and payable in cash upon each such payment, repayment, redemption or prepayment of the applicable tranche of Loans,"

(gg) The introductory paragraph of Section 3.1 of the Facility Agreement shall be hereby amended by removing the language "as of the Agreement Date and on each Disbursement Date" and replacing it with "as of and on (v) the Agreement Date, (w) each Disbursement Date, (x) the date of effectiveness of any amendment, restatement, supplement, change or other modification to this Agreement (or of any waiver of any provision of this Agreement or consent to any departure from the terms of this Agreement), (y) solely with respect to any new Loan Party that joins this Agreement after the Agreement Date, the date such new Loan Party joins this Agreement, and (z) each other date that it is agreed by the applicable Parties that the representations and warranties set forth in this Section 3.1 shall be remade or deemed made, in each case,".

(hh) The first sentence of Section 3.1(c) of the Facility Agreement shall be hereby amended to (i) remove the "and" appearing directly after the language "On the Agreement Date (both before and after giving effect to the Transactions)" therein and replace it with "," and (ii) add ", on the First Amendment Effective Date (both before and after giving effect to the First Amendment Transactions) and on each date that this Agreement is amended, restated, supplemented, changed or otherwise modified (or any provision of this Agreement is waived or any departure of this Agreement is consented to)" immediately after the language "on each Disbursement Date (both before and after giving effect to such Disbursement and the use of the proceeds thereof)."

(ii) Section 3.1(i) of the Facility Agreement shall be hereby amended (i) to add ", the First Amendment Transactions" immediately after the reference to "the Transactions" in clause (B) of the first sentence thereof and (ii) to add ", solely in the case of any such action, suit or other proceeding before any Governmental Authority that becomes pending or threatened after the date of the First Amendment and on or prior to the First Amendment Effective Date, that would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect" at the end of clauses (B) and (C) of the first sentence thereof.

(jj) Section 3.1(j) of the Facility Agreement shall be hereby amended and restated as follows:

"Each of this Agreement and the other Loan Documents and the issuance of the Securities hereunder and thereunder, has been duly authorized (including, to the extent required, by the holders of Borrower's Stock), executed and delivered by each Loan Party. No further consent or authorization is required by the Borrower, the Borrower's board of directors or the holders of the Borrower's Stock, and this Agreement and the other Loan Documents constitute valid, legal and binding obligations of each Loan Party, enforceable in accordance with their terms, except as such enforceability may be limited by applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally. No further authorization or approval is required to satisfy the requirements of the NASDAQ Stock Market ("NASDAQ") in connection with the performance by the Borrower of its obligations under the Loan Documents, including the issuance of the Securities. The Purchased Shares, the Interest Payment Shares, the Warrant Shares and the Conversion Shares have been approved for listing on the Principal Market. The execution, delivery and performance of the Loan Documents by each Loan Party party thereto and the consummation of the transactions (including the issuance of the Securities hereunder and thereunder) contemplated herein and therein will not (A) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any assets of any such Loan Party pursuant to, any agreement, document or instrument to which such Loan Party is a party or by which any Loan Party is bound or to which any of the assets or property of any Loan Party is subject, except, with respect to this clause (A), as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (B) result in any violation of or conflict with the provisions of the Organizational Documents or (C) result in the violation of any Applicable Law, or of any judgment, order, rule, regulation or decree of any Governmental Authority, except, with respect to this clause (C), as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect."

(kk) Section 3.1(k) of the Facility Agreement shall be hereby amended to add ", the First Amendment Transactions" immediately after the reference to "the Transactions" in clause (ii) thereof.

(ll) Section 3.1(w) of the Facility Agreement shall be hereby amended to add ")" at the end of such Section immediately before the ".".

(mm) Section 3.1(y) of the Facility Agreement shall be hereby amended to (i) change the reference to "(vii)" to "(vi)", and (ii) in clause (Z) thereof, (A) remove the word "any" appearing immediately before "restrictions upon" and (B) replace the words "transfer" appearing therein with "Transfer."

(nn) Section 3.1(aa) of the Facility Agreement shall be hereby amended by adding the following sentences at the end of such Section: "The Borrower has delivered to the Agent and the Lenders a true, complete and correct copy of all of the Subordinated Loan Documents and all of the Specified Acquisition Payment Obligations Documents (in each case, including all schedules, exhibits, amendments, restatements, supplements, modifications, assignments and all other agreements, instruments and documents delivered pursuant thereto or in connection therewith). All Obligations constitute permitted Indebtedness under the Subordinated Loan Documents. All Liens granted under the Loan Documents constitute permitted Liens under the Subordinated Loan Documents. All Obligations (and all Liens granted under the Loan Documents) are entitled to the benefits of the subordination and other intercreditor provisions contained in the Subordination Agreement.

(oo) Section 3.1(cc) of the Facility Agreement shall be hereby amended to remove the word "Permits" and replace it with "Authorizations and permits."

(pp) Section 3.1(hh) of the Facility Agreement shall be hereby amended to add "and the First Amendment Transactions" immediately prior to the reference to ", when taken as a whole" therein.

(qq) Section 3.1(nn) of the Facility Agreement shall be hereby amended to add ", except for issuances of certain Stock (other than Disqualified Stock) in accordance and compliance with the Subordinated Loan Agreement, the Subordinated Notes and the Subordination Agreement," immediately before the word "cause" therein.

(rr) Section 5.1(h) of the Facility Agreement shall be hereby amended to (i) add in the first sentence thereof (A) immediately after the reference to "will provide to Agent and each Lender" the language "(1)" and (B) immediately prior to the "." at the end of such first sentence the following: "and (2) on the same day as delivery to any Subordinated Creditor (or any other holder of any Indebtedness or other obligations) under the Subordinated Loan Documents, any additional financial statements, certificates, reports, notices, agreements, instruments and documents provided under (or in connection with) the Subordinated Loan Documents and (ii) add the language "or for the year ended December 31, 2018" immediately after the reference to "December 31, 2017" in clause (ii)(x) of the second sentence thereof.

(ss) Section 5.1(o) of the Facility Agreement shall be hereby amended by deleting the first sentence thereof.

(tt) Section 5.1(u) of the Facility Agreement shall be hereby amended by (i) adding ", Subordinated Loan Documents, Specified Acquisition Payment Obligations Documents" immediately after each reference to "Agreement Date Acquisition Documents" in clause (i) thereof, and (ii) adding " or any Subordinated Loan Document" immediately after each reference to "Revolving Credit Facility" in clause (ii) thereof.

(uu) Section 5.1(v)(i) of the Facility Agreement shall be hereby amended and restated as follows:

"(i) Minimum Cash Balance. The Loan Parties covenant and agree that the Borrower and its Subsidiaries shall maintain, on a consolidated basis, a minimum aggregate amount of unrestricted cash in deposit accounts covered by a Control Agreement in favor of Agent (for the benefit of the Secured Parties) (and, solely with respect to unrestricted cash in an amount not to exceed $5,000,000, deposit accounts held by Foreign Subsidiaries that are not subject to Liens of any Person other than Liens of the type set forth in clause (a) or clause (f) of the definition of "Permitted Liens") equal to no less than (A) at all times on or prior to March 31, 2020, $40,000,000, and (B) at all times on and after April 1, 2020, $25,000,000."

(vv) Section 5.1(v)(ii) of the Facility Agreement shall be hereby amended and restated as follows:

"(ii) Minimum Net Sales. The Loan Parties shall maintain LTM Net Sales of at least (A) $45,000,000 for the fiscal year ending December 31, 2018, (B) $63,750,000 for the fiscal year ending December 31, 2019 and (C) $85,000,000 for the fiscal year ending December 31, 2020 and each fiscal year ending thereafter."

(ww) Section 5.2(a) of the Facility Agreement shall be hereby amended by adding the following sentence between the first and last sentences of such Section:

"No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, divide (or otherwise split) itself or themselves into two or more limited liability companies or other entities or Persons."

(xx) Section 5.2(b) of the Facility Agreement shall be hereby amended to amend and restate clause (iii) thereof as follows:

"(iii) make any Restricted Payments, other than (v) cash payments in lieu of fractional shares in connection with the exercise of warrants or other securities convertible into or exchangeable for Common Stock or in connection with the Reverse Stock Split (as defined in the Subordinated Loan Agreement) (or any other reverse share split of Common Stock for the purpose of increasing the per share trading price of the Common Stock and/or increasing the authorized shares of Common Stock that are available for issuance, in each case of this parenthetical, that would not cause a Default or Event of Default to occur, and solely to the extent such actions or transactions are not taken with the primary purpose of making cash payments to holders of Stock of the Borrower or its Affiliates prior to the payment in full of the Obligations), (w) cash payments required to be paid upon conversion of any Loan or Disbursement evidenced by the Convertible Notes to Secured Parties (including, for the avoidance of doubt, transferees of the Warrants or the Convertible Notes), (x) when no Default or Event of Default has occurred and is continuing, the repurchase of the Borrower's Stock from current or former officers, employees or directors of the Borrower and its Subsidiaries (or their permitted transferees or estates) upon their death, disability or termination of employment in an aggregate amount not to exceed $250,000 in any fiscal year of the Borrower, (y) Restricted Payments to Loan Parties and (z) solely with respect to Indebtedness under the Subordinated Loan Documents, "Permitted Subordinated Debt Payments" (as defined in the Subordination Agreement) solely at the times (and to the extent) such payments are expressly permitted to be made by the terms, conditions and provisions of the Subordination Agreement (and not at any other time)."

(yy) Section 5.2(g) of the Facility Agreement shall be hereby amended to (i) delete the word "and" immediately after clause (iii) thereof, and (ii) add the following new clause (5) immediately after clause (4) thereof and immediately before the ".": ", and (5) the entering and performing of the Subordinated Loan Documents with Vatera Healthcare Partners LLC and Vatera Investment Partners LLC to the extent such Persons are Affiliates of the Borrower and its Subsidiaries and performing under the Certificate of Designations (as in effect on the First Amendment Effective Date)".

(zz) Section 5.2(j) of the Facility Agreement shall be hereby amended by adding "(except an amendment to the certificate of incorporation of Borrower entered into solely to increase the number of authorized shares of Preferred Stock or Common Stock to accommodate the conversion of the Subordinated Notes (including by a reverse stock split not prohibited by this Agreement) in connection with any Subsequent Stockholder Approval (as defined in the Subordinated Loan Agreement))" immediately after "amend any of its Organizational Documents" therein.

(aaa) Section 5.2(m) of the Facility Agreement shall be hereby amended to (i) in the first sentence thereof, add immediately before the period "." the following: " and the Subordinated Loan Documents (and, solely to the extent the dividends, distributions and other payments required (or permitted) to be made under this Agreement and the other Loan Documents, in each case, are expressly permitted thereunder, the Revolving Credit Facility Documents and the Additional Unsecured Permitted Debt Documents), and (ii) in the second sentence thereof, (A) remove the "and" in front of clause (iii) of the last sentence of such Section, and (B) add the following new clauses (iv) and (v) immediately before the "." in the last sentence of such Section: ", (iv) subject to the terms, conditions and provisions of the Subordination Agreement and the other Loan Documents (and for the avoidance of doubt, no prohibition or restriction shall be included thereunder on the Liens granted to Agent and the other Secured Parties under the Loan Documents other than a cap on the principal amount of the Loans secured by such Liens that is consistent with the cap language in the Subordination Agreement)), the Subordinated Loan Agreement and (v) subject to the terms, conditions and provisions of the subordination agreement with respect to such Indebtedness and the other Loan Documents (and for the avoidance of doubt, no prohibition or restriction shall be included thereunder on the Liens granted to Agent and the other Secured Parties under the Loan Documents other than a cap on the principal amount of the Loans secured by such Liens that is consistent with the cap language in the Subordination Agreement)), the Additional Unsecured Permitted Debt Documents."

(bbb) Section 5.2 of the Facility Agreement shall be hereby amended to insert the following new clauses (v) and (w) immediately after the end of clause (u) thereof:

"(v) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, (A) make any payment, or take any action, with respect to the Indebtedness under the Subordinated Loan Documents that is in violation or breach of this Agreement or the Subordination Agreement, (B) enter into or otherwise make any amendment, restatement, supplement or modification of any Subordinated Loan Documents in violation or breach of this Agreement or the Subordination Agreement; (C) join any Subsidiary or any Affiliate of any Loan Party as a borrower, guarantor or obligor under the Subordinated Loan Documents, unless, in each case, the same Person becomes a Loan Party in the same capacity under the Loan Documents and such Person executes and delivers such agreements, instruments and documents reasonably requested by Agent or the Required Lenders to effectuate any of the foregoing and such Person joins the Subordination Agreement in the same capacity as the other Loan Parties party thereto; or (D) grant or provide any Lien, collateral or security under the Subordinated Loan Documents or for the benefit of the Subordinated Creditors or any other holder of any Indebtedness or obligations under the Subordinated Loan Documents."

"(w) No Loan Party shall, and no Loan Party shall permit any of its Subsidiaries to, amend, restate, supplement, change, increase, accelerate, waive, consent to or otherwise modify any Specified Acquisition Payment Obligations Documents in any manner after the date of the First Amendment that (1) increases the aggregate amount payable by the Loan Parties and their Subsidiaries in respect of the Specified Acquisition Payment Obligations (other than (x) payments that are made in the form of Stock of the Borrower (other than Disqualified Stock) and (y) payments made in consideration for any extension of the due dates of any Specified Acquisition Payment Obligations in the form of interest and fees on the extended amounts in an amount not to exceed five percent (5%) per annum while such amounts remain outstanding), (2) provides that any of the Specified Acquisition Payment Obligations are secured by Liens on any asset or property of any Loan Party or any of its Subsidiaries, (3) provides that any Subsidiary of any Loan Party shall guarantee, or otherwise become obligated (whether unconditionally or upon any condition) to make any payment of or in respect of, or have any other direct or indirect liability for, any of the Specified Acquisition Payment Obligations or provide any asset or property or distribution therefor, (4) shortens the weighted average life to maturity (or otherwise shortens the maturity) of any of the Specified Acquisition Payment Obligations, unless the aggregate amount of the outstanding Specified Acquisition Payment Obligations is permanently reduced in connection therewith in a manner where the shorter maturity (and/or the shorter weighted average life to maturity, as applicable) is reasonable (as determined in good faith by the board of directors of the Borrower) in relation to such reduced aggregate amount provided in exchange therefor, (5) restricts any Loan Party or any Subsidiary from performing, or otherwise adversely affects the performance by any Loan Party or any of its Subsidiaries of, any of its material obligations (including the Obligations) under the Loan Documents, (6) has the effect of putting the Loan Parties in a worse (or less favorable) position than the Specified Acquisition Payment Obligations and the Specified Acquisition Payment Obligations Documents in effect on the date of the First Amendment, as determined in good faith by the board of directors of the Borrower, (7) results in a Material Adverse Effect, or (8) results in any breach of, or Default or Event of Default under, any of the Loan Documents, in each case without the prior written consent of the Required Lenders."

(ccc) Section 5.3 of the Facility Agreement shall be hereby amended to insert the following sentence as the new last sentence of Section 5.3:

"In no event shall the conversion of Convertible Notes into Common Stock, or a series of conversions of Convertible Notes into Common Stock, by any Lender (or any transferee thereof) in and of itself constitute a Major Transaction."

(ddd) Section 5.4(h) of the Facility Agreement shall be hereby amended and restated as follows:

"(h) Any Loan Party or any Subsidiary of any Loan Party (i) fails to make any payment in respect of (A) the Revolving Credit Facility, (B) any Indebtedness under the Subordinated Loan Documents or (C) any other Indebtedness (other than the Obligations) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated

credit arrangement) of more than $250,000 (provided that no such threshold shall apply with respect to the Revolving Credit Facility or any Indebtedness under the Subordinated Loan Documents) when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace or notice period, if any, specified in the documents relating thereto on the date of such failure; or (ii) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness, if the effect of such failure, event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, such Indebtedness to be declared to be due and payable (or otherwise required immediately to be prepaid, redeemed, purchased or defeased) prior to its stated maturity (without regard to any subordination terms with respect thereto) or cash collateral in respect thereof to be demanded."

(eee) Section 5.4(l) of the Facility Agreement shall be hereby amended to add the words "or the Subordination Agreement" immediately after the words "Revolving Credit Facility Intercreditor Agreement."

(fff) Section 6.1 of the Facility Agreement shall be hereby amended to amend and restate the notice information for the Borrower or any other Loan Party as follows:

"If to the Borrower or any other Loan Party:

Melinta Therapeutics, Inc.
300 George Street
Suite 301 New Haven, Connecticut 06511
E-mail: pmilligan@melinta.com
Attn: Peter Milligan

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

Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston St.
Boston, Massachusetts 02116
Facsimile No.: 617-305-4850; 213-621-5122; 312-827-9414
E-mail: graham.robinson@skadden.com; michelle.gasaway@skadden.com; darrin.halcomb@skadden.com
Attn: Graham Robinson; Michelle Gasaway; Darrin Halcomb"

(ggg) Section 6.6(d) of the Facility Agreement shall be hereby amended to remove the reference to "Loan Party" in the first sentence thereof and replace it with "Lender."

(hhh) The Facility Agreement shall be hereby amended to add the following new Section 6.27 to the end of the Facility Agreement:

"**Section 6.27 Subordination Agreement Related Items**. Notwithstanding anything contrary in the Subordination Agreement, (a) Section 24 of the Subordination Agreement shall no longer apply to (or be for) the benefit of the Secured Parties as such restrictions and other agreements with respect to the Subordinated Loan Documents that were set forth in Section 24 are now contained and included in this Agreement (including the First Amendment) and the other Loan Documents and the other provisions of the Subordination Agreement and (b) the Loan Parties, Agent and the Lenders acknowledge and agree that the Subordinated Loan Agreement as in effect on January 14, 2019 shall be deemed to not be in violation (or be a breach) of the terms and provisions of this Agreement or the Subordination Agreement.

(iii) Schedule 3.1(y) of the Facility Agreement shall be hereby amended and restated by replacing such Schedule in its entirety with the Schedule 3.1(y) attached hereto as Exhibit C.

(jjj) Exhibit I of the Facility Agreement shall be hereby amended by replacing such Exhibit in its entirety with Exhibit I attached hereto.

(kkk) Section 5(a) of Exhibit 2.7 to the Facility Agreement shall be hereby amended by replacing the percentage "9.985%" with "4.985%" in each place such percentage appears (including in the term "9.985% Cap," which shall be replaced in each case with the defined term "4.985% Cap").

(lll) Each of the outstanding Loan Notes shall be hereby amended and restated to give effect to the amendments thereto set forth in the form of Amended and Restated Senior Secured Convertible Note attached as Exhibit B hereto, with the outstanding principal amount of each such Note remaining unchanged (and with no novation occurring with respect thereto and all Indebtedness and other obligations evidenced by such Loan Notes continuing under such Convertible Note) and each such Loan Note being thereinafter referred to as a "Convertible Note."

(mmm) Each of the Warrants shall be hereby amended by replacing "9.985%" with 4.985% in each place such percentage appears (including in the defined term "9.985% Cap," which shall in each case be replaced with the term "4.985% Cap").

(nnn) Section 1(a)(xiv) of the Registration Rights Agreement shall be hereby amended to amend and restate the definition of "Prior Registration Rights Agreements" to read as follows:

""Prior Registration Rights Agreements" means (i) the Registration Rights Agreement, dated February 12, 2012, by and among Cempra, Inc. and the persons set forth on Exhibit A attached thereto, (ii) the Registration Rights Agreement, dated as of November 3, 2017, by and among Cempra, Inc., Vatera Healthcare Partners LLC and the other shareholders set forth on the signature pages thereto, including the related rights granted to Vatera Healthcare Partners LLC under its equity commitment letter with the Company, dated November 28, 2017 the ("Vatera Registration Rights Agreement"), and (iii) the Registration Rights Agreement, dated as of January 5, 2018, by and among The Medicines Company and the Company, in each case, without giving effect to any material amendment or modification thereof (except, in the case of the Vatera Registration Rights Agreement, as may be deemed amended or modified by Section 5.1(bb) of the Subordinated Loan Agreement."

(ooo) Section 1(a)(xiv) of the Registration Rights Agreement shall be hereby amended to amend and restate the definition of "Registrable Securities" to read as follows:

""Registrable Securities" means (a) any shares of Common Stock (the "Warrant Shares") issued or issuable upon exercise of, or otherwise pursuant to, the Warrants (without giving effect to any limitations on exercise set forth in the Warrants), (b) shares of Common Stock issuable pursuant to Section 2.7 of (and Exhibit 2.7 to) the Facility Agreement, if the Company has elected to include them in a Registration Statement, (c) the Private Placement Shares, (d) any shares of Common Stock issued or issuable directly or indirectly upon conversion of, or otherwise pursuant to, the Subordinated Notes (as defined in the First Amendment) originally issued to the Lenders, including upon conversion of, or otherwise pursuant to, any Conversion Shares (as defined in the Subordinated Loan Agreement) issued or issuable upon conversion of, or otherwise pursuant to, any such Subordinated Notes, (e) to the extent allowable under the Securities Act and the rules and regulations promulgated thereunder (including Rule 416), such additional shares of Common Stock as may become issuable pursuant to the Warrants to prevent dilution resulting from stock splits, stock dividends, stock issuances or similar transactions; and (f) to the extent not covered by clause (e), solely from and after the date such securities are issued, any securities issued upon any stock split, dividend or other distribution, recapitalization or similar event with respect to any of the foregoing."

**SECTION 3. Conditions.** The effectiveness of the amendments of the Facility Agreement, Schedule 3.1(y) to the Facility Agreement, Exhibit I to the Facility Agreement, Exhibit 2.7 to the Facility Agreement, the Loan Notes, the Warrants and the Registration Rights Agreement (other than the Immediately Effective Amendments, which shall be effective immediately upon the execution and delivery of this Agreement), and the consent with respect to the Subordination Agreement, set forth in Section 2 is subject to the satisfaction (or waiver by all of the Lenders) of all of the following conditions precedent:

(a) the execution and delivery of this Amendment by Borrower, each other Loan Party, Agent and the Required Lenders;

(b) (i) the representations and warranties in Section 4 hereof shall have been true, complete and correct in all respects as of the date hereof (except for those that are only required to be made as of the First Amendment Effective Date) and shall be true, complete and correct in all material respects (without duplication of any materiality qualifier contained therein) as of the First Amendment Date (as if made on the First Amendment Effective Date), except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representation and warranty shall have been true, complete and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date), and (ii) the Loan Parties shall have performed and complied in all material respects (without duplication of any materiality qualifier contained in this Amendment) with all agreements and conditions contained in this Amendment, in the case of this clause (b)(ii), to the extent such agreements and conditions are required to be performed by or complied with by the Loan Parties prior to the First Amendment Effective Date;

(c) no Default or Event of Default shall have occurred or be continuing (or would result after giving effect to the transactions contemplated by this Amendment);

(d) the Secured Parties shall have been paid all fees, costs and expenses (including all attorneys' fees of the Secured Parties) incurred on or prior to the First Amendment Effective Date that are required to be reimbursed pursuant to Section 6.3 of the Facility Agreement or Section 7 of this Amendment;

(e) the Borrower shall have duly executed and delivered to each Lender a Convertible Note, substantially in the form of Exhibit B hereto, in the aggregate principal amount set forth opposite such Lender's name on Schedule II hereto; provided, for the avoidance of doubt, that upon such delivery of such Convertible Notes and the effectiveness of amendments of the Facility Agreement, Schedule 3.1(y) to the Facility Agreement, Exhibit I to the Facility Agreement, Exhibit 2.7 to the Facility Agreement, the Loan Notes, the Warrants and the Registration Rights Agreement (other than the Immediately Effective Amendments), and the consent with respect to the Subordination Agreement, set forth in Section 2, the existing Loan Notes originally issued to the Lenders (the "Existing Notes") shall be immediately cancelled and of no further force and effect (and each Lender shall promptly thereafter return such Loan Note to the Borrower) and the outstanding Obligations under such existing Loan Notes shall continue under such Convertible Notes without any novation occurring with respect thereto and all such Obligations shall continue to be secured by the Collateral and the Liens granted under the Loan Documents;

(f) the Agent and the Lenders shall have received evidence reasonably satisfactory to them that (i) the Subordinated Lenders have funded (or are funding concurrently with the effectiveness of this Amendment) to Borrower the Initial Disbursement (as defined in the Subordinated Loan Agreement), in the aggregate amount of $75,000,000, by wire transfer of immediately available funds to a deposit account covered by a Control Agreement in favor of Agent (for the benefit of the Secured Parties), pursuant to the Subordinated Loan Agreement, (ii) the Subordinated Lenders shall have a binding and enforceable commitment to advance an additional $60,000,000 subject and pursuant to the terms and conditions set forth in the Subordinated Loan Agreement, and (iii) all conditions set forth in the Subordinated Loan Documents to the effectiveness of the Subordinated Loan Documents and the funding of the Initial Disbursement (as defined in the Subordinated Loan Agreement) have been satisfied or waived (in accordance with the terms thereof) in all respects;

(g) (i) each of the Subordination Loan Documents and the Subordination Agreement shall remain in full force and effect and (ii) the Agent and the Lenders shall have received the Subordinated Loan Documents (including an amendment to (or amendment and restatement of) the Subordinated Loan Agreement), which shall be in form and substance reasonably satisfactory to the Agent and the Lenders;

(h) the Stockholder Approval (as defined in the Subordinated Loan Agreement) shall have been obtained and the Borrower shall have adopted and filed the applicable amendment(s) to the Certificate of Incorporation of the Borrower and a Certificate of Designations with respect to the Preferred Stock with the Secretary of State of the State of Delaware in substantially the applicable form(s) attached to the Subordinated Loan Agreement as Exhibits F-1 (the "Reverse Split Amendment") and/or F-2 (the "Authorized Shares Amendment" and, together with the Reverse Split Amendment, the "Certificate Amendment") and Exhibit G (the "Certificate of Designations"), respectively, and the applicable Certificate Amendment and the Certificate of Designations shall each be in full force and effect (all capitalized terms used but not defined in this Section 3(h) having the meanings ascribed to them in the Subordinated Loan Agreement);

(i) Borrower shall have issued and delivered to each of the Lenders a Subordinated Note in a principal amount equal to such Lender's Pro Rata Share of $5,000,000, pursuant to the Subordinated Loan Agreement (but, for the avoidance of doubt without any Lender funding any loans or other amounts to the Borrower thereunder), each such Note to have the same terms and conditions, and be in the same form, as the Subordinated Notes issued to the Subordinated Lenders on the First Amendment Effective Date pursuant to the Subordinated Loan Documents, and each of the Loan Parties and the Lenders shall have duly executed and delivered a joinder to the Subordinated Loan Documents in the form of Exhibit D hereto;

(j) the Conversion Shares shall have been approved for listing on the Nasdaq Global Select Market or, if the Common Stock is not then listed on the Nasdaq Global Select Market, such other Eligible Market on which the Common Stock is then listed, subject to effective notices of issuance;

(k) the Lenders shall have received a favorable written opinion (relating to the First Amendment, the Facility Agreement (as amended by the First Amendment) and the Convertible Notes) of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel to the Loan Parties, addressed to the Lenders, dated the First Amendment Effective Date, in form and substance reasonably satisfactory to the Required Lenders; and

(l) the Lenders shall have received a certificate executed by an Authorized Officer of the Borrower, in form and substance reasonably satisfactory to the Required Lenders, certifying that the conditions in this Section 3 have been satisfied in all respects.

**SECTION 4. Representations and Warranties.**

(a) Representations and Warranties of the Loan Parties. The Loan Parties hereby jointly and severally represent and warrant to Agent and each Lender as follows as of the date hereof (except solely for Section 4(a)(ix) below, which shall only be required to be made on the First Amendment Effective Date) and as of the First Amendment Effective Date:

(i) Each Loan Party is validly existing as a corporation, limited liability company or limited partnership, as applicable, and is in good standing under the laws of the jurisdiction of its incorporation, organization or formation, as applicable. Each Loan Party (i) has full power and authority (and all governmental licenses, authorizations, permits, consents and approvals) to (A) own its properties and conduct its business (solely with respect to governmental licenses, authorizations, permits, consents and approvals, except where the failure to have such governmental licenses, authorizations, permits, consents and approvals could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect), and (B) to (x) enter into, and perform its obligations under, this Amendment and the other Loan Documents (as shall be amended hereby on the First Amendment Effective Date) and (y) consummate the transactions contemplated under this Amendment and the other Loan Documents (as shall be amended hereby on the date of this Agreement and the First Amendment Effective

Date, as applicable), in the case of clause (B) (other than with respect to the entering into this Amendment), subject to the satisfaction of the Specified Approval Conditions, and (ii) is duly qualified as a foreign corporation, limited liability company or limited partnership, as applicable, and licensed and in good standing, under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification or license, in each case of this clause (ii), where the failure to be so qualified, licensed or in good standing could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(ii) Subject to the satisfaction of the Approval Conditions solely with respect to the issuance of the Convertible Notes and the Subordinated Notes, the issuance of Conversion Shares upon conversion of the Convertible Notes (and the availability of sufficient authorized shares of Common Stock to accommodate such issuance), the issuance of the Conversion Shares (as defined in the Subordinated Loan Agreement and hereinafter referred to as the "Subordinated Conversion Shares") upon conversion of the Subordinated Notes (and the availability of sufficient authorized shares of Common Stock to accommodate such issuance), and the issuance of shares of Common Stock upon conversion of the Subordinated Conversion Shares or the Subordinated Notes, as applicable (and the availability of sufficient authorized shares of Common Stock to accommodate such issuance) (collectively, the "Specified Approval Conditions"): (I) the execution, delivery and performance of this Amendment and the other Loan Documents has been duly authorized by each Loan Party and no further consent or authorization is required by any Loan Party, any Loan Party's board of directors (or other equivalent governing body) or the holders of any Loan Party's Stock for the execution, delivery and performance of this Amendment and the other Loan Documents; (II) each of this Amendment and the other Loan Documents entered into on the date hereof has been, and any Loan Documents entered into on the First Amendment Effective Date will have been, duly executed and delivered by each of the Loan Parties and constitutes, and each of the other Loan Documents (as shall be amended hereby on the date of this Agreement and the First Amendment Effective Date, as applicable) will constitute, a valid, legal and binding obligation of each Loan Party, enforceable against such Loan Party in accordance with its terms, except as such enforceability may be limited by applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general equitable principles; (III) the execution, delivery and performance of this Amendment and the other Loan Documents (as shall be amended hereby on the date of this Agreement and the First Amendment Effective Date, as applicable) by each Loan Party and the consummation of the transactions contemplated herein and therein will not (A) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any assets of any such Loan Party pursuant to, any agreement, document or instrument to which such Loan Party is a party or by which any Loan Party is bound or to which any of the assets or property of any Loan Party is subject, except, with respect to this clause (A), as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (B) result in any violation of or conflict with the provisions of the Organizational Documents of any Loan Party, (C) result in the violation of any Applicable Law, (D) result in the violation of any judgment, order, rule, regulation or decree of any

Governmental Authority, (E) affect in any respect the creation, validity, attachment, perfection or priority of the security interests and Liens granted in favor of the Agent or any Secured Party (or for the benefit of the Secured Parties) under any of the Loan Documents in effect immediately prior to (1) the time giving effect to this Amendment and/or (2) the First Amendment Effective Date, or (F) violate, conflict with or cause a breach or default under any agreement or instrument binding upon it, except, with respect to clauses (C), (D) and (F) only, as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and (IV) except as expressly contemplated hereby or by the Subordinated Loan Agreement, no consent, approval, Authorization or order of, or registration or filing with any Governmental Authority is required for (i) the execution, delivery or performance by any Loan Party of this Amendment or the other Loan Documents entered into on the date hereof or on the First Amendment Effective Date, and (ii) the consummation by any Loan Party of the transactions contemplated hereby or thereby.

(iii) No Default or Event of Default has occurred and is continuing (or would result after giving effect to the transactions contemplated by this Amendment, after giving effect to the satisfaction of the Specified Approval Conditions).

(iv) Attached as Exhibit A hereto are true, correct and complete copies of the Subordinated Loan Agreement (including all annexes, exhibits, schedules and attachments thereto) and the Guaranty (as defined in the Subordinated Loan Agreement).

(v) Upon and at all times after the satisfaction of the Approval Conditions, the Conversion Shares issuable or issued upon conversion of the Convertible Notes, the Subordinated Conversion Shares issuable or issued upon conversion of the Subordinated Notes and any shares of Common Stock issuable or issued upon conversion of the Subordinated Conversion Shares will have been duly authorized and, when issued in accordance with such Convertible Notes or the Subordinated Loan Agreement or the Certificate of Designations (as applicable), and any shares of Common Stock issuable or issued upon conversion will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Borrower, and will not be issued in violation of, or subject to, any preemptive or similar rights of any Person. The issuance of any Convertible Notes, Conversion Shares, Subordinated Notes, Subordinated Conversion Shares or shares of Common Stock issuable upon conversion of any Subordinated Conversion Shares will not result in any adjustment of the conversion, exercise or exchange price of, or in the number of shares of Stock issuable pursuant to, or any other modification of the terms of, any Options or Convertible Securities that are outstanding on the date this representation is made (excluding the Convertible Notes and the Warrants), subject to a lender's compliance with the transfer restrictions and ownership limitations of the Certificate of Designations and Section 2.14 of the Subordinated Loan Agreement.

(vi) The Borrower has filed all reports, schedules, forms, statements and other documents required to be filed by it under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date this representation is made (the foregoing materials, including the exhibits thereto and

documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports"). None of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Borrower is not in violation of the requirements of the NASDAQ Stock Market ("NASDAQ") and neither the Borrower nor its Affiliates has received any communication, written or oral, from (X) NASDAQ regarding the suspension of trading of the Common Stock on NASDAQ or (Y) the SEC regarding the suspension or termination of trading of the Common Stock on NASDAQ or of registration of the Common Stock under the Exchange Act.

(vii) No brokerage or finder's fees or commissions are or will be payable by the Borrower or any of its affiliates or representatives to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by this Amendment. The Lenders shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 4(a)(vii) that may be due in connection with the transactions contemplated hereby.

(viii) Assuming the accuracy of the representations and warranties of each Lender set forth in Section 4(b) of this Agreement, no registration under the Securities Act or any state securities laws is required for the offer and issuance of the or the issuance of the Convertible Notes, the Conversion Shares, the Subordinated Notes (including any related guaranties), the Subordinated Conversion Shares or the shares of Common Stock issuable upon conversion of the Subordinated Conversion Shares by the Borrower. Subject to the satisfaction of the Approval Conditions, the amendments and transactions contemplated hereby, including the issuance and sale of the Conversion Shares, the Subordinated Conversion Shares and the shares of Common Stock issuable upon conversion of the Subordinated Conversion Shares do not contravene, or require any stockholder approval, pursuant to Applicable Laws or the rules and regulations of NASDAQ. Notwithstanding anything to the contrary contained in the Loan Documents, the Convertible Notes and the Conversion Shares will not contain or be subject to any legend or stop transfer instructions restricting the sale or transferability thereof. Assuming the accuracy of the representations and warranties of each Lender set forth in Section 4(b) of this Agreement, each Lender's holding period for the Convertible Notes for purposes of Rule 144 under the Securities Act shall be deemed to have commenced on the Agreement Date.

(ix) Each of the representations and warranties set forth in Section 3.1 of the Facility Agreement and set forth in any other existing Loan Document are true, correct and complete in all material respects (without duplication of any materiality qualifier contained therein) as of the First Amendment Date (in each case, as if made on such date), except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representation or warranty is true, complete and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date).

(x) All Obligations constitute senior secured Indebtedness entitled to the benefits of the subordination and/or intercreditor provisions contained in the applicable subordination and/or intercreditor agreements governing any subordinated Indebtedness.

(xi) The security interests and Liens granted in the Collateral pursuant to the Loan Documents (A) constitute valid and continuing perfected security interests and Liens in all of the Grantors' rights in the Collateral (other than motor vehicles owned by the Loan Parties and used by employees of the Loan Parties in the ordinary course of business and Commercial Tort Claims with a value of $25,000 or less) in favor of Agent (for the benefit of the Secured Parties) as collateral security for the Obligations, enforceable in accordance with the terms of the Facility Agreement and the Security Agreement; and (B) shall be prior to all other Liens on the Collateral except for Permitted Liens having priority over Agent's Lien by operation of law, in each case, except as expressly stated otherwise in Section 4.2 of the Security Agreement or in the Facility Agreement.

(b) Representations and Warranties of the Lenders. Each Lender hereby severally represents and warrants to each Loan Party as follows as of the date hereof and as of the First Amendment Effective Date:

(i) Such Lender is validly existing as a limited partnership and is in good standing under the laws of the jurisdiction of its formation. Such Lender has full power and authority to (to (x) enter into, and perform its obligations under, this Amendment and the other Loan Documents (as shall be amended hereby upon date of this Agreement and the First Amendment Effective Date, as applicable) and consummate the transactions contemplated under this Amendment and the other Loan Documents (as shall be amended hereby upon the date of this Agreement and the First Amendment Effective Date, as applicable).

(ii) The execution, delivery and performance of this Amendment has been duly authorized by such Lender. This Amendment has been duly executed and delivered by such Lender and constitutes, and each of the other Loan Documents (as shall be amended hereby on the date of this Agreement and the First Amendment Effective Date, as applicable) to which such Lender is party will constitute, a valid, legal and binding obligation of such Lender, enforceable against such Lender in accordance with its terms, except as such enforceability may be limited by applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general equitable principles. The execution, delivery and performance by such Lender of this Amendment and the other Loan Documents (as shall be amended hereby on the date of this Agreement and the First Amendment Effective Date, as applicable) to which such Lender is party and the consummation of the transactions contemplated herein and therein will not (A) result in any violation of or conflict with the provisions of the Organizational Documents of such Lender, or (B) result in the violation of any judgment, order, rule, regulation or decree of any Governmental Authority to which such Lender is subject, except, with respect to this clause (B) only, as could not reasonably be expected, individually or in the aggregate, to materially and adversely affect such Lender's ability to perform its obligations under this Amendment or consummate the transactions

contemplated hereby on a timely basis. Except as expressly contemplated hereby or by the Subordinated Loan Agreement, no consent, approval, Authorization or order of, or registration or filing with any Governmental Authority is required for (i) the execution, delivery or performance by such Lender of this Amendment, and (ii) the consummation by such Lender of the transactions contemplated hereby.

(iii) Such Lender has held such Lender's Loan Note of record and beneficially for a period of at least one year and is not, and during the three-month period prior to the date hereof has not been, an Affiliate of the Borrower.

(iv) Such Lender is the record and beneficial owner of, and has good and valid title to, such Lender's Loan Note, free and clear of all Liens, and has full power to dispose thereof and to exercise all rights thereunder (other than as restricted by this Amendment, the Loan Notes and the Facility Agreement).

(v) Each of the representations and warranties set forth in Section 3.3 of the Facility Agreement are true, correct and complete in all material respects (without duplication of any materiality qualifier contained therein) as of the First Amendment Effective Date (in each case, as if made on such date), except to the extent that such representation or warranty expressly relates to an earlier date (in which event such representation or warranty is true, complete and correct in all material respects (without duplication of any materiality qualifier contained therein) as of such earlier date).

**SECTION 5. Covenants.**

(a) On and after the First Amendment Effective Date, the Borrower shall at all times reserve and keep available, free of preemptive or similar rights, a sufficient number of shares of Common Stock for the purpose of enabling the Borrower to issue all of the Conversion Shares issuable pursuant to the Convertible Notes, assuming at any time that all future conversion of the Convertible Notes are effected at the Floor Price (as defined in the Convertible Notes).

(b) The Borrower shall take such action, if any, as is necessary in order to obtain an exemption for, or to qualify the Conversion Shares for, issuance and sale to the Lenders under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any of the Lenders.

(c) The Borrower shall be responsible for paying all Other Taxes imposed on the issuance of any Conversion Shares.

(d) The Borrower shall comply with its obligations under Section 5.1(x) of the Subordinated Loan Agreement in all respects.

(e) At or prior to 8:30 a.m. (New York City time) on the third (3rd) Business Day following the date of this Amendment, the Borrower shall file a Form 8-K with the SEC describing the terms of the transactions contemplated by this Amendment and the Subordinated Loan Documents entered into on the date of this Amendment and including as exhibits to such Form 8-K this Amendment and the Subordinated Loan Agreement (such Form 8-K, the "Announcing Facility Amendment Form 8-K"). At or prior to 8:30 a.m. (New York City time)

on the first (1st) Business Day following the First Amendment Effective Date or any termination of this Amendment and such Subordinated Loan Agreement, the Borrower shall file a Form 8-K with the SEC describing the consummation of the applicable transactions contemplated by this this Amendment and the Subordinated Loan Agreement that occurred on the First Amendment Effective Date or such termination, as applicable (such Form 8-K, the "Closing Facility Amendment Form 8-K"), and disclosing any other then presently material non-public information (if any) provided or made available to any Secured Party (or any such Secured Party's agents or representatives) by the Borrower or any other Loan Party on or prior to the filing of the Closing Facility Amendment Form 8-K. Subject to the foregoing, after the filing of the Closing Facility Amendment Form 8-K, no Loan Party will issue any press releases or any other public statements with respect to the transactions contemplated by this Amendment or such Subordinated Loan Documents or disclosing the name of any Secured Party without the prior consent of such Secured Party; provided, however, that the Borrower will be entitled, without the prior approval of any Secured Party, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with, or derived from the same information contained in, the Announcing Facility Amendment Form 8-K or the Closing Facility Amendment Form 8-K or the proxy materials filed with the SEC in connection with obtaining the Stockholder Approval, or (ii) as is required by Applicable Law and regulations (provided that each Secured Party will be consulted by the Borrower in connection with any such press release or other public disclosure prior to its release and will be provided with a copy thereof by the Borrower, other than periodic reports required by the Exchange Act to be made with the SEC, which Borrower may file without such consultation or notice). Upon each of (X) the Borrower's filing with the SEC of its definitive proxy statement in connection with obtaining the Stockholder Approval, and (Y) the Borrower's filing with the SEC of the Closing Facility Amendment Form 8-K, no Secured Party shall be in possession of any material nonpublic information received from the Borrower or any other Loan Party or any of its or their respective officers, directors, employees or agents on behalf of the Borrower or any other Loan Party in connection with the transactions contemplated by this Amendment prior to the date of such filing. After giving effect to the filing of the Closing Facility Amendment Form 8-K, the Borrower expressly acknowledges and agrees that no Secured Party shall have any duty of trust or confidence with respect to, or duty not to trade in any securities on the basis of, any material nonpublic information regarding the Borrower that is otherwise possessed (or continued to be possessed) by any Secured Party that was received from the Borrower or any other Loan Party or any of its or their respective officers, directors, employees or agents on behalf of the Borrower or any other Loan Party in connection with the transactions contemplated by this Amendment. For the avoidance of doubt, each of the parties to this Amendment acknowledges and agrees that no Lender nor any Affiliate of any Lender shall be deemed to be in possession of any material nonpublic information provided to Agent unless and until Agent actually provides such information to such Lender or Affiliate thereof (as applicable). For the avoidance of doubt, nothing in this 5(d) shall limit, or otherwise affect the provisions of, Section 5.1(r) of the Facility Agreement (including in respect of the period between the date of this Agreement and the First Amendment Effective Date).

(f) After the First Amendment Effective Date, the Borrower shall file a Registration Statement covering the resale by the Lenders of the shares of Common Stock issuable upon conversion of the Subordinated Conversion Shares (or directly upon conversion of the Subordinated Notes) as contemplated by, in accordance with, the Registration Rights Agreement

as amended hereby upon the First Amendment Effective Date); provided that, such Registration Statement shall be filed not later than the first registration statement filed by the Borrower with the SEC in respect of any other shares of Common Stock issuable upon conversion of the Subordinated Conversion Shares (or directly upon conversion of the Subordinated Notes). For the avoidance of doubt, the Borrower acknowledges and agrees that the Investors (as defined in the Registration Rights Agreement) shall be entitled to registration rights in respect of such shares of Common Stock on the same terms, and pursuant to and in accordance with, the Registration Rights Agreement, and the Registration Rights Agreement shall be deemed amended as of the First Amendment Effective Date as shall be necessary to give effect to the foregoing.

**SECTION 6. Efforts; Termination.** Each of the Loan Parties agrees to use its reasonable best efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable to satisfy the conditions to the effectiveness of the amendments to the Facility Agreement and the other Loan Documents set forth herein prior to the Termination Date (as defined below). This Amendment shall terminate, and be of no further force or effect, upon the earlier (such earlier date, the "Termination Date") of (a) the termination or expiration of the Subordinated Loan Agreement prior to the funding of the "Initial Disbursement" (as defined in the Subordinated Loan Agreement) and (b) February 25, 2019 if each of the "Initial Disbursement Date" (as defined in the Subordinated Loan Agreement) and the First Amendment Effective Date have not occurred on or prior to such date; provided, however, that, the Immediately Effective Amendments and the Loan Parties' obligations under Section 7 (Fees, Costs and Expense Reimbursement), Section 13 (Governing Law) and Section 17 (Release) shall survive any such termination and remain in full force and effect.

**SECTION 7. Fees, Costs and Expense Reimbursement.** In connection with the Agent and the Lenders party hereto agreeing to enter into this Amendment and provide the accommodations hereunder, the Loan Parties agree to pay on the date of this Amendment all fees, costs and expenses (including attorneys' fees) incurred by the Secured Parties in connection with this Amendment and any other Loan Document and the transactions contemplated hereby and thereby.

**SECTION 8. Captions.** Captions used in this Amendment are for convenience only and shall not modify or affect the interpretation or construction of this Amendment or any of its provisions.

**SECTION 9. Counterparts.** This Amendment may be executed in several counterparts, and by each party hereto on separate counterparts, each of which and any photocopies, facsimile copies and other electronic methods of transmission thereof shall be deemed an original, but all of which together shall constitute one and the same agreement.

**SECTION 10. Severability.** If any provision of this Amendment shall be invalid, illegal or unenforceable in any respect under any Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. The parties hereto shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

**SECTION 11. Entire Agreement.** This Amendment and the other Loan Documents (including as shall be amended hereby on the First Amended Effective Date) contain the entire understanding among the parties hereto with respect to the matters covered hereby and thereby and supersede any and all other written and oral communications, negotiations, commitments and writings with respect thereto.

**SECTION 12. Successors; Assigns.** This Amendment shall be binding upon Borrower, the Loan Parties, the Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Borrower, the Loan Parties, the Lenders, Agent and the other Secured Parties and the successors and assigns of the Lenders, Agent and the other Secured Parties. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Amendment or any of the other Loan Documents, except as expressly provided in Section 17 hereof and Section 6.11 of the Facility Agreement. No Loan Party may assign or transfer any of its rights or obligations under this Amendment without the prior written consent of Agent and each Lender, and any prohibited assignment or transfer shall be absolutely void *ab initio*.

**SECTION 13. Governing Law; Etc.** ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE. Section 6.4 of the Facility Agreement is incorporated herein, *mutatis mutandis*.

**SECTION 14. Reaffirmation and Ratification.**

(a) Each Loan Party hereto as debtor, grantor, pledgor, guarantor, assignor, or in any other similar capacity in which such Person grants Liens in its property or otherwise acts as accommodation party or guarantor, as the case may be pursuant to the Loan Documents, hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under the Facility Agreement and each other Loan Document to which it is a party (after giving effect hereto) and (ii) ratifies and reaffirms all Liens and security interests granted in such Loan Party's property and assets pursuant to any Loan Documents and all guarantees of the Obligations under the Loan Documents (and the validity and enforceability thereof) and confirms and agrees and acknowledges that such Liens, security interests and guarantees, and all Collateral heretofore pledged as security for the Obligations, continue to be and remain Collateral and security for the Obligations from and after the date hereof. Each Loan Party hereto hereby consents to this Amendment and acknowledges that the Facility Agreement and each other Loan Document remains in full force and effect and is hereby ratified and reaffirmed. The execution and delivery of this Amendment shall not operate as a waiver of any right, power or remedy of Agent, the Lenders or any other Secured Party, constitute a waiver of any provision of the Facility Agreement or any other Loan Document or serve to effect a novation of any obligations (including the Obligations).

(b) Each Loan Party hereby ratifies, reaffirms and confirms each Loan Document to which it is a party, and its payment and performance obligations, contingent or otherwise, thereunder and does hereby acknowledge that any rights granted thereby in favor of Agent (for its benefit and the benefit of the other Secured Parties) are and shall remain in full force and effect subsequent to the date of this Amendment and the First Amendment Effective Date, as though each such Loan Document was executed in full by such Loan Party as of the date hereof, subject to any amendments made to the Loan Documents pursuant to this Amendment on the the date of this Amendment or the First Amendment Effective Date. Each Loan Party also hereby ratifies, reaffirms and confirms all prior and/or concurrent grants of security interests and Liens or "control" (within the meaning of Articles 8 and 9 under the applicable UCC, "Control") in favor of Agent or any other Secured Party in all of such Loan Party's right, title, and interest in, to, and under the Collateral under each Loan Document.

(c) Each Loan Party confirms and agrees that to the extent that any such Loan Document purports to assign or pledge to Agent or any Secured Party or to grant to Agent or any other Secured Party a security interest in or Lien on, any collateral (including the Collateral) or to provide Control to Agent or any other Secured Party as security for the obligations (including the Obligations) of any Loan Party, as the case may be, from time to time existing in respect of the Facility Agreement (as amended hereby), or any other Loan Document, such pledge or assignment or grant of the security interest or Lien or Control is hereby ratified, reaffirmed and confirmed in all respects, and shall constitute and be deemed a pledge or assignment or grant of the security interest or Lien or Control under the Facility Agreement and the other Loan Documents. Without limiting the generality of the foregoing, each Loan Party hereby confirms and agrees that any security interest or Lien granted (or Control provided) in any Loan Document shall secure the obligations (including the Obligations) under the Facility Agreement and the other Loan Documents, as applicable. Each Loan Party hereby further ratifies, reaffirms and confirms the validity and enforceability of all of the Liens and security interests heretofore granted and Control provided, pursuant to and in connection with any Loan Document, to Agent or any other Secured Party, as collateral security for the obligations (including the Obligations) under the Loan Documents in accordance with their respective terms, and acknowledges that all of such Liens and security interests and Control, and all Collateral heretofore pledged as security for such obligations (including the Obligations), continue to be and remain collateral for such obligations (including Obligations) from and after the date hereof.

**SECTION 15. Effect on Loan Documents**.

(a) The Loan Documents (including as shall be amended hereby on the date of this Amendment and the First Amendment Effective Date), shall be and remain in full force and effect in accordance with their respective terms and hereby are ratified and confirmed in all respects. The execution, delivery, and performance of this Amendment shall not operate, except with respect to the modifications and amendments expressly set forth herein, as a waiver of, consent to, or a modification or amendment of, any right, power, or remedy of Agent or any Lender under the Facility Agreement or any other Loan Document. Except for the amendments to the Facility Agreement and other Loan Documents expressly set forth herein, the Facility Agreement and the other Loan Documents shall remain unchanged and in full force and effect. The amendments, modifications and other agreements set forth herein are limited to the specified provisions hereof, shall not apply with respect to any facts or occurrences other than those on which the same are based, shall neither excuse future non-compliance with the Loan Documents nor operate as a waiver of any Default or Event of Default, shall not operate as a consent to any further or other matter under the Loan Documents and shall not be construed as an indication that any waiver of covenants or any other provision of the Facility Agreement or other Loan Party will be agreed to, it being understood that the granting or denying of any waiver which may hereafter be requested by Borrower or any other Loan Party remains in the sole and absolute discretion of the Agent and the Lenders.

(b) Upon and after the effectiveness of this Amendment, each reference in the Facility Agreement (the Exhibits thereto), the Loan Notes, the Warrants and the Registration Rights Agreement to "this Amendment," "hereunder," "herein," "hereof" or words of like import referring to the Facility Agreement (and the applicable Exhibits thereto), the Loan Notes, the Warrants or the Registration Rights Agreement and each reference in the other Loan Documents to "the Facility Agreement," "Schedule 3.1(y) to the Facility Agreement," "Exhibit I to the Facility Agreement," "Exhibit 2.7 to the Facility Agreement," "the Loan Notes," "the Warrants," "the Registration Rights Agreement," "thereunder," "therein," "thereof" or words of like import referring to the Facility Agreement, Schedule 3.1(y) to the Facility Agreement, Exhibit I to the Facility Agreement, Exhibit 2.7 to the Facility Agreement, the Loan Notes, the Warrants or the Registration Rights Agreement, shall mean and be a reference to the Facility Agreement, Schedule 3.1(y) to the Facility Agreement, Exhibit I to the Facility Agreement, Exhibit 2.7 to the Facility Agreement, the Loan Notes, the Warrants or the Registration Rights Agreement, in each case, as modified and amended hereby.

(c) To the extent that any of the terms and conditions in any of the Loan Documents shall contradict or be in conflict with any of the terms or conditions of the Facility Agreement, Schedule 3.1(y) to the Facility Agreement, Exhibit I to the Facility Agreement, Exhibit 2.7 to the Facility Agreement, the Loan Notes, the Warrants or the Registration Rights Agreement, after giving effect to this Amendment, such terms and conditions are hereby deemed modified and amended accordingly to reflect the terms and conditions of the Facility Agreement, Schedule 3.1(y) to the Facility Agreement, Exhibit I to the Facility Agreement, Exhibit 2.7 to the Facility Agreement, the Loan Notes, the Warrants and the Registration Rights Agreement, in each case, as modified and amended hereby.

(d) This Amendment is a Loan Document.

**SECTION 16. Guarantors' Acknowledgment and Agreement**. Although the Guarantors party hereto have been informed of the matters set forth herein and have agreed to the same, each such Guarantor understands, acknowledges and agrees that none of the Secured Parties has any obligations to inform such Guarantor of such matters in the future or to seek such Guarantor's acknowledgment or agreement to future amendments, restatements, supplements, changes, modifications, waivers or consents, and nothing herein shall create such a duty.

**SECTION 17. Release**.

(a) As of the date of this Amendment, each Loan Party, for itself and on behalf of its successors, assigns and Subsidiaries, and such Loan Parties' and their Subsidiaries' officers, directors and employees, and any Person acting for or on behalf of, or claiming through it (collectively, the "Releasing Persons"), hereby waives, releases, remises and forever discharges each Secured Party, each of their respective Affiliates and successors in title, and officers, directors, limited partners, general partners, investors, employees, attorneys, assigns,

subsidiaries, shareholders, trustees, agents and financial advisors of the foregoing Persons (each a "Releasee" and collectively, the "Releasees"), from any and all past, present and future claims, suits, liens, lawsuits, amounts paid in settlement, debts, deficiencies, disbursements, demands, obligations, liabilities, causes of action, damages, losses, costs and expenses of any kind or character, whether based in equity, law, contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law (each a "Claim" and collectively, the "Claims"), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, matured or unmatured, foreseen or unforeseen, past or present, liquidated or unliquidated, suspected or unsuspected, which such Releasing Persons ever had from the beginning of the world until (and including) the date of this Amendment which relates, directly or indirectly, to the Facility Agreement, any other Loan Document, the Stock owned by any Releasee or to any acts or omissions of any such Releasee with respect to the Facility Agreement or any other Loan Document.

(b) Each Loan Party acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to such Claims and agrees that this Amendment shall be and remain effective in all respects notwithstanding any such differences or additional facts. Each Loan Party understands, acknowledges and agrees that the release set forth above in this Section 17 may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(c) Each Loan Party, for itself and on behalf of each other Releasing Person, hereby absolutely, unconditionally and irrevocably covenants and agrees with and in favor of each Releasee above that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by such Person pursuant to the above release in this Section 17. Each Loan Party further agrees that it shall not dispute the validity or enforceability of this Amendment (including this Section 17). If any Loan Party or any other Releasing Person breaches or otherwise violates the foregoing covenant and provisions, each Loan Party, for itself and its Releasing Persons, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees, expenses and costs and any other fees, expenses and costs incurred by such Releasee as a result of such breach or violation.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the first day written above.

**BORROWER:**

**MELINTA THERAPEUTICS, INC.,**
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**OTHER LOAN PARTIES:**

**MELINTA SUBSIDIARY CORP.,**
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**CEMPRA PHARMACEUTICALS, INC.,**
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**CEM-102 PHARMACEUTICALS, INC.,**
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**REMPEX PHARMACEUTICALS, INC.**,
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**TARGANTA THERAPEUTICS CORPORATION**,
a Delaware corporation

By: /s/ John H. Johnson
Name: John H. Johnson
Title: Interim Chief Executive Officer

**LENDERS:**

**DEERFIELD SPECIAL SITUATIONS FUND, L.P.**

By: Deerfield Mgmt, L.P.
General Partner

By: J.E. Flynn Capital, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN FUND III, L.P.**

By: Deerfield Mgmt III, L.P.
General Partner

By: J.E. Flynn Capital III, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

**DEERFIELD PRIVATE DESIGN FUND IV, L.P.**

By: Deerfield Mgmt IV, L.P.
General Partner

By: J.E. Flynn Capital IV, LLC
General Partner

By: /s/ David J. Clark
Name: David J. Clark
Title: Authorized Signatory

**AGENT:**

**CORTLAND CAPITAL MARKET SERVICES LLC**

By: /s/ Winnalynn N. Kantaris
Name: Winnalynn N. Kantaris
Title: Associate General Counsel

**SCHEDULE II**

**Convertible Note Amounts**

| | |
|---|---|
| Deerfield Private Design Fund IV, L.P. | $ 101,594,69.31 |
| Deerfield Private Design Fund III, L.P. | $ 30,781,340.66 |
| Deerfield Special Situations Fund, L.P. | $ 15,398,059.03 |
| **Total** | **$147,774,079.00** |

**EXHIBIT B**

**Form of Convertible Notes**

**EXHIBIT B**

**FORM OF**

**AMENDED AND RESTATED SENIOR SECURED CONVERTIBLE NOTE**

THIS NOTE IS BEING AMENDED AND RESTATED AS PART OF AND PURSUANT TO A PLAN OR RECAPITALIZATION AND REORGANIZATION OF THE COMPANY DESCRIBED IN SECTION 368(a)(1)(E) OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED.

Lender: _____ Principal: U.S. $

Principal Amount: _____

Agreement Date/Original Issuance Date: January 5, 2018
First Amendment Effective Date: [•], 2019

FOR VALUE RECEIVED, the undersigned, MELINTA THERAPEUTICS, INC., a Delaware corporation (the "**Company**"), hereby unconditionally promises to pay to the Lender set forth above or its registered assigns (the "**Holder**") the Principal Amount set forth above, or, if less, the aggregate unpaid Principal of the Loan (as defined in the Facility Agreement referred to below) of the Holder to the Company, payable at such times and in such amounts as are specified in the Facility Agreement.

The Company promises to pay interest on the outstanding Principal of the Loan, any overdue interest and all other Obligations (as defined in the Facility Agreement referred to below) from and after the Agreement Date until such outstanding Principal of the Loan, any overdue interest and all other Obligations are paid in full, payable at such times and at such interest rates as are specified in the Facility Agreement. The Company promises to pay any Exit Fee, Prepayment Fee or any other fee that is due on the Loan or the other Obligations in accordance with the Facility Agreement. Demand, diligence, presentment, protest and notice of non-payment and protest are hereby waived by the Company.

Principal and interest (and any Exit Fee or Prepayment Fee) are payable in cash in Dollars to the Holder in the manner set forth in the Facility Agreement; provided, however, that in lieu of making any payment of interest in cash (but not interest payable in connection with any Event of Default or late payment hereunder or any other interest payable pursuant to Section 2.8 of the Facility Agreement) and subject to the conditions set forth in Section 2.7 of the Facility Agreement and Exhibit 2.7 to the Facility Agreement, the Company may elect to satisfy all or any such payment by the issuance to the Lender of shares of Freely Tradable Shares (as defined in such Exhibit 2.7) in accordance with the provisions of such Exhibit 2.7.

The Principal evidenced by this Amended and Restated Senior Secured Convertible Note (this "**Note**") was originally evidenced by a Loan Note dated January 5, 2018 (the "**Original Note**") under the Original Facility Agreement (as defined below), which Original Note was amended and restated as this Note on the First Amendment Effective Date (as defined in the Facility Agreement), and this Note is one of the "Notes" referred to in, and is entitled to the benefits of, the Facility Agreement, dated as of January 5, 2018 (the "**Original Facility Agreement**"), and as amended by Amendment No. 1 thereto dated as of January 31, 2019 (the "**Amendment Date**") and effective as of the Amendment Date and the First Amendment Effective Date, as applicable (as the same may be further amended, restated, supplemented or otherwise modified from time to time, the "**Facility Agreement**"), by and among the Company, the other Loan Parties party thereto, the Lenders party thereto and Cortland Capital Market Services LLC, as agent for itself and the other Secured Parties (in such capacity, together with its successors and assigns, the "**Agent**"), and the other Loan Documents. Capitalized terms used herein without definition are used as defined in the Facility Agreement.

The Facility Agreement, among other things, (a) provides for the making of a Loan by the Holder to the Company in an aggregate amount not to exceed at any time outstanding the Principal Amount set forth above, the indebtedness of the Company resulting from such Loan being evidenced by this Note and (b) contains provisions for acceleration of the maturity of the unpaid Principal of this Note (and all other Obligations (including the Obligations) evidenced hereby) upon the happening of certain stated events and also for prepayments pursuant to Sections 2.3 and 5.3 of the Facility Agreement on account of the Principal hereof prior to the maturity hereof upon the terms and conditions specified therein. The maximum aggregate principal amount of Loans and Disbursements in respect of which the Convertible Notes shall be convertible (including by amendment and restatement of the Loan Notes) shall not exceed $74,000,000.

1.Definitions.

(a) Certain Defined Terms. For purposes of this Note, the following terms shall have the following meanings:

(i) "**4.985% Cap**" has the meaning set forth in Section 2(f).

(ii) "**Affiliate**" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Holder, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Holder will be deemed to be an Affiliate of such Holder. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

(iii) "**Closing Price**" for any security as of any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid and ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) on such date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the relevant security is traded. If the security is not listed for trading on a U.S. national or regional securities exchange on the relevant Trading Day, then the Closing Price will be the last quoted bid price per share for the security in the over-the-counter market on the relevant Trading Day as reported by the OTC Markets Group, Inc. or similar organization. If the relevant security is not so quoted, then the Closing Price will be the average of the mid-point of the last bid and ask prices per share for the relevant security on the relevant date from at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The Closing Price will be determined without regard to after-hours trading or any other trading outside of the regular trading hours.

(iv) "**Common Stock**" means the common stock, par value $0.001 per share, of the Company.

(v) "**Conversion Amount**" means the portion of the Principal to be converted.

(vi) "**Conversion Date**" means the date of delivery via facsimile or electronic mail of a Conversion Notice.

(vii) "**Conversion Price**" means, as of any Conversion Date, the greater of (A) {INSERT: $1.03, appropriately adjusted to reflect any Stock Event occurring after the Amendment Date and on or prior to the First Amendment Effective Date}, appropriately adjusted to reflect any Stock Event occurring after the First Amendment Effective Date (the "**Floor Price**"), and (B) 95% of the lesser of (I) the Closing Price of the Common Stock on the Trading Day immediately preceding the Conversion Date and (II) the arithmetic average of the Volume Weighted Average Price of the Common Stock on each of the three (3) Trading Days immediately preceding the Conversion Date (the "**Measurement Period**"); provided, that in the event that a stock split, stock combination, reclassification, payment of stock dividend, recapitalization or other similar transaction of such character that the Shares shall be changed into or become exchangeable for a larger or smaller number of shares (a "**Stock Event**") is consummated during the Measurement Period, then the Volume Weighted Average Price for all Trading Days during the Measurement Period prior to the effectiveness of the Stock Event shall be appropriately adjusted to reflect such Stock Event. For the avoidance of doubt, if a Stock Event occurs on a Conversion Date, the Conversion Price (including, for the avoidance of doubt the Closing Price referred to in clause (B)(I) above if it does not reflect such Stock Event) shall be appropriately adjusted to reflect such Stock Event.

(viii) "**Conversion Rate**" means the Conversion Amount divided by the Conversion Price.

(ix) "**Conversion Shares**" means fully paid and nonassessable shares of Common Stock.

(x) "**Interest**" means any interest (including any default interest) accrued on the Principal pursuant to the terms of this Note and the Facility Agreement.

(xi) "**Market Disruption Event**" means, with respect to any Trading Day and any security, (a) a failure by the Principal Market to open for trading during its regular trading session, (b) the occurrence or existence prior to 1:00 p.m., New York City time, on such day for such securities for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant securities exchange or otherwise) in such securities or in any options, contracts or future contracts relating to such securities, or (c) the suspension of trading for the one-half hour period ending on the scheduled close of trading on such day (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in such securities.

(xii) "**Measurement Period**" shall have the meaning set forth in the definition of "Conversion Price."

(xiii) "**Principal**" means the outstanding principal amount of this Note as of any date of determination.

(xiv) "**Principal Market**" means the principal U.S. securities exchange or trading market for the Common Stock, which as of the First Amendment Effective Date is {INSERT: the Nasdaq Global Market or the Nasdaq Global Select Market, as applicable}.

(xv) "**Required Holders**" means, as of any date of determination, holders of Notes representing more than 50% of the aggregate Principal of the Notes outstanding as of such date.

(xvi) "**SEC**" means the United States Securities and Exchange Commission.

(xvii) **"Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

(xviii) "**Shares**" means shares of Common Stock.

(xix) "**Trading Day**" means any day on which the Common Stock is traded for any period on the Principal Market; provided, that for purposes of the definition of "Conversion Shares," Trading Day shall not include any Trading Day on which there is a Market Disruption Event.

(xx) "**Volume Weighted Average Price**" for any security as of any Trading Day means (a) the volume weighted average sale price of such security on the principal U.S. national or regional securities exchange on which such security is traded as reported by Bloomberg Financial Markets or an equivalent, reliable reporting service mutually acceptable to (and hereinafter designated by) the Company and the Required Holders ("**Bloomberg**"), or (b) if no volume weighted average sale price is reported for such security, then the closing (last sale) price per share of such security as reported by Bloomberg, or, if no closing price per share is

reported for such security by Bloomberg, the average of the last bid and last ask price (or if more than one in either case, the average of the average last bid and average last ask prices) on such Trading Day as reported in the composite transactions for the principal U.S. national or regional securities exchange on which such security is traded. If the security is not listed for trading on a U.S. national or regional securities exchange on the relevant Trading Day, then the Volume Weighted Average Price will be the average of the mid-point of the last bid and last ask prices of the security in the over-the-counter market on the relevant Trading Day as reported by the OTC Markets Group or similar organization. If the Volume Weighted Average Price cannot be calculated for such security on such date in the manner provided above, the Volume Weighted Average Price shall be the fair market value as mutually determined by the Company and the holders of a majority in interest of the Notes being converted (based on the Principal being converted by each such holder) for which the calculation of the Volume Weighted Average Price is required in order to determine the Conversion Price of such Notes. The Volume Weighted Average Price will be determined without regard to after-hours trading or any other trading outside of the regular trading hours.

2. Conversion Rights. The Principal may be converted, in whole or in part, into Conversion Shares on the terms and conditions set forth in this Section 2. For the avoidance of doubt, the Conversion (as defined below) of Principal hereunder shall not affect the obligation of the Company to pay all Interest that has accrued on such converted Principal prior to the Conversion Date.

(a) Conversion at Option of the Holder. At any time prior to the close of business on the second ($2^{nd}$) Business Day immediately prior to the Maturity Date (as defined in the Facility Agreement), subject to the 4.985% Cap and the Conversion Cap (each as defined below), the Holder shall be entitled to convert any part of the outstanding Principal into Conversion Shares in accordance with this Section 2 at the Conversion Rate (as defined in Section 2(b)). The Company shall not issue any fraction of a Share upon any Conversion. If the issuance would result in the issuance of a fraction of a Share, then the Company shall round such fraction of a Share up or down to the nearest whole Share (with 0.5 rounded up).

(b) Conversion Rate. The number of Conversion Shares issuable upon a Conversion of any portion of this Note pursuant to Section 2 shall be determined according to the following formula:

Number of Conversion Shares = Conversion Amount / Conversion Price

(c) Mechanics of Conversion. The conversion of Principal ("**Conversion**") shall be conducted in the following manner, in each case subject to the 4.985% Cap and the Conversion Cap:

(i) Holder's Delivery Requirements. To convert a Conversion Amount into Conversion Shares pursuant to Section 2(a) above on any date, the Holder shall transmit by facsimile or electronic mail (or otherwise deliver), for receipt on or prior to 5:00 p.m. New York City time on such date, a copy of a conversion notice in the form attached hereto as Exhibit A (the "**Conversion Notice**") to the Company (Attention: _____, Fax: (___) ___-_____, Email: _____@_____.com), setting forth the Conversion Amount and, to the extent that any Conversion Shares are to be issued in the name of a Person other than the Holder, the name and address of such Person and the number of Conversion Shares issuable in the name of such Person.

(ii) Company's Response. Upon receipt or deemed receipt by the Company of a copy of a Conversion Notice, the Company (I) shall promptly send, via electronic mail a confirmation of receipt of such Conversion Notice to the Holder and the Company's designated transfer agent (the "**Transfer Agent**"), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein, and (II) on or before the second (2nd) Business Day following the date of receipt or deemed receipt by the Company of such Conversion Notice (or, if earlier, the end of the then standard settlement period for U.S. broker-dealer securities transactions) (the "**Share Delivery Date**"), credit such aggregate number of Conversion Shares to which the Holder shall be entitled to the Holder's or its designee's balance account with The Depository Trust Company ("**DTC**") through its Deposit/Withdrawal at Custodian ("**DWAC")** system. For purposes of the receipt or deemed receipt of a Conversion Notice, if the Company receives such Conversion Notice after 5:00 p.m. New York City time, it will be deemed to have received such Conversion Notice on the next Business Day. For purposes of Rule 144 under the Securities Act, any Conversion Shares issued to the Holder shall be deemed to have been acquired by the Holder on the Agreement Date (the date this Note was originally issued). The Conversion Shares issued upon any conversion of this Note, will not contain or be subject to a legend or stop transfer order restricting the resale or transferability of thereof or otherwise be subject to any restriction on transfer imposed by or on behalf of the Transfer Agent or the Company (except as expressly provided in Section 2(g) of this Note).

(iii) Dispute Resolution. In the case of a dispute as to the determination of the Conversion Price or the arithmetic calculation of the Conversion Rate, the Company shall instruct the Transfer Agent to issue to the Holder the number of Conversion Shares that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via electronic mail within two (2) Business Days of receipt or deemed receipt of the Holder's Conversion Notice or other date of determination. If the Holder and the Company are unable to agree upon the determination of the Conversion Price or arithmetic calculation of the Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Company shall, within two (2) Business Days, submit via electronic mail (A) the disputed determination of the Closing Price or the Volume Weighted Average Price of the Company's Common Stock to an independent, reputable investment bank selected by the Company and approved by Holder, which approval shall not be unreasonably withheld, or (B) the disputed arithmetic calculation of the Conversion Price or the Conversion Rate to the Company's independent registered public accounting firm, as the case may be. The Company shall use its reasonable best efforts to cause the investment bank or the accounting firm, as the case may be, to perform the determination or calculation and notify the Company and the Holder of the results no later than five (5) Business Days from the time it receives the disputed determination or calculation. Such investment bank's or accounting firm's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error. The fees and expenses of such investment bank or accounting firm shall be paid by the Company. Notwithstanding the existence of a dispute contemplated by this paragraph, if requested by Holder, the Company shall issue to Holder the Conversion Shares, if any, that are not in dispute in accordance with the terms hereof.

(iv) Record Holder. The person or persons entitled to receive the Conversion Shares issuable upon a Conversion shall be treated for all purposes as the legal and record holder or holders of such Conversion Shares upon the Conversion Date, or in the case of Conversion Shares the issuance of which is subject to a *bona fide* dispute that is subject to and being resolved pursuant to, and in compliance with the time periods and other provisions of, the dispute resolution provisions of Section 2(c)(iii), the first (1st) Business Day after the resolution of such *bona fide* dispute.

(v) Company's Failure to Timely Convert.

(A) Cash Damages. If by the Share Delivery Date, the Company shall fail to credit the Holder's or its designee's balance account with DTC with the applicable number of Conversion Shares (free of any restrictive legend, provided the Unrestricted Condition is satisfied) (a "**Delivery Failure**"), then, in addition to all other available remedies that the Holder may pursue hereunder and under the Facility Agreement, the Company shall pay additional damages to the Holder for each day after the Share Delivery Date such conversion is not timely effected in an amount equal to one and one-half percent (1.5%) of the product of (I) the number of Conversion Shares not issued to the Holder or its designee on or prior to the Share Delivery Date and to which the Holder is entitled and (II) the Volume Weighted Average Price of the Common Stock on the Share Delivery Date. Alternatively in lieu of the foregoing damages, at the written election of the Holder made in the Holder's sole discretion, if, on or after the applicable Conversion Date, the Holder purchases (in an open market transaction or otherwise) Shares to deliver in satisfaction of a sale by such Holder of Conversion Shares that such Holder anticipated receiving from the Company (such purchased Shares, "**Buy-In Shares**"), the Company shall (A) pay to the Holder the amount by which (I) such Holder's total purchase price (including brokerage commissions, if any) for such Buy-In Shares exceeds (II) the net proceeds received by the Holder from the sale of the number of Conversion Shares the Holder was entitled to receive but had not received on the Share Delivery Date, and (B) at the option of the Holder, by notice to the Company made via electronic mail prior to receipt by Holder of the Conversion Shares, either reinstate the portion of this Note and equivalent number of Conversion Shares for which such conversion was not honored or deliver to the Holder the number of Common Shares that would have been issued had the Company timely complied with its conversion and delivery obligations hereunder. Nothing herein shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing Common Shares upon conversion of this Note as required pursuant to the terms hereof.

(B) Void Conversion Notice. If for any reason the Holder has not received all of the Conversion Shares to which it is entitled prior to the tenth (10th) Business Day after the Share Delivery Date with respect to a Conversion (a "**Conversion Failure**"), then the Holder, upon written notice to the Company (a "**Void Conversion Notice**"), may void its Conversion with respect to, and retain or have returned, as the case may be, any portion of Principal that has not been converted pursuant to the Holder's Conversion Notice; provided, that

the voiding of the Holder's Conversion Notice shall not affect the Company's obligations to make any payments that have accrued prior to the date of such notice pursuant to Section 2(c)(v)(A) or otherwise. A Conversion Failure shall constitute an Event of Default under the Facility Agreement and entitle the Holder to all payments and remedies provided under the Facility Agreement upon an Event of Default.

(vi) Book-Entry. Upon Conversion or repayment of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company. In such event, the Company shall update Schedule I hereto and send such updated schedule to the Holder. Notwithstanding the foregoing, (A) if this Note is converted or repaid, the Holder may not transfer this Note unless the Holder first physically surrenders this Note to the Company, whereupon the Company will promptly issue and deliver upon the order of the Holder a new Note of like tenor, registered as the Holder may request, representing in the aggregate the remaining Principal represented by this Note, and (B) upon any Conversion or repayment of this Note in full, this Note shall be surrendered to the Company for cancellation as provided in Section 9. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion or repayment of any portion of this Note, the Principal of this Note may be less than the "Principal Amount" stated on the face hereof.

(d) Taxes. Subject to the terms of the Facility Agreement, all payments will be free and clear of, and without deduction or withholding for, any present or future taxes. Without limiting the foregoing, the Company shall pay any and all taxes (excluding income taxes, franchise taxes or other taxes levied on gross earnings, profits or the like of the Holder) that may be payable with respect to the issuance and delivery of Conversion Shares upon the conversion of this Note. The Company shall pay all and any costs (administrative or otherwise) imposed by the Company's banks, clearing houses, or any other financial institution, in connection with making any payments or issuing any Conversion Shares hereunder.

(e) Reservation of Shares. The Company shall at all times reserve and keep available out of its authorized but unissued Shares solely for the purpose of effecting Conversions of this Note, such number of Shares as shall from time to time be sufficient to effect the Conversion of this Note (without giving effect to the 4.985% Cap but giving effect to the Conversion Cap), assuming that any future Conversions will be at the Floor Price; and if at any time the number of authorized but unissued Shares shall not be sufficient to effect the Conversion of the entire Principal convertible under this Note, the Company will use reasonable best efforts to take such corporate action as may, upon the advice of the Company's counsel, be necessary to increase its authorized but unissued Shares to such number of Shares as shall be sufficient for such purpose. The Company covenants and agrees that, upon any Conversion of this Note, all Shares issued upon such Conversion shall be duly and validly issued, fully paid and nonassessable and not subject to preemptive rights, rights of first refusal or similar rights of any Person.

(f) Limitations on Conversion.

(i) Beneficial Ownership Limitation. Notwithstanding anything herein to the contrary, the Company shall not be required to issue to the Holder, and the Holder may not acquire, a number of Shares upon Conversion or otherwise issue any Shares pursuant hereto or the Facility Agreement to the extent that, upon such Conversion, the number of Shares then beneficially owned by the Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of Warrants or other securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) would exceed 4.985% of the total number of Shares then issued and outstanding (the "**4.985% Cap**"); provided, however, that the 4.985% Cap shall only apply to the extent that the Common Stock is deemed to constitute an "equity security" pursuant to Rule 13d-1(i) promulgated under the Exchange Act. For purposes hereof, "group" has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the SEC, and the percentage held by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act. For purposes hereof, in determining the number of outstanding Shares, the Holder may rely on the number of outstanding Shares as stated in the Company's most recent quarterly or annual report filed with the SEC, or any current report filed by the Company with the SEC subsequent thereto. Upon the written request of the Holder, the Company shall, within two (2) Trading Days, confirm orally and in writing to the Holder the number of Shares then outstanding, and the Holder shall be entitled to rely upon such confirmation for purposes hereof.

(ii) Conversion Limitation. Notwithstanding anything to the contrary herein, this Note shall not be convertible, and the Company shall not issue Shares upon Conversion of this Note, to the extent that the aggregate Principal of this Note that would otherwise be converted pursuant to the applicable Conversion Notice, together with the aggregate Principal of this Note converted into Conversion Shares after the First Amendment Effective Date and prior to such Conversion, would exceed {INSERT: the Holder's Pro Rata Share of $74,000,000} (the "**Conversion Cap**") (provided, for the avoidance of doubt, that upon any Conversion of this Note, the Company shall convert the maximum portion of Principal set forth in the applicable Conversion Notice that may be converted into Shares without so exceeding the Conversion Cap).

(g) The Holder shall not sell or dispose, in a pre-arranged single transaction or series of related transactions, any shares of Common Stock that have been issued upon Conversion of this Note, to any other Person or "group" if such Holder knows, in advance of effecting such transaction or series of related transactions, that such Person or "group" holds or, after giving effect to any such sale or disposition, would hold (for such purpose, in each case, including the right to acquire), in excess of fifteen percent (15%) of the issued and outstanding Common Stock, unless such sale or disposition has been approved by a majority of the board of directors of the Company. Notwithstanding the foregoing, the obligations and restrictions set forth in this Section 2(g) shall be of no effect if such sale is part of a tender offer or exchange offer made to all stockholders of the Company, or otherwise is in a merger or other business combination transaction. For the avoidance of doubt, notwithstanding anything herein to the contrary, this Section 2(g) shall not restrict the ability of the Holder (i) to transfer all or any portion of this Note in accordance with the terms hereof or (ii) to sell any shares of Common Stock that have been issued upon Conversion of this Note in open-market transactions.

3. Voting Rights. The Holder shall have no voting rights with respect to any of the Conversion Shares until the Conversion Date relating to the Conversion of the Principal for which such Conversion Shares are issuable (or in the case of Conversion Shares the issuance of which is subject to a *bona fide* dispute that is subject to and being resolved pursuant to, and in compliance with the time periods and other provisions of, the dispute resolution provisions of Section 2(c)(iii), the first Business Day after the resolution of such *bona fide* dispute).

4. Remedies, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note, the Facility Agreement, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy, and nothing herein shall limit the Holder's right to pursue actual damages for any failure by the Company to comply with the terms of this Note. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies (at law or in equity), to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

5. Specific Shall Not Limit General; Construction. No specific provision contained in this Note shall limit or modify any more general provision contained herein. This Note shall be deemed to be jointly drafted by the Company and all Persons acquiring Notes pursuant to the Facility Agreement and shall not be construed against any Person as the drafter hereof.

6. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 6.1 of the Facility Agreement.

7. Assignment of Note. Subject to Section 6.5 of the Facility Agreement, the Holder may sell, transfer, assign, pledge, hypothecate or otherwise dispose of this Note, in whole or in part; provided that the parties to each assignment shall execute and deliver to the Company an Assignment indicating the respective Principal of the Note to be assigned to each assignee, substantially in the form of the Assignment attached hereto as Exhibit B (which shall include the name and address and e-mail address and contact of the Holder, and the name and address and e-mail address and contact of the assignee). The Company shall effect the assignment (including by making appropriate notation of such transfer on the Register) within three (3) business days, and shall deliver to the assignee(s) designated in the Assignment a Note or Notes of like tenor and terms for the appropriate Principal. Upon such an assignment becoming effective, the assignee shall be deemed to make the representation and warranty set forth in Section 3.3(b) of the Facility Agreement. This Note and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of Holder. This Note is not assignable or transferable by the Company without the written consent of the Holder and the Agent and any such prohibited assignment or transfer is absolutely void *ab initio*.

8. Payment of Costs and Expense. The Company shall pay all costs and expenses (including attorney's fees) of the Holder incurred in connection with this Note as provided in Section 6.3 of the Facility Agreement.

9. Cancellation. After all Principal, Interest and other amounts at any time owed under, or on account of, this Note have been paid in full or converted into Shares in accordance with the terms hereof, this Note shall automatically be deemed cancelled, shall be surrendered to the Company for cancellation and shall not be reissued.

10. Waiver of Notice. Other than those notices required to be provided by the Holder to the Company under the terms of the Facility Agreement, the Company and every endorser of this Note, or the obligations represented hereby, expressly waives presentment, protest, demand, notice of dishonor or default, and notice of any kind with respect to this Note, the Facility Agreement and the other Loan Documents or the performance of the obligations (and the other Obligations) under this Note, the Facility Agreement and/or the other Loan Documents. No renewal or extension of this Note, the Facility Agreement or the other Loan Documents (or the Obligations), no delay in the enforcement of payment of this Note, the Facility Agreement or the other Loan Documents (or the Obligations), and no delay or omission in exercising any right, remedy or power under this Note, the Facility Agreement or the other Loan Documents or under applicable law shall affect the liability of the Company or any endorser of this Note.

11. Waiver and Amendment. No delay or omission by the Holder in exercising any power or right hereunder shall impair such right or power or be construed to be a waiver of any default, nor shall any single or partial exercise of any power or right hereunder preclude the full exercise thereof or the exercise of any other power or right. The provisions of this Note may be waived or amended, restated, supplemented or otherwise modified only in a writing signed by the Company and the Required Holders.

12. Governing Law. This Note shall be governed by, and be construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and to be performed in such State. The other provisions of Section 6.4 of the Facility Agreement shall apply hereto *mutatis mutandis*.

13. Miscellaneous. This Note is a Loan Document, is entitled to the benefits of the Loan Documents and is subject to the provisions of the Facility Agreement, including Section 1.2 (Interpretation) of the Facility Agreement.

14. Interpretative Matters. Unless the context otherwise requires, (a) all references to Sections or Exhibits are to Sections or Exhibits contained in or attached to this Note, (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter, and (c) the use of the word "including" in this Note shall be by way of example rather than limitation.

15. Execution. A facsimile, PDF or other reproduction of this Note may be delivered by the Company, and an executed copy of this Note may be delivered by the Company by facsimile, e-mail or other similar electronic transmission pursuant to which the signature of or on behalf of the Company can be seen, and such execution and delivery shall be considered valid,

binding and effective for all purposes. The Company hereby agrees that it shall not raise the execution by the Company of a facsimile, PDF or other reproduction of this Note, or the fact that any signature was transmitted by the Company by facsimile, e-mail or other similar electronic transmission, as a defense to the Company's execution of this Note. Notwithstanding the foregoing, the Company shall be required to deliver an originally executed Note to the Holder.

16. No Novation. This Note is an amendment and restatement of the Original Note and evidences an extension, continuation and renewal of the indebtedness evidenced by the Original Note, but this Note replaces the Original Note, with the indebtedness evidenced by the Original Note now evidenced by this Note. The Original Note shall be of no further force and effect upon execution of this Note. The Borrower hereby acknowledges and agrees that the indebtedness under the Original Note has not been repaid or extinguished and that the execution hereof does not constitute a novation of the Original Note. Moreover, this Note shall be entitled to all security and collateral to which the Original Note was entitled, without change or diminution in the priority of any lien or security interest granted to secure the Original Note.

**[Signature page follows]**

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the date first set forth above.

**COMPANY:**

**MELINTA THERAPEUTICS, INC.**

By: _____
Name:
Title:

**Schedule I**

**SCHEDULE OF CONVERSIONS OR REPAYMENTS**

| Date of Transaction | Type of Transaction (Conversion or Repayment) | Amount of Principal Converted or Repaid | Principal After Transaction | Signature of Company Officer |
|---|---|---|---|---|

**Exhibit A**

**CONVERSION NOTICE**

Reference is made to the Amended and Restated Senior Secured Convertible Note (the "**Note**") of MELINTA THERAPEUTICS, INC., a Delaware corporation (the "**Company**"), in the original principal amount of $[_____]. In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Common Stock, par value $0.001 per share (the "**Common Stock**"), of the Company, as of the date specified below.

Date of Conversion: _____

Amount of Principal to be converted: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Note is being converted in the following name:

Issue to: _____

DTC Participant Number and Name: _____
Account Number: _____

**Exhibit B**

**ASSIGNMENT**

(To be executed by the registered holder
desiring to transfer the Note)

FOR VALUE RECEIVED, the undersigned holder of the attached Amended and Restated Senior Secured Convertible Note (the "**Note**") hereby sells, assigns and transfers unto the person or persons below named the right to receive the principal amount of $_____ from MELINTA THERAPEUTICS, INC., a Delaware corporation (the "**Company**"), evidenced by the attached Note and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____ _____
Signature

Fill in for new registration of Note:

_____
Name

_____
Address

_____
Please print name and address of assignee
(including zip code number)

E-mail Address: _____
_____

NOTICE

The signature to the foregoing Assignment must correspond to the name as written upon the face of the attached Note.