

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 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): September 21, 2022**

**SPECTRUM PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-35006**  
(Commission  
File Number)

**93-0979187**  
(IRS Employer  
Identification No.)

**Pilot House - Lewis Wharf, Atlantic Avenue**  
(Address of principal executive offices)

**6th Floor Boston, MA**

**02110**  
(Zip Code)

**Registrant's telephone number, including area code: (617) 586-3900**

**Not Applicable**  
(Former name or former address if changed since last report.)

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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<b>Common Stock, \$0.001 par value</b>	<b>SPPI</b>	<b>The NASDAQ Global Select Market</b>

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

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

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

On September 21, 2022 (the “**Closing Date**”), Spectrum Pharmaceuticals, Inc. (the “**Company**”) entered into a Loan and Security Agreement (the “**Loan and Security Agreement**”), by and among the Company, Allos Therapeutics, Inc., Talon Therapeutics, Inc., and Spectrum Pharmaceuticals International Holdings, LLC, as borrowers (together with the Company, collectively, the “**Borrowers**”), the lenders from time to time party thereto (the “**Lenders**”), and SLR Investment Corp., in its capacity as collateral agent for the Lenders (in such capacity, the “**Agent**”). The Loan and Security Agreement establishes a \$65.0 million term loan facility, consisting of (i) \$30.0 million (the “**Term A Loan**”) funded on the Closing Date, (ii) \$10.0 million (the “**Term B Loan**”) that the Company may borrow on or prior to December 20, 2022; provided that the Company has received approval by the U.S. Food and Drug Administration (“**FDA**”) for its new drug application for poziotinib for non-small cell lung cancer (NSCLC) in previously treated patients with HER2 exon 20 insertion mutations, (iii) \$15.0 million (the “**Term C Loan**”) that the Company may borrow on or prior to May 15, 2023; provided that the Company and its subsidiaries have achieved certain product revenue milestone targets described in the Loan and Security Agreement and (iv) \$10.0 million (the “**Term D Loan**”) and, together with the Term A Loan, the Term B Loan and the Term C Loan, collectively, the “**Term Loan**”) that the Company may borrow on or prior to November 15, 2023; provided that the Company and its subsidiaries have achieved certain product revenue milestone targets described in the Loan and Security Agreement. The Term Loan has a maturity date of September 1, 2027 (the “**Maturity Date**”).

Borrowings under the Term Loan will bear interest at a rate per annum equal to one-month term SOFR (subject to a 2.30% floor), plus 5.70%, payable monthly in arrears. The Company is permitted to make interest-only payments on the Term Loan through September 30, 2025, which may be extended at the Company’s option to September 30, 2026; provided that the Company meets certain financial milestones described in the Loan and Security Agreement. Accordingly, beginning on October 1, 2025 or October 1, 2026 (as applicable), the Company will be required to make monthly payments of interest, plus repay the Term Loan in consecutive equal monthly installments of principal. The Company is obligated to pay the Lenders a non-refundable facility fee in the amount of 1.0% of each Term Loan that is funded. In addition, the Company is obligated to pay a final fee equal to 4.75% of the aggregate amount of the Term Loan funded, such final fee to be due and payable upon the earliest to occur of (1) the Maturity Date, (2) the acceleration of the Term Loan, and (3) the prepayment of the Term Loan. The Company may voluntarily prepay the outstanding Term Loan, subject to a prepayment premium of (i) 3.0% of the principal amount of the Term Loan, if prepaid prior to or on the first anniversary of the Closing Date, (ii) 2.0% of the principal amount of the Term Loan, if prepaid after the first anniversary of the Closing Date through and including the second anniversary of the Closing Date, or (iii) 1.0% of the principal amount of the Term Loan if prepaid after the second anniversary of the Closing Date and prior to the Maturity Date. Concurrently with the funding of each tranche of the Term Loan, the Company is required to issue to each Lender of such Term Loan a warrant to purchase a number of shares of the Company’s common stock in an amount equal to 1.00% of the Term Loan funded, divided by the exercise price (collectively, the “**Warrants**”). The exercise price will be the lesser of (a) the 10-day trailing average of the Company’s common stock price, as determined as of the close of business on the day immediately prior to the funding date of the applicable Term Loan and (b) the Company’s common stock price, as determined as of the close of business on the business day immediately prior to the funding date of the applicable Term Loan. The Warrants are immediately exercisable, and the exercise period will expire 10 years from the date of issuance.

The Company’s obligations under the Loan and Security Agreement and the other Loan Documents (as defined in the Loan and Security Agreement) are guaranteed by the other Borrowers and any other subsidiaries of the Company that become Guarantors (as defined in the Loan and Security Agreement). The Borrowers’ and the Guarantors’ (collectively, the “**Loan Parties**”) respective obligations under the Loan and Security Agreement and the other Loan Documents are secured by first priority security interests in substantially all assets of the Loan Parties, subject to certain customary thresholds and exceptions.

The Loan and Security Agreement contains customary events of default and representations, warranties and affirmative and negative covenants, including financial covenants requiring the Company to (i) maintain certain levels of cash in accounts subject to a control agreement in favor of the Agent of at least \$25.0 million at all times commencing from the Closing Date and ending on the later of (A) July 31, 2023 and (B) the date Company either (1) receives, on or after September 13, 2022, at least \$40.0 million in net cash proceeds from equity raises and/or business development or collaboration agreements or (2) (x) receives, on or after September 13, 2022, at least \$30.0 million in net cash proceeds from equity raises and/or business development or collaboration agreements and (y) achieves at least \$25.8 million in trailing 6-month net revenue from the sale of any products (on or prior to the period ending July 31, 2023) and (ii) maintain, commencing March 31, 2023, on a monthly basis until the end of 2023, and on a quarterly basis thereafter, either (A) net revenue from the sale of any products of at least \$100 million on a trailing 12-month basis, or (B) net revenue from the sale of any products of an amount set forth in the Loan and Security Agreement, on a trailing 6-month basis.

In addition, the Loan and Security Agreement contains customary events of default that entitle the Agent to cause the Company's indebtedness under the Loan and Security Agreement to become immediately due and payable, and to exercise remedies against the Loan Parties and the collateral securing the Term Loan, including cash. Under the Loan and Security Agreement, an event of default will occur if, among other things, the Company fails to make payments under the Loan and Security Agreement, the Company or its subsidiaries breach any of the covenants under the Loan and Security Agreement, subject to specified cure periods with respect to certain breaches, a material adverse change occurs, the Company, its subsidiaries or their respective assets become subject to certain legal proceedings, such as bankruptcy proceedings, the Company and/or its subsidiaries are unable to pay their debts as they become due or default on contracts with third parties which would permit the holder of indebtedness in excess of a certain threshold to accelerate the maturity of such indebtedness or that could cause a material adverse change. Upon the occurrence and for the duration of an event of default, an additional default interest rate equal to 4.0% per annum will apply to all obligations owed under the Loan and Security Agreement.

The Loan and Security Agreement is filed as Exhibit 10.1 to this Current Report and is incorporated herein by reference. The description of the Loan and Security Agreement in this Current Report is a summary only, does not purport to be complete, and is qualified in its entirety by the terms of the Loan and Security Agreement.

**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 in Item 1.01 of this Current Report is incorporated by reference into this Item 2.03.

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

The information provided in response to Item 1.01 of this Current Report is incorporated by reference into this Item 3.02. The Warrants were issued in a private placement pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended (the "*Securities Act*") available under Section 4(a)(2) promulgated pursuant to the Securities Act. Each Lender represented that it is an accredited investor, and that it was acquiring the securities for its own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act. A description of the Warrants under Item 1.01 of this Current Report on Form 8-K is incorporated by reference herein. The form of Warrant is filed as an exhibit to this Current Report on Form 8-K and is incorporated by reference herein.

**Item 3.03. Material Modification to Rights of Security Holders.**

Pursuant to the Loan and Security Agreement, the Company is subject to certain restrictions on its ability to pay dividends or make other distributions or payments on account of any redemption, retirement or purchase of any capital stock. The information regarding such restrictions is set forth in the Loan and Security Agreement, which is incorporated by reference into this Item 3.03.

**Item 8.01. Other Events.**

On September 23, 2022, the Company issued a press release announcing its entrance into the Loan and Security Agreement. A copy of the press release is attached as Exhibit 99.1 to this Current Report and is incorporated herein by reference.

On September 22, 2022, the Company issued a press release announcing that the U.S. Food and Drug Administration's Oncologic Drugs Advisory Committee ("ODAC") met to review poziotinib for the treatment of patients with previously treated locally advanced or metastatic non-small cell lung cancer harboring HER2 exon 20 insertion mutations. The committee voted 9-4 that the current benefits of poziotinib did not outweigh its risks. A copy of the press release announcing the results of the ODAC meeting is attached as Exhibit 99.2 hereto and is incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	<a href="#">Form of Warrant</a>
10.1	<a href="#">Loan and Security Agreement, dated September 21, 2022, by and among Spectrum Pharmaceuticals, Inc., the other borrowers party thereto, the lenders party thereto and SLR Investment Corp., as collateral agent.</a>
99.1	<a href="#">Press Release, dated September 23, 2022.</a>
99.2	<a href="#">Press Release, dated September 22, 2022.</a>
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

**SIGNATURE**

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.

**SPECTRUM PHARMACEUTICALS, INC.**

Date: September 23, 2022

By: /s/ Nora E. Brennan

Nora E. Brennan

Executive Vice President and Chief Financial Officer

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN SECTIONS 5.3 AND 5.4 BELOW, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

### WARRANT TO PURCHASE STOCK

<i>Company:</i>	SPECTRUM PHARMACEUTICALS, INC.
<i>Number of Shares:</i>	[\$300,000 / Warrant Price]
<i>Type/Series of Stock:</i>	Common
<i>Warrant Price:</i>	[\$ _____]
<i>Issue Date:</i>	September [___], 2022
<i>Expiration Date:</i>	September [___], 2032 (See also Section 5.1(b))
<i>Credit Facility:</i>	This Warrant to Purchase Stock (“ <u>Warrant</u> ”) is issued in connection with that certain Loan and Security Agreement, dated as of the date hereof, by and among [SLR INVESTMENT CORP., a Maryland corporation with an office located at 500 Park Avenue, 3rd Floor, New York, NY (“ <u>SLR</u> ”), as Collateral Agent, the Lenders party thereto from time to time including SLR in its capacity as a Lender, the Company, as a Borrower, and the other parties from time to time party thereto (as amended, restated, or otherwise modified from time to time, the “ <u>Loan Agreement</u> ”; capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Loan Agreement).

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, SLR (together with any successor or permitted assignee or transferee of this Warrant or of any shares issued upon exercise hereof, “Holder”) is entitled to purchase the number of fully paid and non-assessable shares (the “Shares”) of the common stock (the “Common Stock”) of the above-named company (the “Company”) at the above-stated Warrant Price, all as set forth above and as adjusted pursuant to Section 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

#### SECTION 1 EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time on or before the Expiration Date exercise this Warrant, in whole or in part, by delivering to the Company the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached hereto as Appendix 1 and, unless Holder is exercising this Warrant pursuant to a cashless exercise set forth in Section 1.2, a check, wire transfer of same-day funds (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Cashless Exercise. On any exercise of this Warrant, in lieu of payment of the aggregate Warrant Price in the manner as specified in Section 1.1 above, but otherwise in accordance with the requirements of Section 1.1, Holder may elect to receive Shares equal to the value of this Warrant, or portion hereof as to which this Warrant is being exercised. Thereupon, the Company shall issue to the Holder such number of fully paid and non-assessable Shares as are computed using the following formula:

$$X = Y(A-B)/A$$

where:

X = the number of Shares to be issued to the Holder;

Y = the number of Shares with respect to which this Warrant is being exercised (inclusive of the Shares surrendered to the Company in payment of the aggregate Warrant Price);

A = the Fair Market Value (as determined pursuant to Section 1.3 below) of one Share; and

B = the Warrant Price.

1.3 Fair Market Value. If the Company's Common Stock is then traded or quoted on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a "Trading Market"), the fair market value of a Share shall be the closing price or last sale price of a share of Common Stock reported for the Business Day immediately before the date on which Holder delivers this Warrant together with its Notice of Exercise to the Company. If the Company's Common Stock is not traded on a Trading Market, the Board of Directors of the Company shall determine the fair market value of a Share in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Within a reasonable time after Holder exercises this Warrant in the manner set forth in Section 1.1 or 1.2 above, the Company shall deliver to Holder a certificate representing the Shares issued to Holder upon such exercise, and, if this Warrant has not been fully exercised and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form, substance and amount to the Company or, in the case of mutilation, on surrender of this Warrant to the Company for cancellation, the Company shall, within a reasonable time, execute and deliver to Holder, in lieu of this Warrant, a new warrant of like tenor and amount.

1.6 Treatment of Warrant Upon Acquisition of Company.

(a) Acquisition. For the purpose of this Warrant, “Acquisition” means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company; (ii) any merger or consolidation of the Company into or with another person or entity (other than a merger or consolidation effected exclusively to change the Company’s domicile), or any other corporate reorganization, in which the stockholders of the Company in their capacity as such immediately prior to such merger, consolidation or reorganization, own less than a majority of the Company’s (or the surviving or successor entity’s) outstanding voting power immediately after such merger, consolidation or reorganization; or (iii) any sale or other transfer by the stockholders of the Company of shares representing at least a majority of the Company’s then-total outstanding combined voting power.

(b) Treatment of Warrant at Acquisition. In the event of an Acquisition in which the consideration to be received by the Company’s stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a “Cash/Public Acquisition”), either (i) Holder shall exercise this Warrant pursuant to Section 1.1 or Section 1.2 above as to all Shares not less than one (1) Business Day prior to the closing of such Cash/Public Acquisition, and such exercise will be deemed to be effective immediately prior to and contingent upon the consummation of such Cash/Public Acquisition or (ii) if Holder elects not to exercise the Warrant, then this Warrant will expire immediately prior to the consummation of such Cash/Public Acquisition.

(c) The Company shall provide Holder with written notice of a contemplated Cash/Public Acquisition (together with a description of the treatment of this Warrant in connection with such contemplated Cash/Public Acquisition giving rise to such notice), which is to be delivered to Holder not less than seven (7) Business Days prior to the closing of the proposed Cash/Public Acquisition. In the event the Company does not provide such notice and the fair market value of one Share (or other security issuable upon the exercise hereof), as determined in accordance with Section 1.3 above on the Business Day immediately prior to the consummation of the Cash/Public Acquisition, would be greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, effective immediately prior to and contingent upon the consummation of such Cash/Public Acquisition, and the Company shall promptly notify the Holder of the number of Shares (or such other securities) issued upon such exercise to the Holder. Holder shall be deemed to have restated each of the representations and warranties in Section 4 of this Warrant as of the date of any deemed exercise pursuant to this Section 1.6(c).

(d) Upon the closing of any Acquisition other than a Cash/Public Acquisition defined above, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

(e) As used in this Warrant, “Marketable Securities” means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded on a Trading Market; and (iii) Holder would not be restricted from publicly re-selling all of the issuer’s shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition, except to the extent that any such restriction (A) arises solely under federal or state securities laws, rules or regulations and (B) does not extend beyond six (6) months from the closing of such Acquisition.

## SECTION 2 ADJUSTMENTS TO THE SHARES AND WARRANT PRICE.

2.1 Stock Dividends, Splits, Etc. If, prior to the earlier of the Expiration Date or the exercise or conversion, in full, of this Warrant, the Company declares or pays a dividend or distribution on the outstanding shares of Common Stock, payable in Common Stock or other securities or property (other than cash), then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without additional cost to Holder, the total number and kind of securities and property which Holder would have received had Holder owned the Shares of record as of the date the dividend or distribution occurred. If the Company subdivides the outstanding shares of Common Stock by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased, provided the aggregate purchase price shall remain the same. If the outstanding shares of Common Stock are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased, provided the aggregate purchase price shall remain the same.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any event whereby all of the outstanding shares of Common Stock are reclassified, exchanged, combined, substituted, or replaced for, into, with or by Company securities of a different class and/or series, then from and after the consummation of such event, this Warrant will be exercisable for the number, class and series of Company securities that Holder would have received had the Shares been outstanding on and as of the consummation of such event, provided the aggregate purchase price shall remain the same, and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations substitutions, replacements or other similar events.

2.3 Intentionally Omitted.

2.4 Intentionally Omitted.

2.5 No Fractional Share. No fractional Share shall be issuable upon exercise of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional Share interest arises upon any exercise of the Warrant, the Company shall eliminate such fractional Share interest by paying Holder in cash the amount computed by multiplying the fractional interest by (a) the fair market value (as determined in accordance with Section 1.3 above) of a full Share, less (b) the then-effective Warrant Price.

2.6 Notice/Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Common Stock and/or number of Shares, the Company, at the Company's expense, shall notify Holder in writing within a reasonable time setting forth the adjustments to the Warrant Price, Common Stock and/or number of Shares and facts upon which such adjustment is based. The Company shall, upon written request from Holder, furnish Holder with a certificate of its Chief Executive Officer or Chief Financial Officer, including computations of such adjustment and the Warrant Price, Common Stock and number of Shares in effect upon the date of such adjustment.

### SECTION 3 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) This Warrant is, and all Shares which may be issued upon the exercise of this Warrant shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of shares of Common Stock or other securities as will be sufficient to permit the exercise in full of this Warrant.

3.2 Notice of Certain Events. If the Company proposes at any time to:

(a) declare any dividend or distribution upon the outstanding shares of Common Stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend;

(b) offer for subscription or sale pro rata to the holders of the outstanding shares of Common Stock any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights);

(c) effect any reclassification, exchange, combination, substitution, reorganization or recapitalization of the outstanding shares of Common Stock; or

(d) effect an Acquisition or to liquidate, dissolve or wind up.

then, in connection with each such event, the Company shall give Holder:

(1) at least seven (7) Business Days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of outstanding shares of Common Stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) and (b) above; and

(2) in the case of the matters referred to in (c) and (d) above, at least seven (7) Business Days prior written notice of the date when the same will take place (and specifying the date on which the holders of outstanding shares of Common Stock will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event).

Reference is made to Section 1.6(c) whereby this Warrant will be deemed to be exercised pursuant to Section 1.2 hereof if the Company does not give written notice to Holder of a Cash/Public Acquisition as required by the terms hereof. Company will also provide information requested by Holder that is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements.

#### SECTION 4 REPRESENTATIONS AND WARRANTIES OF THE HOLDER.

The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder are being acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder is aware of the Company's business affairs and financial condition and has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies similar to the Company and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

4.6 No Voting Rights. Holder, as a Holder of this Warrant, will not have any voting rights until the exercise of this Warrant.

SECTION 5 MISCELLANEOUS.

5.1 Term and Automatic Conversion Upon Expiration.

(a) Term. Subject to the provisions of Section 1.6 above, this Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 P.M. Eastern time, on the Expiration Date and shall be void thereafter.

(b) Automatic Cashless Exercise upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Section 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall, within a reasonable time, deliver a certificate representing the Shares (or such other securities) issued upon such exercise to Holder.

5.2 Legends. Each certificate evidencing the Shares (and each certificate evidencing the securities issued upon conversion of any Shares, if any) shall be imprinted with a legend in substantially the following form:

THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AS SET FORTH IN THAT CERTAIN WARRANT TO PURCHASE COMMON STOCK ISSUED BY THE ISSUER TO SLR INVESTMENT CORP. DATED SEPTEMBER [ ], 2022, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND LAWS OR IN THE OPINION OF LEGAL COUNSEL, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part except in compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to any affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

5.4 Transfer Procedure. After receipt by SLR of the executed Warrant, SLR may transfer all or part of this Warrant to one or more of SLR's affiliates (each, a "SLR Affiliate"), by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Section 5.3 and upon providing the Company with written notice, SLR, any such SLR Affiliate and any subsequent Holder, may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any other transferee, provided, however, in connection with any such transfer, the SLR Affiliate(s) or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

5.5 Binding on Successors. This Warrant will be binding upon any entity succeeding the Company by merger, consolidation or acquisition of all or substantially all of the Company's assets.

5.6 Taxes. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issuance or delivery of the Shares, other than any tax or other charge imposed in connection with any transfer involved in the issue and delivery of the Shares in a name other than that of the Holder.

5.7 Notices. All notices and other communications hereunder from the Company to the Holder, or vice versa, shall be deemed delivered and effective (i) when given personally, (ii) on the third (3<sup>rd</sup>) Business Day after being mailed by first-class registered or certified mail, postage prepaid, (iii) upon actual receipt if given by facsimile or electronic mail and such receipt is confirmed in writing by the recipient, or (iv) on the first Business Day following delivery to a reliable overnight courier service, courier fee prepaid, in any case at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such Holder from time to time in accordance with the provisions of this Section 5.5. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

[SLR INVESTMENT CORP.]  
500 Park Avenue, 3rd Floor  
New York, NY 10022  
Attention: Anthony Storino  
Phone: (646) 308-8707  
Email: astorino@slrcp.com

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

DLA PIPER LLP (US)  
401 B Street, Suite 1700  
San Diego, CA 92101  
Attention: Parker Zangoei  
Phone: (858) 677-1420  
Email: parker.zangoei@us.dlapiper.com

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

SPECTRUM PHARMACEUTICALS, INC.  
2 Atlantic Avenue, 6<sup>th</sup> Floor  
Boston, MA 02100  
Attention: Keith McGahan, Chief Legal Officer  
Phone: (949) 743-9376  
Email: keith.mcgahan@sppirx.com

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

LATHAM & WATKINS, LLP  
505 Montgomery Street, Suite 2000  
San Francisco, CA 94111  
Attn: Haim Zaltzman  
Phone: (415) 395-8870  
Email: haim.zaltzman@lw.com

5.8 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.9 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.10 Counterparts; Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Warrant and the transactions contemplated hereby (including without limitation assignments, assumptions, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Holder, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

5.11 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law principles that would result in the application of any other than the laws of the State of New York.

5.12 Waiver of Jury Trial. AS A MATERIAL INDUCEMENT FOR EACH PARTY HERETO TO ENTER INTO THIS WARRANT, THE PARTIES HERETO HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING RELATED IN ANY WAY TO THIS WARRANT AND/OR ANY AND ALL OF THE OTHER DOCUMENTS ASSOCIATED WITH THIS TRANSACTION.

5.13 Headings. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

5.14 Business Days. “Business Day” is any day that is not a Saturday, Sunday or a day on which banks in the State of New York are closed.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have caused this Warrant to Purchase Stock to be executed by their duly authorized representatives effective as of the Issue Date written above.

“COMPANY”

**SPECTRUM PHARMACEUTICALS, INC.**

By: \_\_\_\_\_

Name:

Title:

“HOLDER”

**[SLR INVESTMENT CORP.]**

By: \_\_\_\_\_

Name: Anthony Storino

Title: Authorized Signatory

[Signature Page to Warrant to Purchase Stock (Term A Loans)]

**APPENDIX 1**

**NOTICE OF EXERCISE**

1. The undersigned Holder hereby exercises its right purchase \_\_\_\_\_ shares of the Common Stock of \_\_\_\_\_ (the "Company") in accordance with the attached Warrant to Purchase Stock, and tenders payment of the aggregate Warrant Price for such shares as follows:

- check in the amount of \$\_\_\_\_\_ payable to order of the Company enclosed herewith
- Wire transfer of immediately available funds to the Company's account
- Cashless Exercise pursuant to Section 1.2 of the Warrant
- Other [Describe] \_\_\_\_\_

2. Please issue a certificate or certificates representing the Shares in the name specified below:

\_\_\_\_\_  
Holder's Name  
\_\_\_\_\_  
\_\_\_\_\_  
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Section 4 of the Warrant to Purchase Stock as of the date hereof.

HOLDER:

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
(Date): \_\_\_\_\_

**APPENDIX 2**

**ASSIGNMENT**

For value received, [SLR] hereby sells, assigns and transfers unto

Name: [SLR TRANSFEREE]

Address: \_\_\_\_\_

Tax ID: \_\_\_\_\_

that certain Warrant to Purchase Stock issued by SPECTRUM PHARMACEUTICALS, INC. (the “**Company**”), on [\_\_\_\_\_] [\_\_\_\_], 202[\_\_\_\_] (the “**Warrant**”) together with all rights, title and interest therein.

[SLR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By its execution below, and for the benefit of the Company, [SLR TRANSFEREE] makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[SLR TRANSFEREE]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_]

## LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (as the same may be amended, restated, modified, or supplemented from time to time, this “**Agreement**”) dated as of September 21, 2022 (the “**Effective Date**”) among SLR INVESTMENT CORP., a Maryland corporation with an office located at 500 Park Avenue, 3rd Floor, New York, NY 10022 (“**SLR**”), as collateral agent (in such capacity, together with its successors and assigns in such capacity, “**Collateral Agent**”), and the lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including SLR in its capacity as a Lender (each a “**Lender**” and collectively, the “**Lenders**”), and SPECTRUM PHARMACEUTICALS, INC., a Delaware corporation with offices located at 2 Atlantic Avenue, 6<sup>th</sup> Floor, Boston, MA 02110 (“**Parent**”), ALLOS THERAPEUTICS, INC., Delaware corporation with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Allos**”), TALON THERAPEUTICS, INC., Delaware corporation with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Talon**”) and SPECTRUM PHARMACEUTICALS INTERNATIONAL HOLDINGS, LLC, a Delaware limited liability company with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Spectrum International**”) and together with Parent, Allos and Talon, and any other co-Borrower party hereto from time to time, individually and collectively, jointly and severally, “**Borrower**”), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

### 1. DEFINITIONS AND OTHER TERMS

**1.1 Terms.** Capitalized terms used herein shall have the meanings set forth in Section 1.4 to the extent defined therein. All other capitalized terms used but not defined herein shall have the meaning given to such terms in the Code. Any accounting term used but not defined herein shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term “financial statements” shall include the accompanying notes and schedules. For the avoidance of doubt, and without limitation of the foregoing, Permitted Convertible Indebtedness shall at all times be valued at the full stated principal amount thereof and shall not include any reduction or appreciation in value of the shares deliverable upon conversion thereof.

**1.2 Section References.** Any section, subsection, schedule or exhibit references are to this Agreement unless otherwise specified.

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

**1.4 Definitions.** The following terms are defined in the Sections or subsections referenced opposite such terms:

“ <b>Agreement</b> ”	Preamble
“ <b>Allos</b> ”	Preamble
“ <b>Approved Lender</b> ”	Section 12.1
“ <b>Borrower</b> ”	Preamble
“ <b>Change of Control</b> ”	Section 7.2(c)(ii)
“ <b>Claims</b> ”	Section 12.2
“ <b>Collateral Agent</b> ”	Preamble
“ <b>Collateral Agent Report</b> ”	Exhibit B, Section 5
“ <b>Communications</b> ”	Section 10

“ <b>Connection Income Taxes</b> ”	Exhibit C, Section 1
“ <b>Default Rate</b> ”	Section 2.3(b)
“ <b>Effective Date</b> ”	Preamble
“ <b>Event of Default</b> ”	Section 8
“ <b>Excluded Taxes</b> ”	Exhibit C, Section 1
“ <b>FATCA</b> ”	Exhibit C, Section 1
“ <b>FDCA</b> ”	Section 5.6
“ <b>Good Faith Deposit</b> ”	Section 2.4(d)
“ <b>Indemnified Person</b> ”	Section 12.2
“ <b>Indemnified Taxes</b> ”	Exhibit C, Section 1
“ <b>Lender</b> ” and “ <b>Lenders</b> ”	Preamble
“ <b>Lender Transfer</b> ”	Section 12.1
“ <b>New Subsidiary</b> ”	Section 6.10
“ <b>Non-Funding Lender</b> ”	Exhibit B, Section 10(c)(ii)
“ <b>Other Connection Taxes</b> ”	Exhibit C, Section 1
“ <b>Other Lender</b> ”	Exhibit B, Section 10(c)(ii)
“ <b>Other Taxes</b> ”	Exhibit C, Section 1
“ <b>Parent</b> ”	Preamble
“ <b>Perfection Certificate</b> ” and “ <b>Perfection Certificates</b> ”	Section 5.1
“ <b>Participant Register</b> ”	Section 12.1
“ <b>Recipient</b> ”	Exhibit C, Section 1
“ <b>Register</b> ”	Section 12.1
“ <b>SLR</b> ”	Preamble
“ <b>Spectrum International</b> ”	Preamble
“ <b>Talos</b> ”	Preamble
“ <b>Termination Date</b> ”	Exhibit B, Section 8
“ <b>Term A Loan</b> ”	Section 2.2(a)(i)
“ <b>Term B Loan</b> ”	Section 2.2(a)(ii)
“ <b>Term C Loan</b> ”	Section 2.2(a)(iii)
“ <b>Term D Loan</b> ”	Section 2.2(a)(iv)
“ <b>Term Loan</b> ”	Section 2.2(a)(iv)
“ <b>Transfer</b> ”	Section 7.1
“ <b>U.S. Tax Compliance Certificate</b> ”	Exhibit C, Section 7(b)(ii)(C)
“ <b>Withholding Agent</b> ”	Exhibit C, Section 1

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

“**1-Month CME Term SOFR**” is the 1-month CME Term SOFR reference rate as published by the CME Term SOFR Administrator on the CME Term SOFR Administrator’s Website.

“**2027 Plan**” is Borrower’s annual plan outlining Borrower’s quarterly forecasted Net Product Revenue for its 2027 fiscal year which has been approved by Borrower’s board of directors and by Collateral Agent in its reasonable discretion.

“**Account**” is any “account” as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

“**Account Debtor**” is any “account debtor” as defined in the Code with such additions to such term as may hereafter be made under the Code.

“**ACH Letter**” is ACH debit authorization in the form of Exhibit G hereto.

“**Affiliate**” of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person’s senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person’s managers and members.

“**Amortization Date**” is, for each Term Loan, October 1, 2025; provided, however, if Borrower achieves the Interest-Only Extension Milestone prior, then, upon Borrower’s written request to Collateral Agent therefor prior to September 30, 2025, “Amortization Date” shall be October 1, 2026.

“**Anti-Terrorism Laws**” are any laws, rules, regulations or orders relating to terrorism or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

“**Applicable Rate**” is a per annum interest rate equal to the greater of (i) 2.30% and (ii) the Benchmark. Notwithstanding the foregoing, upon the occurrence of a Benchmark Transition Event, Collateral Agent may, in good faith amend this Agreement to replace the then-current Benchmark in a manner consistent with other loans in Collateral Agent’s portfolio so that such changes result in a substantially similar interest rate to the interest rate in effect immediately prior to the effectiveness of such Benchmark, and any such amendment shall become effective at 5:00 pm Eastern time on the third Business Day after Collateral Agent has notified Borrower of such amendment. Any determination, decision or election that may be made by Collateral Agent pursuant hereto will be conclusive and binding absent manifest error and may be made in Collateral Agent’s sole discretion and without consent from any other party.

“**Approved Fund**” is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“**Benchmark**” is, initially, the 1-Month CME Term SOFR; provided, that if a Benchmark Transition Event has occurred with respect to the 1-Month CME Term SOFR or the then-current Benchmark, then “Benchmark” is the applicable replacement rate that has replaced the immediately preceding benchmark rate pursuant to the defined term “Applicable Rate”.

“**Benchmark Transition Event**” is the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator for such Benchmark announcing that such Person has ceased or will cease to provide such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark;

(b) a public statement or publication of information by the regulatory supervisor for the administrator for such Benchmark, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, which states that the administrator for such Benchmark has ceased or will cease to provide such Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark; or

a public statement or publication of information by the administrator of such Benchmark or the regulatory supervisor for the administrator for such Benchmark announcing that such Benchmark is not, or as of a specified future date will not be, representative or in compliance with the International Organization of Securities Commissions Principles for Financial Benchmarks.

**“Blocked Person” is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.**

**“Borrower’s Books”** are Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, state, local and foreign tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

**“Business Day”** is any day that is not a Saturday, Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

**“Cash Equivalents”** are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition and having a rating of at least A-2 or P-2 from either Standard & Poor’s Ratings Group or Moody’s Investors Services; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent, (d) any money market or similar funds under Parent’s investment policy, as approved by Collateral Agent from time to time, (e) corporate debt securities and similar securities having a rating of at least “A-/A-3” or above, from either Moody’s, Fitch, or S&P, respectively and in each case maturing within eighteen (18) months after the date of creation or acquisition thereof, (f) direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof, in each case having a rating of at least “AAA” from Moody’s, Fitch, or S&P with maturities within eighteen (18) months after the date of creation or acquisition thereof, and (g) any money market or similar funds that exclusively hold any of the foregoing.

**“CFC”** is a “controlled foreign corporation” as defined in Section 957 of the Internal Revenue Code.

**“CME Term SOFR Administrator”** is CME Group Benchmark Administration Limited, as administrator of the forward-looking term SOFR, or any successor administrator.

“**CME Term SOFR Administrator’s Website**” is the website of the CME Group Benchmark Administrator at <http://www.cmegroup.com>, or any successor source.

“**Code**” is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Guarantor at any time.

“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

“**Commodity Account**” is any “commodity account” as defined in the Code with such additions to such term as may hereafter be made under the Code.

“**Compliance Certificate**” is that certain certificate in substantially the form attached hereto as Exhibit E.

“**Contingent Obligation**” is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but “Contingent Obligation” does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith in accordance with GAAP; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement. Notwithstanding anything to the contrary in the foregoing, any Permitted Call Spread Agreement shall not constitute a Contingent Obligation of the Parent.

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower or such Subsidiary, as applicable, and Collateral Agent pursuant to which Collateral Agent, for the ratable benefit of the Secured Parties, obtains “control” (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

“**Default**” is any event that, with the giving of notice or passage of time or both, could constitute an Event of Default.

“**Deposit Account**” is any “deposit account” as defined in the Code with such additions to such term as may hereafter be made under the Code.

“**Designated Deposit Account**” is Borrower’s deposit account, account number XXXX-X9200, maintained at Wells Fargo Bank, National Association, or such other deposit account designated by the Borrower in the applicable Loan Payment Request Form.

“**Dollars**,” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Eligible Assignee**” is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor’s Rating Group and a rating of Baa2 or higher from Moody’s Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars (\$5,000,000,000.00), which in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, “Eligible Assignee” shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower’s Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture fund or a distressed debt fund, each as determined by Collateral Agent in its reasonable discretion. Notwithstanding the foregoing, (x) in connection with any assignment made by a Lender as a result of a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender’s own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

“**Equipment**” is all “equipment” as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

“**ERISA**” is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

“**Excluded Subsidiary**” is each direct and indirect Subsidiary of Borrower (a) that is a CFC, (b) that is a direct or indirect Subsidiary of a CFC, or (c) substantially all of the assets of which are equity interests (or equity interests and debt interests) in one or more CFCs; in each case, provided that (i) the pledge of all of the equity interests of such Subsidiary as Collateral or (ii) the guarantee by such Subsidiary of the Obligations would result in material adverse tax consequences to Borrower (as reasonably determined by Borrower and Collateral Agent).

**“Exigent Circumstance”** is any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

**“FDA”** is the U.S. Food and Drug Administration or any successor thereto.

**“Fee Letter”** is that certain Fee Letter dated as of the Effective Date, by and among Collateral Agent, as agent, Lenders and Borrower, as amended, amended and restated, supplemented or otherwise modified from time to time.

**“Foreign Subsidiary”** is a Subsidiary that is not an entity organized under the laws of the United States or any state thereof or the District of Columbia.

**“Funding Date”** is any date on which a Term Loan is made to or on account of Borrower which shall be a Business Day.

**“GAAP”** is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination; provided that for purposes of the defined term “Permitted Indebtedness,” GAAP shall be GAAP as in effect on the Effective Date.

**“General Intangibles”** are all “general intangibles” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

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

**“Governmental Authority”** is any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof (including the FDA) or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state or locality of the United States, the United States, or a foreign government.

“**Governmental Payor**” is, Medicare, Medicaid, TRICARE, CHAMPVA, any state health plan adopted pursuant to Title XIX of the Social Security Act, any other state or federal health care program and any other Governmental Authority which presently or in the future maintains a payment or reimbursement program, and in which Borrower or any Subsidiary participates.

“**Guarantor**” is any Person providing a Guaranty in favor of Collateral Agent for the benefit of the Secured Parties (including without limitation pursuant to Section 6.10).

“**Guaranty**” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“**Healthcare Laws**” is all applicable laws, rules and regulations relating to the provision or payment of health items and services applicable to the Borrower or its Subsidiaries, including, without limitation, (a) all federal and state fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), the Civil False Claims Act (31 U.S.C. §3729 et seq.), the criminal false statements law (42 U.S.C. § 1320a-7b(a)), all criminal laws relating to health care fraud and abuse, including but not limited to 18 U.S.C. Sections 286, 287, 1347 and 1349, and the health care fraud criminal provisions under the U.S. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (42 U.S.C. Section 1320d et seq.), any applicable state fraud and abuse prohibitions, including those that apply to all payors (governmental, commercial insurance and self-payors), the civil monetary penalty laws (42 U.S.C. § 1320a-7a), the exclusion laws (42 U.S.C. § 1320a-7), and any similar state laws or regulations, (b) any laws relating to any Governmental Payor, including, without limitation, the Medicare statute (Title XVIII of the Social Security Act) and the Medicaid statute (Title XIX of the Social Security Act), and (c) any and all other applicable health care laws, regulations and binding program manual provisions and transmittals, each of (a) through (c) as may be amended from time to time.

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, (d) non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, (e) equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (f) obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (g) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (h) all Indebtedness of others guaranteed by such Person, (i) off-balance sheet liabilities and/or pension plan or multiemployer plan liabilities of such Person, and (j) Contingent Obligations. Notwithstanding anything to the contrary in the foregoing, any Permitted Call Spread Agreement shall not constitute Indebtedness of the Borrower.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions or proceedings seeking reorganization, arrangement, or other relief.

“**Insolvent**” is not Solvent.

“**Intellectual Property**” is all of Borrower’s or any of its Subsidiaries’ right, title and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

“**Intellectual Property Security Agreement**” is that certain Intellectual Property Security Agreement dated as of the Effective Date between Parent and Collateral Agent, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“**Interest-Only Extension Milestone**” is Collateral Agent’s receipt of satisfactory evidence that Borrower has achieved the Term D Loan Funding Condition.

“**Internal Revenue Code**” is the Internal Revenue Code of 1986, as amended.

“**Inventory**” is all “inventory” as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person’s custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

“**Investment**” is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

“**IRS**” is the United States Internal Revenue Service.

“**Key Person**” is each of Parent’s (i) President and Chief Executive Officer, who is Thomas J. Riga as of the Effective Date and (ii) Executive Vice President and Chief Financial Officer, who is Nora E. Brennan as of the Effective Date.

“**Knowledge**” is to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

“**Lender**” is any one of the Lenders.

“**Lenders**” are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

“**Lenders’ Expenses**” are (a) all reasonable audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating and administering the Loan Documents, and (b) all fees and expenses (including attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents. The Good Faith Deposit paid by the Borrower to the Collateral Agent prior to the Effective Date shall be applied to the Lenders’ Expenses.

“**Lien**” is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

“**Liquidity Milestone**” is Collateral Agent’s receipt of satisfactory evidence that either:

(a) Borrower has raised (meaning the date on which the transaction for which the consideration was given took place, not necessarily the day on which the proceeds were received by Borrower), on or after September 13, 2022, not less than Forty Million Dollars (\$40,000,000.00) in net cash proceeds from any combination of (i) the sale or issuance of Borrower’s equity interests and/or (ii) a business development or collaboration agreement otherwise permitted hereunder; or

(b) (i) Borrower has raised (meaning the date on which the transaction for which the consideration was given took place, not necessarily the day on which the proceeds were received by Borrower), on or after September 13, 2022, not less than Thirty Million Dollars (\$30,000,000.00) in net cash proceeds from any combination of (x) the sale or issuance of Borrower’s equity interests and/or (y) a business development or collaboration agreement otherwise permitted hereunder, and (ii) Borrower has achieved a minimum of Twenty-Five Million Eight Hundred Thousand Dollars (\$25,800,000.00) in Net Product Revenue calculated on a trailing six (6) month basis for any measuring period ending on or prior to July 31, 2023.

“**Loan Documents**” are, collectively, this Agreement, the Warrants, the Warrant Letter Agreement, the Fee Letter, each Control Agreement, the Pledge Agreement, the Intellectual Property Security Agreement, the Perfection Certificates, each Compliance Certificate, the ACH Letter, each Loan Payment Request Form, any Guarantees, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, any agreements creating or perfecting rights in the Collateral (including all insurance certificates and endorsements, landlord consents and bailee consents) and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent, as applicable, in connection with this Agreement; all as amended, restated, or otherwise modified.

“**Loan Parties**” is the Borrower and the Guarantors, and “**Loan Party**” shall mean any one of them.

“**Loan Payment Request Form**” is that certain form attached hereto as Exhibit D.

“**Material Adverse Change**” is (a) a material adverse change in the business, operations or financial condition of Borrower and its Subsidiaries, when taken as a whole; or (b) a material impairment of (i) the ability of the Loan Parties to repay any portion of the Obligations, (ii) the legality, validity or enforceability of any Loan Document, (iii) the rights and remedies of Collateral Agent or Lenders under any Loan Document except as the result of the action or inaction of the Collateral Agent or Lenders or (iv) the validity, perfection or priority of any Lien in favor of Collateral Agent for the benefit of the Secured Parties on any of the Collateral except as the result of the action or inaction of the Collateral Agent or Lenders. For the avoidance of doubt, “Material Adverse Change” shall not include, in and of themselves, the non-occurrence of any of the events described under “Term Loan B Funding Conditions”, “Term Loan C Funding Conditions” or “Term Loan D Funding Conditions”.

“**Material Agreement**” is any license, agreement or other contractual arrangement of Borrower or any of its Subsidiaries whereby Borrower or any of its Subsidiaries is required to file and disclose such license, agreement or contractual arrangement with the Securities and Exchange Commission.

“**Maturity Date**” is, for each Term Loan, September 1, 2027.

“**MSC Investment Conditions**” means that any Borrower and any Guarantor collectively have on deposit in Collateral Accounts subject to a Control Agreement in favor of Collateral Agent, cash and Cash Equivalents in an aggregate amount greater than or equal to one hundred twenty percent (120%) of the amount required to prepay the outstanding Obligations in full at the time of such redemption, including, for the avoidance of doubt, all outstanding principal of the Term Loans, the accrued and unpaid interest thereon, the Prepayment Premium, all fees under the Fee Letter.

“**MSC Subsidiary**” means a Subsidiary of Borrower that is a corporation that qualifies as a Massachusetts securities corporation by meeting the requirements of Chapter 63, Section 38B of the Massachusetts General Laws.

“**Net Product Revenue**” is the revenue determined in accordance with GAAP (including for the avoidance of doubt, after taking into effect any “netting” required under GAAP, consistent with the calculation of revenue in Borrower’s financial statements) of any sales or share of sales of products or services of Borrower or its Subsidiaries, inclusive of such party’s share of such sale generated indirectly through the sales or distribution of Borrower’s products under any licensing or similar arrangement and which amounts are included in the revenue of such party determined in accordance with GAAP, but exclusive of any upfront payments under licensing or similar arrangements which are not tied directly to sales.

“**New Drug Application**” is an application submitted to the FDA pursuant to 21 U.S.C. § 355 seeking authorization to market a new drug in the United States.

“**Obligations**” are all of Borrower’s obligations to pay when due any debts, principal, interest, Lenders’ Expenses, the Prepayment Premium, all fees under the Fee Letter, and any other amounts Borrower owes the Collateral Agent or the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents (other than the Warrants and the Warrant Letter Agreement), or otherwise, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent in connection with this Agreement and the other Loan Documents (other than the Warrants and the Warrant Letter Agreement), and the performance of Borrower’s duties under the Loan Documents (other than the Warrants and the Warrant Letter Agreement).

“**OFAC**” is the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operating Documents**” are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Patents**” is all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

“**Payment Date**” is the first (1<sup>st</sup>) calendar day of each calendar month, commencing on November 1, 2022.

“**Permitted Call Spread Agreements**” is (a) any call option transaction (including, but not limited to, any bond hedge transaction or capped call transaction) pursuant to which the Borrower acquires an option requiring the counterparty thereto to deliver to the Parent shares of common stock of the Parent (or other securities or property following a merger event or other change of the common stock of the Parent), the cash value thereof or a combination thereof from time to time upon exercise of such option entered into by the Parent in connection with the issuance of Permitted Convertible Indebtedness (such transaction, a “**Bond Hedge Transaction**”) and (b) any call option transaction pursuant to which the Parent issues to the counterparty thereto warrants to acquire common stock of the Parent (or other securities or property following a merger event or other change of the common stock of the Parent) (whether such warrant is settled in shares, cash or a combination thereof) entered into by the Parent in connection with the issuance of Permitted Convertible Indebtedness (such transaction, a “**Warrant Transaction**”); provided that (i) the terms, conditions and covenants of each such call option transaction are customary for agreements of such type, as determined by Parent in good faith, and (ii) the purchase price for such Bond Hedge Transaction, less the proceeds received by the Parent from the sale of any related Warrant Transaction, does not exceed twenty percent (20%) of the aggregate principal amount of the related Permitted Convertible Indebtedness at the time of such purchase.

“**Permitted Convertible Indebtedness**” is senior unsecured notes issued by the Parent pursuant to either an effective registration statement under the Securities Act of 1933, as amended or Rule 144A of the regulations thereunder (which issuance shall include a customary offering document which describes (i) this Agreement and (ii) the capital structure of Parent after giving effect to such Indebtedness, in each case, in reasonable detail as determined by the Parent in good faith) that are convertible into a fixed number (subject to customary anti-dilution adjustments, “make-whole” increases and the other customary changes thereto) of shares of common stock of the Parent (or other securities or property following a merger event or other change of the common stock of the Parent), cash or any combination thereof (with the amount of such cash or such combination determined by reference to the market price of such common stock or such other securities) and cash in lieu of fractional shares of common stock of the Parent; provided that the Indebtedness thereunder must satisfy each of the following conditions, and any agreements providing for such Indebtedness may only be amended, restated, supplemented or modified from time to time if each of the following conditions remains satisfied: (i) both immediately prior to and after giving effect (including pro forma effect) to the issuance thereof, no Default or Event of Default shall exist or result therefrom, (ii) such Indebtedness matures, and does not provide for or require any scheduled amortization or other scheduled or otherwise provided for or required payments of principal prior to, after the date that is one hundred eighty (180) days after the Maturity Date (it being understood that neither (x) any provision requiring an offer to purchase such Indebtedness as a result of change of control or other fundamental change (howsoever defined), (y) any early conversion of such Indebtedness in accordance with the terms thereof, nor (z) any provision providing for redemption of such Indebtedness upon satisfaction of a condition related to the stock price of the Parent’s common stock, in each case, shall violate the foregoing restriction), (iii) such Indebtedness (at any one time outstanding) is in an aggregate principal amount of not more than the lesser of (x) Two Hundred Million Dollars (\$200,000,000.00) and (y) an amount equal to twenty percent (20%) of Parent’s market capitalization, as of the close of the regular trading session for the Parent’s common stock on the date that is one (1) Business Day prior to the date of launching (i.e. not pricing) of such convertible Indebtedness, (iv) such Indebtedness shall bear an interest rate of not more than seven and one half percent (7.50%) per annum and (v) such Indebtedness shall be subject to an indenture and the terms, conditions and covenants (other than pricing terms determined through a customary marketing process) of such Indebtedness must be customary for convertible Indebtedness of such type (as determined by the Parent in good faith) and (vi) such Indebtedness is not guaranteed by any Subsidiary of the Parent (unless such Subsidiary is a Borrower hereunder or the Obligations are otherwise guaranteed by such Subsidiary on a secured basis).

“Permitted Indebtedness” is:

- (a) Borrower’s Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business
- (e) Indebtedness in connection with credit cards incurred in the ordinary course of business in an aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000.00);
- (f) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets or software of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed Five Hundred Thousand Dollars (\$500,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);
- (g) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower’s business;
- (h) Permitted Convertible Indebtedness;
- (i) Indebtedness consisting of the obligation to pay rent when due under real property leases entered into in the ordinary course of Borrower’s business;
- (j) other unsecured Indebtedness at any time not to exceed Five Hundred Thousand Dollars (\$500,000.00) in the aggregate;
- (k) Indebtedness in respect of letters of credit, bank guarantees and similar instruments issued for the account of the Borrower or any of its Subsidiaries in the aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) at any time, in each case as incurred in the ordinary course of business;
- (l) Hedges and similar transactions with respect to currency risk entered into in the ordinary course of business and not for speculative purposes;
- (m) Surety bonds and similar Indebtedness entered into in the ordinary course of business and in an amount not exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00) outstanding at any time;
- (n) Intercompany Indebtedness that constitutes a Permitted Investment under clause (f), (i) and (j) of the term “Permitted Investments”;
- (o) Advances or deposits received from customers or vendors in the ordinary course of business; and

(p) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (o) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

“**Permitted Investments**” are:

(a) Investments disclosed on the Perfection Certificate and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any Investments permitted by Parent’s investment policy, as amended from time to time so long as such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of Collateral Accounts in which Collateral Agent has a perfected Lien (subject to the terms of this Agreement) for the ratable benefit of the Secured Parties, except as permitted in Section 6.6 hereof;

(e) Investments in connection with Permitted Indebtedness, Permitted Liens and with Transfers permitted by Section 7.1;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Parent or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Parent’s board of directors; not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate for (i) and (ii) in any fiscal year;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (h) shall not apply to Investments of Borrower in any Subsidiary;

(i) Investments in Subsidiaries that are a Borrower or Guarantor;

(j) Investments in Subsidiaries that are not a Borrower or Guarantor, not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate per fiscal year;

(k) any Permitted Call Spread Agreements;

(l) (i) non-cash Investments in joint ventures or strategic alliances in the ordinary course of Borrower’s business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support, and (ii) Investments in joint ventures or strategic alliances; provided that, with respect to such Investments under this sub-clause (ii), the aggregate outstanding amount of all such cash Investments made during any fiscal year shall not exceed Five Hundred Thousand Dollars (\$500,000.00);

(m) Investments by Borrower in an MSC Subsidiary; provided that both immediately prior to and after giving effect to such Investment, Borrower maintains the MSC Investment Conditions and no Event of Default has occurred and is continuing; and

(n) other Investments not to exceed Five Hundred Thousand Dollars (\$500,000.00) in the aggregate outstanding at any time.

“**Permitted Licenses**” are (A) licenses of over-the-counter software that is commercially available to the public, and (B) non-exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in this clause (B), the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property, (C) exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in this clause (C), the license (i) constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property (provided, however, Borrower or such Subsidiary may covenant in such license that it will not license such Intellectual Property to another Person in the specific geography for which such license applies), and (ii) is limited in territory with respect to a specific geographic country or region (e.g. Japan, Germany, northern China) outside of the United States (but may be exclusive in any other respect) and (D) licenses entered into with contract manufacturing organizations or contract research organizations in the ordinary course of business; provided, that, with respect to each such license described in this clause (D), the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property.

“**Permitted Liens**” are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for Taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith by appropriate proceedings diligently conducted and for which Borrower maintains adequate reserves on Borrower’s Books in accordance with GAAP, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code and the Treasury Regulations adopted thereunder;

(c) Liens securing Indebtedness permitted under clause (f) of the definition of “Permitted Indebtedness,” provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, landlords, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000.00), and 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 property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6(a) hereof;

(i) Liens on cash that stand as security for letter of credit reimbursement obligations and cash management obligations, together with such amount permitted under clause (j) of "Permitted Liens", in the aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000.00);

(j) Security deposits under real property leases that are made in the ordinary course of business, together with such amount permitted under clause (i) of "Permitted Liens", in the aggregate amount not to exceed Five Hundred Thousand Dollars (\$500,000.00);

(k) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(l) Permitted Licenses; and

(m) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described above, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Pledge Agreement**" is that certain Pledge Agreement dated as of the Effective Date, between Borrower and Collateral Agent, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Prepayment Premium**" is, with respect to any Term Loan subject to prepayment, refinancing, substitution or replacement prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), an additional fee payable to the Lenders in amount equal to:

(a) for a prepayment, refinancing, substitution or replacement made on or after the Effective Date through but excluding the first anniversary of the Effective Date, three percent (3.00%) of the principal amount of such Term Loan so prepaid;

(b) for a prepayment, refinancing, substitution or replacement made on or after the date which is the first anniversary of the Effective Date through but excluding the second anniversary of the Effective Date, two percent (2.00%) of the principal amount of such Term Loan so prepaid; and

(c) for a prepayment, refinancing, substitution or replacement made on or after the date which is after the second anniversary of the Effective Date and prior to the Maturity Date, one percent (1.00%) of the principal amount of such Term Loan so prepaid.

**“Pro Rata Share”** is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

**“Property”** is any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

**“Redemption Conditions”** is, with respect to any redemption by the Parent of any Permitted Convertible Indebtedness, satisfaction of each of the following events: (a) no Event of Default has occurred and is continuing or result therefrom, (b) both immediately before and after such redemption, the aggregate amount of all cash and Cash Equivalents held in Collateral Accounts subject to a Control Agreement in favor of Collateral Agent shall be no less than an amount equal to the product of (i) one hundred fifty percent (150%) and (ii) the amount required to prepay the outstanding Obligations in full at the time of such redemption, including, for the avoidance of doubt, all outstanding principal of the Term Loans, the accrued and unpaid interest thereon, the Prepayment Premium, all fees under the Fee Letter, and (c) a Responsible Officer has provided a certificate to the Collateral Agent not less than five (5) Business Days prior to such redemption certifying that each of the foregoing events is satisfied, together with reasonably detailed calculations in support thereof.

**“Registered Organization”** is any “registered organization” as defined in the Code with such additions to such term as may hereafter be made under the Code.

**“Registration”** is any registration, authorization, approval, license, permit, clearance, certificate, and exemption issued or allowed by the FDA or state pharmacy licensing authorities (including, without limitation, new drug applications, abbreviated new drug applications, investigational new drug applications, pricing and reimbursement approvals, labelling approvals or their foreign equivalent, and wholesale distributor permits).

**“Regulatory Action”** is an administrative, regulatory, or judicial enforcement action, proceeding, for-cause investigation or inspection, FDA Form 483 notice of inspectional observation, warning letter, untitled letter, other notice of violation letter, recall, seizure, Section 305 notice or other similar written communication, injunction or consent decree, issued by the FDA or a federal or state court.

**“Related Persons”** is, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

“**Required Lenders**” is (i) for so long as all of the Persons that are Lenders on the Effective Date (each an “**Original Lender**”) have not assigned or transferred any of their interests in their Term Loan other than to an Affiliate of such Lender, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding more than fifty percent (50%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender’s interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

“**Requirement of Law**” is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Responsible Officer**” is any of the President, Chief Executive Officer, Chief Financial Officer or Chief Legal Officer of Parent, acting alone.

“**Secured Parties**” is the Collateral Agent and the Lenders.

“**Securities Account**” is any “securities account” as defined in the Code with such additions to such term as may hereafter be made under the Code.

“**Solvent**” is, with respect to any Person, that (a) the fair salable value of such Person’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person’s liabilities, (b) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the other Loan Documents, and (c) such Person is able to pay its debts (including trade debts) as they mature in the ordinary course (without taking into account any forbearance and extensions related thereto).

“**Subordinated Debt**” is unsecured indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders which (i) is non-cash pay (other than customary fees and expenses) during the term of this Agreement, (ii) has a maturity date outside the date that is one hundred eighty (180) days after the Maturity Date, (iii) is unsecured, and (iv) is subject to a subordination, intercreditor, or other similar agreement providing for deep subordination (including with respect to payment (other than customary fees and expenses), and enforcement) in form and substance reasonably satisfactory to Collateral Agent and the Required Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor.

“**Subsidiary**” is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

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

“**Term Loan Commitment**” is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. “**Term Loan Commitments**” is the aggregate amount of such commitments of all Lenders.

“**Term B Loan Funding Condition**” is Collateral Agent’s receipt of, by no later than December 20, 2022, satisfactory evidence that the FDA has approved the New Drug Application for poziotinib for non-small cell lung cancer (NSCLC) in previously treated patients with HER2 exon 20 insertion mutations with a label materially consistent with that sought in Borrower’s filing of such New Drug Application.

“**Term B Loan Draw Period**” is the period commencing on the Effective Date and ending on December 20, 2022.

“**Term C Loan Funding Condition**” is Collateral Agent’s receipt of satisfactory evidence that Borrower has achieved a minimum of Fifteen Million Seven Hundred Thousand Dollars (\$15,700,000.00) in Net Product Revenue calculated on a trailing six (6) month basis for any measuring period ending on or prior to March 31, 2023.

“**Term C Loan Draw Period**” is the period commencing on the Effective Date and ending on May 15, 2023.

“**Term D Loan Funding Condition**” is Collateral Agent’s receipt of satisfactory evidence that Borrower has achieved a minimum of Forty Million Dollars (\$40,000,000.00) in Net Product Revenue calculated on a trailing six (6) month basis for any measuring period ending on or prior to September 30, 2023.

“**Term D Loan Draw Period**” is the period commencing on the Effective Date and ending on November 15, 2023.

“**Trademarks**” is any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower and each of its Subsidiaries connected with and symbolized by such trademarks.

“**Unqualified Opinion**” is an opinion on financial statements from an independent certified public accounting firm reasonably acceptable to Collateral Agent which opinion shall not include any qualification expressing substantial doubt about the ability of Borrower or any of its Subsidiaries to continue as a going concern or any qualification or exception as to the scope of such audit; provided that an opinion shall continue to be an Unqualified Opinion if the opinion includes going concern explanatory language solely in connection with the Borrower’s cash levels or liquidity, the pending maturity of the Borrower’s indebtedness within the next twelve (12) months, and/or the financial covenants hereunder.

“**Warrant Letter Agreement**” is that certain letter agreement dated as of the Effective Date among Parent and each Lender regarding the form of Warrants to be issued to each Lender or such Lender’s Affiliates upon the Funding Dates of the Term Loans and pursuant to Section 3.2(d) hereof.

“**Warrants**” are those certain Warrants to Purchase Stock dated as of the Effective Date, or any date thereafter, issued by Parent in favor of each Lender or such Lender’s Affiliates.

## 2. LOANS AND TERMS OF PAYMENT

**2.1 Promise to Pay.** Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

## 2.2 Term Loans.

### (a) Availability.

(i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate principal amount of Thirty Million Dollars (\$30,000,000.00), and disbursed in a single advance according to each Lender's Term A Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term A Loan**", and collectively as the "**Term A Loans**"). After repayment, no Term A Loan may be re-borrowed.

(ii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Term B Loan Draw Period, to make term loans to Borrower in an aggregate principal amount of Ten Million Dollars (\$10,000,000.00), and disbursed in a single advance according to each Lender's Term B Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term B Loan**", and collectively as the "**Term B Loans**"). After repayment, no Term B Loan may be re-borrowed.

(iii) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Term C Loan Draw Period, to make term loans to Borrower in an aggregate principal amount of Fifteen Million Dollars (\$15,000,000.00), and disbursed in a single advance according to each Lender's Term C Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term C Loan**", and collectively as the "**Term C Loans**"). After repayment, no Term C Loan may be re-borrowed.

(iv) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Term D Loan Draw Period, to make term loans to Borrower in an aggregate principal amount of Ten Million Dollars (\$10,000,000.00), and disbursed in a single advance according to each Lender's Term D Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term D Loan**", and collectively as the "**Term D Loans**"; each Term A Loan, Term B Loan, Term C Loan or Term D Loan is hereinafter referred to singly as a "**Term Loan**" and the Term A Loans, the Term B Loans, the Term C Loans and the Term D Loans are hereinafter referred to collectively as the "**Term Loans**"). After repayment, no Term D Loan may be re-borrowed.

(b) Repayment. Borrower shall make monthly payments of interest only, to each Lender in accordance with its Pro Rata Share, commencing on the first (1<sup>st</sup>) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of the Term A Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of the Term A Loan and September 30, 2022. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall (i) make monthly payments of interest, to each Lender in accordance with its Pro Rata Share, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon the effective rate of interest applicable to the Term Loan, as determined in Section 2.3(a), plus (ii) make consecutive equal monthly payments of principal to each Lender in accordance with its Pro Rata Share, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (A) the respective principal amounts of such Lender's Term Loans outstanding, and (B) a repayment schedule equal to (y) twenty-four (24) months if the Amortization Date is October 1, 2025 and (z) twelve (12) months if the Amortization Date is October 1, 2026. All unpaid principal and accrued and unpaid interest with respect to each such Term Loan is due and payable in full on the Maturity Date, to each Lender in accordance with its Pro Rata Share. The Term Loans may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) any fees payable under the Fee Letter by reason of such prepayment, (iii) the Prepayment Premium (subject to numbered paragraph 3 of the Fee Letter), plus (iv) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if any fees payable under the Fee Letter by reason of such prepayments had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to each Lender such fees as may then be due and payable in accordance with the terms of the Fee Letter. The Prepayment Premium shall also be payable in the event the Obligations (and/or this Agreement) are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. EACH BORROWER AND GUARANTOR EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION.

(d) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all, of the outstanding principal balance of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least five (5) Business Days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) the outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) any fees payable under the Fee Letter by reason of such prepayment, (C) the Prepayment Premium (subject to numbered paragraph 3 of the Fee Letter), plus (D) all other Obligations that are due and payable on such prepayment date, including any Lenders' Expenses and interest at the Default Rate (if any) with respect to any past due amounts.

### **2.3 Payment of Interest on the Term Loans.**

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a floating per annum rate equal to the Applicable Rate in effect from time to time *plus* 5.70%, which aggregate interest rate shall be determined by Collateral Agent in accordance with the definition of "Applicable Rate" on the third Business Day prior to the Funding Date of the applicable Term Loan and on the date occurring on the first Business Day of the month prior to each Payment Date occurring thereafter, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e). Except as set forth in Section 2.2(b), such interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full (or any payment is made hereunder).

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, all Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus four percentage points (4.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Person's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 3:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. Collateral Agent may at its discretion and with prior notice of at least one (1) Business Day, initiate debit entries to the Borrower's account as authorized on the ACH Letter (i) on each Payment Date of all Obligations then due and owing, (ii) at any time any payment due and owing with respect to Lender Expenses, and (iii) upon an Event of Default, any other Obligations outstanding.

**2.4 Fees.** Borrower shall pay to Collateral Agent and/or Lenders (as applicable) the following fees, which shall be deemed fully earned and non-refundable upon payment:

(a) Fee Letter. When due and payable under the terms of the Fee Letter, to Collateral Agent and each Lender, as applicable, the fees set forth in the Fee Letter.

(b) Prepayment Premium. The Prepayment Premium, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares. Borrower expressly agrees (to the fullest extent that each may lawfully do so) that: (i) the Prepayment Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (ii) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (iii) there has been a course of conduct between Collateral Agent, Lenders and Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium and (iv) Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph. Borrower expressly acknowledges that its agreement to pay the Prepayment Premium to Lenders as herein described is a material inducement to Lenders to provide the Term Loan Commitments and make the Term Loans. Notwithstanding anything herein or in the other Loan Documents to the contrary, the Prepayment Premium shall be subject to numbered paragraph 3 of the Fee Letter.

(c) Lenders' Expenses. Subject to utilization of the Good Faith Deposit pursuant to Section 2.4(d), all Lenders' Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

(d) Good Faith Deposit. Parent has paid to SLR a deposit of One Hundred Thousand Dollars (\$100,000.00) (the "Good Faith Deposit"), to initiate Collateral Agent's and Lenders' due diligence review and documentation process. The Good Faith Deposit shall be utilized to pay Lenders' Expenses.

**2.5 Taxes; Increased Costs.** Borrower, Collateral Agent and the Lenders each hereby agree to the terms and conditions set forth on Exhibit C attached hereto.

### 3. CONDITIONS OF LOANS

**3.1 Conditions Precedent to Initial Term Loan.** Each Lender's obligation to make a Term A Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

(a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;

(b) a completed Perfection Certificate for Borrower and each of its Subsidiaries;

(c) duly executed Control Agreements with respect to any Collateral Accounts maintained by Borrower or any Guarantor to the extent required by Section 6.6(a);

(d) a duly executed Fee Letter;

(e) satisfactory evidence that the FDA has approved the New Drug Application for eflapegrastim for the treatment of chemotherapy-induced neutropenia with a label materially consistent with that sought in Borrower's filing of such New Drug Application;

(f) (i) the Operating Documents and good standing certificates of Borrower certified by the Secretary of State (or equivalent agency) of Borrower's jurisdiction of organization and in each state in which Borrower is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date, and (ii) the Operating Documents of each Subsidiary of Borrower;

(g) a certificate of Borrower in substantially the form of Exhibit F hereto executed by the Secretary of Borrower with appropriate insertions and attachments, including with respect to (i) the Operating Documents of Borrower (which Certificate of Incorporation or Certificate of Formation, as applicable, shall be certified by the Secretary of State of the State of Delaware) and (ii) the resolutions adopted by Borrower's board of directors or other governing body for the purpose of approving the transactions contemplated by the Loan Documents;

(h) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Term Loan, will be terminated or released;

(i) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;

(j) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Secured Parties;

(k) a copy of any applicable Investors Rights Agreement or Registration Rights Agreement and any amendments thereto/joinders, etc.; and

(l) payment of the fees payable under the terms of the Fee Letter and, to the extent invoiced to the Borrower at least one(1) Business Day prior to the Effective Date, Lenders' Expenses then due as specified in Section 2.4 hereof.

**3.2 Conditions Precedent to all Term Loans.** The obligation of each Lender to extend each Term Loan, including the initial Term Loan, is subject to the following conditions precedent:

(a) receipt by Collateral Agent of an executed Loan Payment Request Form in the form of Exhibit D attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the Funding Date of each Term Loan; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) in such Lender's reasonable discretion, there has not been any Material Adverse Change;

(d) to the extent not delivered at the Effective Date, duly executed Warrants, in substantially the form delivered at the Effective Date and in accordance with the terms of the Warrant Letter Agreement, in favor of each Lender according to its Commitment Percentage, with respect to each Term Loan made by such Lender after the Effective Date;

(e) No Default or Event of Default, shall exist or result from the funding of such Term Loan;

(f) payment of the fees payable under the terms of the Fee Letter and Lenders' Expenses then due as specified in Section 2.4 hereof;

(g) with respect to any Term B Loan, the Term B Loan Funding Condition shall be satisfied;

(h) with respect to any Term C Loan, the Term C Loan Funding Condition shall be satisfied; and

(i) with respect to any Term D Loan, the Term D Loan Funding Condition shall be satisfied.

**3.3 Covenant to Deliver.** Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Term Loan. Borrower expressly agrees that a Term Loan made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Term Loan in the absence of a required item shall be made in each Lender's sole discretion.

**3.4 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan (other than the Term Loan funded on the Effective Date), Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 2:00 p.m. New York City time three (3) Business Days prior to the date the applicable Term Loan is to be made. Together with any such electronic, facsimile

or telephonic notification, Borrower shall deliver to Collateral Agent by electronic mail or facsimile a completed Loan Payment Request Form executed by a Responsible Officer or his or her designee. The Collateral Agent may rely on any telephone notice given by a person whom Collateral Agent reasonably believes is a Responsible Officer or designee. On the Funding Date related to any Term Loan, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to its Term Loan Commitment in respect of such Term Loan.

#### 4. CREATION OF SECURITY INTEREST

**4.1 Grant of Security Interest.** Borrower hereby grants Collateral Agent, for the ratable benefit of the Secured Parties, to secure the payment and performance in full of all of the Obligations in full and, until payment in cash of all Obligations (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made), a continuing first priority security interest in, and pledges to Collateral Agent, for the ratable benefit of the Secured Parties, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products and supporting obligations (as defined in the Code) in respect thereof. If Borrower shall acquire any commercial tort claim (as defined in the Code) in an amount greater than Two Hundred Fifty Thousand Dollars (\$250,000.00), Borrower shall grant to Collateral Agent, for the ratable benefit of the Secured Parties, a first priority security interest therein and in the proceeds and products and supporting obligations (as defined in the Code) thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made) and at such time as the Lenders' obligation to extend Term Loans has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral (and enter into any related documentation reasonably requested by Borrower) and all rights therein shall revert to Borrower.

**4.2 Authorization to File Financing Statements.** Borrower hereby authorizes Collateral Agent or its designee to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral (held for the ratable benefit of the Secured Parties), without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents. Such financing statements may include an indication that the financing statement covers "all assets" or "all personal property" or "all assets of the Debtor, whether now existing or hereafter arising", or words of similar effect, in accordance with Section 9-504 of the Code.

#### 5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

**5.1 Due Organization, Authorization: Power and Authority.** Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate and any updates or supplements thereto on, before or after the Effective Date (each a "**Perfection Certificate**" and collectively, the "**Perfection**

**Certificates**”). For the avoidance of doubt, Collateral Agent and Lenders agree that the Borrower may from time-to-time update certain information in the Perfection Certificates after the Effective Date to the extent permitted by one or more specific provisions in this Agreement. Borrower represents and warrants that, subject to the preceding sentence, all the information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries is accurate and complete (other than clerical mistakes in addresses and other contact information).

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is, or they are, a party have been duly authorized, and do not (i) conflict with any of Borrower’s or such Subsidiaries’ organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any Material Agreement by which Borrower, any of its Subsidiaries or any of their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

## **5.2 Collateral.**

(a) Borrower and each Guarantor have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith in respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein as required under this Agreement. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that, under applicable law, have priority over Collateral Agent’s Lien.

(c) On the Effective Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee, and (ii) no such third party bailee possesses components of the Collateral in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in book value.

(d) All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(e) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property (other than Intellectual Property that has no material value) each respectively purports to own, free and clear of all Liens other than Permitted Liens. Except as noted on the Perfection Certificate (which, upon the consummation of a transaction not prohibited by this Agreement, may be updated to reflect such transaction), neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other Material Agreement.

**5.3 Litigation.** Except as disclosed on the Perfection Certificate or with respect to which Borrower has provided notice as required hereunder, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than Five Hundred Thousand Dollars (\$500,000.00).

**5.4 No Material Adverse Change; Financial Statements.** All consolidated financial statements for Parent and its consolidated Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, and in all material respects the consolidated financial condition of Parent and its consolidated Subsidiaries, and the consolidated results of operations of Parent and its consolidated Subsidiaries. Since December 31, 2021, there has not been a Material Adverse Change.

**5.5 Solvency.** Parent is Solvent. Borrower and each of its Subsidiaries, when taken as a whole, are Solvent.

**5.6 Regulatory Compliance.** Neither Borrower nor any of its Subsidiaries is an “investment company” or a company “controlled” by an “investment company” under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a “holding company” or an “affiliate” of a “holding company” or a “subsidiary company” of a “holding company” as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, regulations, ordinances or rules (including, without limitation, the Food, Drug, and Cosmetic Act of 1938, as amended (“FDCA”) and its implementing regulations), the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower’s nor any of its Subsidiaries’ properties or assets has been used by Borrower or such Subsidiary or, to Borrower’s Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Borrower and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or any of Borrower’s or its Subsidiaries’ Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the Knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

**5.7 Investments.** Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower and each of its Subsidiaries have timely filed all required U.S. Federal and state income tax returns and other material tax returns and reports (or extensions thereof), and Borrower and each of its Subsidiaries have timely paid all foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries in an amount greater than Fifty Thousand Dollars (\$50,000.00), in all jurisdictions in which

Borrower or any such Subsidiary is subject to Taxes, including the United States, unless such Taxes are being contested in accordance with the next sentence. Borrower and each of its Subsidiaries may defer payment of any contested Taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; (b) notifies Collateral Agent of the commencement of, and any material development in, the proceeding; and (c) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP, provided, further, that such action would not involve, in the reasonable judgment of Collateral Agent, any risk of the sale, forfeiture or loss of any material portion of the Collateral. Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower's or such Subsidiary's prior Tax years which could result in additional Taxes greater than Fifty Thousand Dollars (\$50,000.00) becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries has withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Term Loans as working capital and to fund its general business requirements, and not for personal, family, household or agricultural purposes.

**5.10 Full Disclosure(a)** . No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

#### **5.11 Healthcare Regulatory Matters.**

(a) Borrower and each Subsidiary is in compliance with all applicable Healthcare Laws, the noncompliance with which could reasonably be expected to have a Material Adverse Change, and, during the past three (3) years, to Borrower's knowledge, none of Borrower or its Subsidiaries have engaged in activities which are, as applicable, cause for civil penalties, or mandatory or permissive exclusion from any Governmental Payor which could reasonably be expected to have a Material Adverse Change. Without limiting the generality of the foregoing, during the past three (3) years, none of Borrower or its Subsidiaries has received written notice by a Governmental Authority of any violation (or of any investigation, audit, or other proceeding involving allegations of any violation) of any Healthcare Laws which could reasonably be expected to have a Material Adverse Change, and no such investigation, inspection, audit or other proceeding involving allegations of any such violation is, to Borrower's Knowledge, threatened in writing or contemplated which could reasonably be expected to have a Material Adverse Change.

(b) Borrower and each Subsidiary, and its respective officers, directors, and employees are not and, during the past three (3) years, has not been, excluded, debarred, suspended or otherwise ineligible to participate in any Governmental Payor where the same could reasonably be expected to have a Material Adverse Change, and no such action is pending or, to Borrower's Knowledge, threatened in

writing. None of the Borrower or its Subsidiaries: (i) is a party to or has any reporting obligations under a corporate integrity agreement, deferred or non-prosecution agreement, monitoring agreement, consent decree, settlement order, or any similar agreement with any Governmental Authority; or (ii) during the past three (3) years, has made or been the subject of any submissions pursuant to the Office of Inspector General's Self Disclosure Protocol.

## **6. AFFIRMATIVE COVENANTS**

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

### **6.1 Government Compliance.**

(a) Other than specifically permitted hereunder, maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations, including all Healthcare Laws, to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Secured Parties, in all of the Collateral.

### **6.2 Financial Statements, Reports, Certificates; Notices.**

(a) Deliver to each Lender:

(i) as soon as available, but no later than thirty (30) days after the last day of each month and together with the delivery of the Compliance Certificate, a company prepared cash balance and cash burn report, and accounts payable aging statement for the Parent and its consolidated Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to the Collateral Agent;

(ii) as soon as available, but no later than forty-five (45) days after the last day of each of Parent's fiscal quarters, a company prepared consolidated and, if prepared by Parent or if reasonably requested by the Lenders, consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Parent and its consolidated Subsidiaries for such fiscal quarter certified by a Responsible Officer and in a form reasonably acceptable to the Collateral Agent;

(iii) as soon as available, but no later than ninety (90) days after the last day of Parent's fiscal year or within five (5) days of filing of the same with the SEC, audited consolidated financial statements covering the consolidated operations of Parent and its consolidated Subsidiaries for such fiscal year, prepared under GAAP, consistently applied, together with an Unqualified Opinion on the financial statements;

(iv) as soon as available after approval thereof by Parent's board of directors, but no later than February 28 of such year, Parent's annual financial projections for the entire current fiscal year as approved by Parent's board of directors; provided that, any revisions to such projections approved by Parent's board of directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such approval);

(v) together with the delivery of the Compliance Certificate, copies of all non-ministerial material statements, reports and notices made available generally to Parent's security holders or holders of Subordinated Debt (other than materials provided to members of the Parent's board of directors solely in their capacities as security holder, holders of Subordinated Debt, board members or management of Parent); provided, however, the foregoing may be subject to such exclusions and redactions as Parent deems reasonably necessary, in the exercise of its good faith judgment, in order to (i) preserve the confidentiality of highly sensitive information, (ii) prevent impairment of the attorney client privilege or (iii) conflict of interest with Lenders for new financing;

(vi) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission;

(vii) prompt notice of any amendments of or other changes to the respective Operating Documents of Parent or any of its Subsidiaries, in each case together with any copies reflecting such amendments or changes with respect thereto;

(viii) together with the delivery of the Compliance Certificate, copies of the month-end account statements for each Collateral Account maintained by Borrower or any Guarantor, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s);

(ix) [Reserved];

(x) prompt delivery of (and in any event within five (5) days after the same are sent or received) copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or that otherwise could reasonably be expected to have a Material Adverse Change;

(xi) prompt notice of any event that (A) could reasonably be expected to materially and adversely affect the value of the Intellectual Property or (B) could reasonably be expected to result in a Material Adverse Change;

(xii) written notice delivered at least five (5) Business Days prior to Borrower's creation of a New Subsidiary in accordance with the terms of Section 6.10;

(xiii) written notice delivered at least twenty (20) days' prior to Borrower's (A) adding any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in assets or property of Borrower or any of its Subsidiaries), (B) changing its respective jurisdiction of organization, (C) changing its organizational structure or type, (D) changing its respective legal name, or (E) changing any organizational number(s) (if any) assigned by its respective jurisdiction of organization;

(xiv) upon Borrower becoming aware of the existence of any Default or Event of Default, prompt (and in any event within three (3) Business Days) written notice of such occurrence, which such notice shall include a reasonably detailed description of such Default or Event of Default, and Borrower's proposal regarding how to cure such Default or Event of Default;

(xv) immediate notice if Borrower or such Subsidiary has Knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering;

(xvi) together with the delivery of the Compliance Certificate, notice of any commercial tort claim (as defined in the Code) or letter of credit rights (as defined in the Code) held by Borrower or any Guarantor, in each case in an amount greater than Two Hundred Fifty Thousand Dollars (\$250,000.00) and of the general details thereof;

(xvii) if Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, written notice of such occurrence and information regarding such Person's organizational identification number within seven (7) Business Days of receiving such organizational identification number;

(xviii) prompt notice of the execution any Material Agreement or any amendment to, modification of, termination of or waiver under any Material Agreement; and

(xix) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, the materials required to be delivered pursuant to the terms of this Section 6.2 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Parent posts such documents, or provides a link thereto, on Parent's website on the internet at Parent's website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(i) above but no later than thirty (30) days after the last day of each month, deliver to Collateral Agent:

(i) a duly completed Compliance Certificate signed by a Responsible Officer;

(ii) copies of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries;

(iii) written notice of the commencement of, and any material development in, the proceedings contemplated by Section 5.8 hereof;

(iv) prompt written notice of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00); and

(v) written notice of all returns, recoveries, disputes and claims regarding Inventory that involve more than Two Hundred Fifty Thousand Dollars (\$250,000.00) individually or in the aggregate in any calendar year.

(c) Keep proper, complete and true books of record and account in accordance with GAAP in all material respects. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

**6.3 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, as applicable, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as applicable.

**6.4 Taxes; Pensions.** Timely file, and require each of its Subsidiaries to timely file (or obtain timely extensions therefor), all required U.S. federal and state income tax returns and other material tax returns and reports, and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except as otherwise permitted pursuant to the terms of Section 5.8 hereof; deliver to Collateral Agent, on demand, appropriate certificates attesting to such payments; and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

**6.5 Insurance.** Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are standard for companies in Borrower's industry and location. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and shall waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent (for the ratable benefit of the Secured Parties), as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days prior written notice before any such policy or policies shall be cancelled (except in the case of non-payment). At Collateral Agent's request, Borrower shall deliver to the Collateral Agent certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Secured Parties, on account of the then-outstanding Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy within one-hundred eighty (180) days of receipt thereof up to Five Hundred Thousand Dollars (\$500,000.00) with respect to any loss, but not exceeding One Million Dollars (\$1,000,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement promptly or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent may make (but has no obligation to do so), at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent deems prudent.

#### **6.6 Operating Accounts.**

(a) Maintain Borrower's and Guarantors' Collateral Accounts with depository institutions that have agreed to execute Control Agreements in favor of Collateral Agent with respect to such Collateral Accounts. The provisions of the previous sentence shall not apply to Deposit Accounts exclusively used for cash collateral for Permitted Liens under clause (i) of the definition thereof, payroll, payroll Taxes and other employee wage and benefit payments (including 401(k) and other retirement and benefit plans, and any trusts relating thereto, including rabbi trusts for deferred compensation), to or for the benefit of Borrower's, or any Guarantor's, employees; provided that the amount in any payroll, payroll tax or wage accounts shall not exceed, in the aggregate, the amount reasonably expected to be due and payable for the next two (2) succeeding pay periods.

(b) Borrower shall provide Collateral Agent ten (10) days' prior written notice before Borrower or any Guarantor establishes any Collateral Account. In addition, for each Collateral Account that Borrower or any Guarantor, at any time maintains, Borrower or such Guarantor shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account (held for the ratable benefit of the Secured Parties) in accordance with the terms hereunder prior to the establishment of such Collateral Account. The provisions of the previous sentence shall not apply to Deposit Accounts exclusively used for cash collateral for Permitted Liens under clause (i) of the definition thereof, payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any Guarantor's, employees and identified to Collateral Agent by Borrower as such in the Perfection Certificate, provided that the amount deposited therein shall not exceed the amount reasonably expected to be due and payable for the next two (2) succeeding pay periods.

(c) Neither Borrower nor any Guarantor shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with this Section 6.6.

**6.7 Protection of Intellectual Property Rights.** Borrower and each of its Subsidiaries shall: (a) protect, defend and maintain the validity and enforceability of its respective Intellectual Property that is material to its business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its respective Intellectual Property; and (c) not allow any of its respective Intellectual Property material to its respective business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent.

**6.8 Litigation Cooperation.** Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent with respect to any Collateral or relating to Borrower.

**6.9 Landlord Waivers; Bailee Waivers.** In the event that Borrower or any of its Subsidiaries, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then, in the event that the Collateral at any new location is valued (based on book value) in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate, at Collateral Agent's election, Borrower shall use commercially reasonable efforts to cause such bailee or landlord, as applicable, to execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent prior to or concurrently with the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be; provided, that this Section 6.9 shall not be applicable to any locations owned or controlled by any contract research organization.

**6.10 Creation/Acquisition of Subsidiaries.** In the event any Loan Party creates or acquires any Subsidiary after the Effective Date, such Loan Party shall promptly notify the Collateral Agent of such creation or acquisition, and such Loan Party shall take all actions reasonably requested by the Collateral Agent to achieve any of the following with respect to such "**New Subsidiary**" (defined as a Subsidiary formed after the Effective Date during the term of this Agreement): (i) if such New Subsidiary is not an Excluded Subsidiary, a Foreign Subsidiary or an MSC Subsidiary, to cause such New Subsidiary to become

a Borrower or a secured guarantor with respect to the Obligations; and (ii) to grant and pledge to Collateral Agent a perfected security interest in (A) one hundred percent (100%) of the stock, units or other evidence of ownership held by such Loan Party of any such New Subsidiary that is not an Excluded Subsidiary, or (B)(1) sixty-five percent (65%) of the stock, units or other evidence of ownership which entitle the holder thereof to vote for directors or any other matter and (2) one hundred percent (100%) of the stock, units or other evidence of ownership which do not entitle the holder thereof to vote for directors or any other matter, in each case held by such Loan Party of any such New Subsidiary which is an Excluded Subsidiary. Notwithstanding the foregoing, (a) promptly upon any change in the U.S. tax laws that would result in such New Subsidiary ceasing to be an Excluded Subsidiary, such Loan Party shall (i) cause such New Subsidiary (for the avoidance of doubt, other than any Foreign Subsidiary or MSC Subsidiary) to become a secured guarantor with respect to the Obligations and (ii) allow the pledge of a greater percentage of such voting equity interests of such New Subsidiary without material adverse tax consequences to such Loan Party, in each case from that time forward and (b) the parties hereto agree that with respect to any Loan Party's pledge of the equity interests of any Foreign Subsidiary, such Loan Party shall only be required to execute a pledge governed by the laws of the State of New York.

**6.11 Further Assurances.** Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

**6.12 Post-Closing Obligations.** Notwithstanding any provision herein or in any other Loan Document to the contrary, to the extent not actually delivered on or prior to the Effective Date, the Borrowers shall, and shall cause each applicable Subsidiary to:

(a) deliver to Collateral Agent a Canadian Security Agreement and any additional ancillary documentation necessary to perfect Agent's Lien on the Collateral located in Canada no later than thirty (30) days after the Effective Date (as may be extended by Collateral Agent in its sole discretion);

(b) deliver to Collateral Agent the original stock certificates of each applicable Subsidiary of Borrower no later than ten (10) Business Days after the Effective Date (as may be extended by Collateral Agent in its sole discretion);

(c) deliver to Collateral Agent insurance certificates with respect to Borrower's Canadian insurance policies and insurance endorsements with respect to Borrower's U.S. and Canadian insurance policies, in each case satisfying the requirements of Section 6.5, no later than thirty (30) days after the Effective Date (as may be extended by Collateral Agent in its sole discretion);

(d) use commercially reasonable efforts to deliver to Collateral Agent a landlord's consent executed in favor of Collateral Agent in respect of Borrower's leased locations in the United States no later than sixty (60) days after the Effective Date (as may be extended by Collateral Agent in its sole discretion); and

(e) use commercially reasonable efforts to deliver to Collateral Agent a bailee waiver executed in favor of Collateral Agent in respect of each third party bailee (other than locations owned or controlled by any contract research organization) where Borrower or any Subsidiary maintains Collateral having a book value in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate no later than sixty (60) days after the Effective Date (as may be extended by Collateral Agent in its sole discretion).

## 7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, dispose of, license (collectively, “**Transfer**”), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out, surplus, uneconomic or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses; (d) cash or Cash Equivalents pursuant to transactions not prohibited by this Agreement, (e) sales or discounting of delinquent accounts in the ordinary course of business; or (f) other Transfers not to exceed Five Hundred Thousand Dollars (\$500,000.00) during the term of this Agreement.

**7.2 Changes in Business, Management, Ownership, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower or such Subsidiary, as applicable, as of the Effective Date or reasonably related, complimentary or incidental thereto; (b) liquidate or dissolve, except that any Subsidiary may liquidate or dissolve so long as the assets or business of such Subsidiary are transferred to a Loan Party; or (c) (i) permit any Key Person to cease being actively engaged in the management of Parent unless written notice thereof is provided to Collateral Agent within ten (10) Business Days of such cessation, or (ii) enter into any transaction or series of related transactions in which (any of the following, a “**Change of Control**”) (A) the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty-five percent (45%) of the voting stock of Parent immediately after giving effect to such transaction or related series of such transactions, (B) that is a change of control or other fundamental change (howsoever defined) under the indenture governing any Permitted Convertible Indebtedness and (C) except as permitted by Section 7.3, Borrower ceases to own, directly or indirectly, one hundred percent (100%) of the ownership interests in each Subsidiary of Borrower. Borrower shall not, and shall not permit any of its Subsidiaries to, without at least twenty (20) days’ prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in assets or property of Borrower or any of its Subsidiaries, as applicable); (B) change its respective jurisdiction of organization, (C) except as permitted by Section 7.3, change its respective organizational structure or type, (D) change its respective legal name, or (E) change any organizational number(s) (if any) assigned by its respective jurisdiction of organization.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or shares or any property of another Person, in each case including for the avoidance of doubt through a merger, purchase, in-licensing arrangement or any similar transaction. A Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a “co-Borrower” hereunder or has provided a secured Guaranty of Borrower’s Obligations hereunder in accordance with Section 6.10) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens), or enter into any agreement, document, instrument or other arrangement (except for any Loan Document or any other agreement, document, instrument or other arrangement with or in favor of Collateral Agent, for the ratable benefit of the Secured Parties) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower’s or such Subsidiary’s Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of “Permitted Liens”.

**7.6 Maintenance of Collateral Accounts.** With respect to Borrower and any Guarantors, maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

**7.7 Restricted Payments.** (a) Declare or pay any dividends (other than dividends payable solely in capital stock) or make any other distribution or payment in respect of or redeem, retire or purchase any capital stock or Permitted Convertible Indebtedness (other than (i) the declaration or payment of dividends to Borrower or its Subsidiaries, (ii) so long as no Default or Event of Default exists or would result therefrom, the declaration or payment of any dividends solely in the form of equity securities, and (iii) repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided such repurchases do not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate per fiscal year), (b) other than the Obligations in accordance with the terms hereof, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity unless being replaced with Indebtedness of at least the same principal amount and such new Indebtedness is Permitted Indebtedness, or (c) be a party to or bound by an agreement that restricts a Subsidiary from paying dividends or otherwise distributing property to Borrower other than this Agreement or any equity or organizational documents of Borrower or such Subsidiary.

Notwithstanding the foregoing, and for the avoidance of doubt, this Section 7.7 shall not prohibit (i) the conversion by holders (including any cash payment upon conversion) of, or required payment of any principal or premium on, or required payment of any interest with respect to, any Permitted Convertible Indebtedness, in each case, in accordance with the terms of the indenture governing such Permitted Convertible Indebtedness; *provided* that this clause (i) shall only allow principal payments with respect to any repurchase in connection with the redemption of Permitted Convertible Indebtedness upon satisfaction of a condition related to the stock price of the Parent's common stock if the Redemption Conditions are satisfied in respect of such redemption, or (ii) any required payment with respect to, or required early unwind or settlement of, any Permitted Call Spread Agreement, in each case, in accordance with the terms of the agreement governing such Permitted Call Spread Agreement.

Notwithstanding the restriction in Section 7.7, the Parent may redeem, repurchase, exchange or induce the conversion of Permitted Convertible Indebtedness by delivery of shares of the Parent's common stock and/or a different series of Permitted Convertible Indebtedness (which series (x) matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the analogous date under the indenture governing the Permitted Convertible Indebtedness that are so repurchased, exchanged or converted and (y) has terms, conditions and covenants that are no less favorable to the Parent than the Permitted Convertible Indebtedness that is so repurchased, exchanged or converted (as determined by the Parent in good faith)) (any such series of Permitted Convertible Indebtedness, "**Refinancing Convertible Indebtedness**") and/or by payment of cash (in an amount that does not exceed the proceeds received by the Parent from the substantially concurrent issuance of shares of the Parent's common stock and/or a Refinancing Convertible Indebtedness plus the net cash proceeds, if any, received by the Parent pursuant to the related exercise or early unwind or termination of the related Permitted Call Spread Agreements pursuant to the immediately following proviso); provided that, substantially concurrently with, or a commercially reasonable period of time before or after, the related settlement date for the Permitted Convertible Indebtedness that is so repurchased, exchanged or converted, the Parent shall (and, for the avoidance of doubt, shall be permitted under this Section 7.7 to) exercise or unwind or terminate early (whether in cash, shares or any combination thereof) the portion of the Permitted Call Spread Agreements, if any, corresponding to such Permitted Convertible Indebtedness that is so repurchased, exchanged or converted.

**7.8 Investments.** Directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so other than Permitted Investments.

**7.9 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions among Loan Parties, (b) transactions upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, (c) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries, and (d) compensation arrangements for Borrower's and its Subsidiaries' officers, directors and employees that are customary in Borrower's industry and approved by Parent's board of directors.

**7.10 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

**7.11 Compliance.** (a) Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Term Loan for that purpose; (b) fail to meet the minimum funding requirements of ERISA; (c) permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; (d) fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; or (e) withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**7.12 Compliance with Anti-Terrorism Laws.** Directly or indirectly, knowingly or permit any Affiliate to enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Directly or indirectly or permit any Affiliate to, (a) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (b) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (c) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

**7.13 Financial Covenants.**

(a) Commencing with the calendar month ending March 31, 2023, and as of (i) March 31, 2023 and the last day of each calendar month thereafter through December 31, 2023 and (ii) March 31, 2024 and the last day of each fiscal quarter thereafter, permit either:

(i) the Net Product Revenue calculated on a trailing twelve (12) month basis as of such date to be less than One Hundred Million Dollars (\$100,000,000.00); or

(ii) the Net Product Revenue calculated on a trailing six (6) month basis as of such date to be less than (x) for all testing dates prior to Borrower's 2027 fiscal year, the amount set forth opposite the applicable testing date as set forth on Schedule 7.13(b) attached hereto and (y) for March 31, 2027 and each testing date thereafter, fifty percent (50%) of the projected Net Product Revenue for the respective measuring period set forth in the 2027 Plan; provided, however, it shall be an immediate Event of Default if Borrower fails to deliver the 2027 Plan on or before December 15, 2026;

provided, however, for the avoidance of doubt, if Borrower is in compliance with either Section 7.13(a)(i) or (ii) as of an applicable testing date, Borrower is not required to be in compliance with the other subsection of this Section 7.13(a) as of such testing date.

(b) At any time prior to Borrower's the later of (i) the achievement of the Liquidity Milestone and (ii) July 31, 2023, permit the consolidated aggregate balance of unrestricted cash and Cash Equivalents in Collateral Accounts that are subject to Control Agreements in favor of Collateral Agent to be less than Twenty-Five Million Dollars (\$25,000,000.00).

**7.14 Foreign Subsidiaries.** Permit (a) the aggregate amount of cash, Cash Equivalents and the value of assets held or maintained by the Foreign Subsidiaries of Borrower to exceed at any time One Million Five Hundred Thousand Dollars (\$1,500,000.00), and (b) any Foreign Subsidiary to own any Intellectual Property.

**7.15 Redemption of Permitted Convertible Debt.** Exercise any redemption right with respect to any Permitted Convertible Indebtedness upon satisfaction of a condition related to the stock price of the Parent's common stock, unless the Redemption Conditions are satisfied in respect of such redemption.

**7.16 MSC Subsidiaries.** Cause or permit (i) any MSC Subsidiary to incur any Indebtedness, (ii) any Lien on any assets of any MSC Subsidiary, (iii) any MSC Subsidiary to maintain any assets, including cash, Cash Equivalents and Investments on deposit in or credited to any deposit or securities account, unless at such time, the MSC Investment Conditions have been met and no Event of Default exists, and (iv) any transfers from any deposit or securities account maintained by any MSC Subsidiary other than to Collateral Accounts of Borrower which are subject to a Control Agreement in favor of Collateral Agent. If at any time after the incorporation of an MSC Subsidiary the MSC Investment Conditions are not met, then (i) Borrower shall immediately cause such MSC Subsidiary to distribute to Borrower all assets held by such MSC Subsidiary for deposit into Collateral Accounts of Borrower which are subject to a Control Agreement in favor of Collateral Agent, and (ii) Borrower shall not permit such MSC Subsidiary to hold any assets. Borrower shall not permit any MSC Subsidiary to engage in any business, make any Investments or hold any assets that would cause such MSC Subsidiary to fail to qualify as a Massachusetts security corporation under 830 CMR 63.38B.1 of the Massachusetts tax code and applicable regulations (as the same may be amended, modified or replaced from time to time).

## 8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "Event of Default") under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Term Loan on its due date, or (b) pay any other Obligation within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1(a) hereof);

## 8.2 Covenant Default.

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Landlord Waivers; Bailee Waivers), 6.10 (Creation/Acquisition of Subsidiaries), 6.12 (Post-Closing Obligations) or Borrower violates any provision in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any other Loan Document to which such person is a party, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within twenty (20) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the twenty (20) day period or cannot after diligent attempts by Borrower or such Subsidiary, as applicable, be cured within such twenty (20) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Term Loans shall be made during such cure period);

**8.3 Material Adverse Change.** A Material Adverse Change has occurred;

## 8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any institution at which Borrower or any Guarantor maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment (other than Permitted Lien) is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) of this clause (a) are not, within twenty (20) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any material part of its business;

**8.5 Insolvency.** (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Term Loans shall be extended while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

**8.6 Other Agreements.** There is a default and such default continues (after the applicable grace, cure or notice period) in (a) any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Five Hundred Thousand Dollars (\$500,000.00) or that could reasonably be expected to have a Material Adverse Change, or (b) any indenture governing any Permitted Convertible Indebtedness. For the avoidance of doubt, (x) the exchange, repurchase, conversion or settlement with respect to any Permitted Convertible Indebtedness, or satisfaction of any condition giving rise to or permitting the foregoing, pursuant to their terms that does not result from a default thereunder or an event of the type that constitutes an Event of Default, or (y) any early payment requirement or unwinding or termination with respect to any Permitted Call Spread Agreement, or satisfaction of any condition giving rise to or permitting the foregoing, in accordance with the terms thereof where neither the Parent nor any of its Affiliates is the "defaulting party" (or substantially equivalent term) under the terms of such Permitted Call Spread Agreement, in each case, shall not constitute an Event of Default under this Section 8.6.

**8.7 Judgments.** One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars (\$500,000.00) (not covered by independent third-party insurance as to which (a) Borrower reasonably believes such insurance carrier will accept liability, (b) Borrower or the applicable Subsidiary has submitted such claim to such insurance carrier and (c) liability has not been rejected by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of thirty (30) days after the entry thereof;

**8.8 Misrepresentations.** Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or the Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement, when taken as a whole, is incorrect in any material respect when made;

**8.9 Subordinated Debt.** After giving effect to any grace or cure period, an event of default occurs under any subordination agreement with Collateral Agent, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

**8.10 Guaranty.** (a) Any Guaranty terminates or ceases for any reason to be in full force and effect other than as a result of a transaction permitted under this Agreement; (b) any Guarantor does not perform any obligation or covenant under any Guaranty, after any applicable grace or cure period; (c) any circumstance described in Section 8 occurs with respect to any Guarantor, beyond any applicable grace or cure period;

**8.11 Governmental Approvals; FDA Action.** (a) Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or (b) (i) the FDA, DOJ or other Governmental Authority initiates a Regulatory Action or any other enforcement action against Borrower or any of its Subsidiaries or any supplier of Borrower or any of its Subsidiaries that causes Borrower or any of its Subsidiaries to recall, withdraw, remove or discontinue manufacturing, distributing, and/or marketing any of its products to the extent such action could reasonably be expected to result in a Material Adverse Change, even if such action is based on previously disclosed conduct; (ii) the FDA or any other comparable Governmental Authority issues a warning letter to Borrower or any of its Subsidiaries with respect to any of its activities or products which could reasonably be expected to result in a Material Adverse Change; (iii) Borrower or any of its Subsidiaries conducts a mandatory or voluntary recall which could reasonably be expected to result in a Material Adverse Change; (iv) Borrower or any of its Subsidiaries enters into a settlement agreement with the FDA, DOJ or other Governmental Authority that could reasonably be expected to result in a Material Adverse Change, even if such settlement agreement is based on previously disclosed conduct; or (v) the FDA or any other comparable Governmental Authority revokes any authorization or permission granted under any Registration, or Borrower or any of its Subsidiaries withdraws any Registration, and such revocation or withdrawal that could reasonably be expected to result in a Material Adverse Change.

**8.12 Lien Priority.** Except as the result of the action or inaction of the Collateral Agent or the Lenders, any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien (to the extent required to be perfected) on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens arising as a matter of applicable law or that are explicitly permitted to have priority pursuant to this Agreement.

## **9. RIGHTS AND REMEDIES**

### **9.1 Rights and Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall at the written direction of Required Lenders, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall at the written direction of the Required Lenders, without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) make a demand for payment upon any Guarantor pursuant to the Guaranty delivered by such Guarantor;

(iii) apply to the Obligations any (A) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, (B) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower, or (C) amounts received from any Guarantors in accordance with the respective Guaranty delivered by such Guarantor; and/or

(iv) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall at the written direction of the Required Lenders, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Liens in the Collateral (held for the ratable benefit of the Secured Parties). Borrower shall assemble the Collateral if Collateral Agent requests and make it available at such location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, any of the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any Collateral Account maintained with Collateral Agent or any Lender or otherwise in respect of which a Control Agreement has been delivered in favor of Collateral Agent (for the ratable benefit of the Secured Parties) and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries; and

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence and during the continuance of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance.

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts of Borrower directly with the applicable Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make extend Term Loans hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries'

attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Term Loans terminates.

**9.3 Protective Payments.** If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other Obligations owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to the Lenders' Pro Rata Shares unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's Pro Rata Share of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its Pro Rata Share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other the Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its Pro Rata Share, then the portion of such payment or distribution in excess of such Lender's Pro Rata Share shall be received and held by such Lender in trust for and shall be promptly paid over to the other Lenders (in accordance with their respective Pro Rata Shares) for application to the payments of amounts due on such other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for the Secured Parties for purposes of perfecting Collateral Agent's security interest therein (held for the ratable benefit of the Secured Parties).

**9.5 Liability for Collateral.** So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Subject to the preceding sentence, Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative.** Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or by Borrower or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

## 10. NOTICES

Other than as specifically provided herein, all notices, consents, requests, approvals, demands, or other communication (collectively, "**Communications**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:

SPECTRUM PHARMACEUTICALS,  
INC.  
2 Atlantic Avenue, 6<sup>th</sup> Floor  
Boston, MA 02110  
Attn: Nora Brennan  
Email: Nora.Brennan@sppirx.com

with a copy (which shall not constitute notice) to: LATHAM & WATKINS LLP  
12670 High Bluff Drive  
San Diego, CA, 92130  
Attn: Teri O'Brien  
Facsimile: (858) 523-5410  
Email: [teri.obrien@lw.com](mailto:teri.obrien@lw.com)

If to Collateral Agent: SLR INVESTMENT CORP.  
500 Park Avenue, 3rd Floor  
New York, NY 10022  
Attn: Anthony Storino  
Fax: (212) 993-1698  
Email: [Astorino@slrco.com](mailto:Astorino@slrco.com)

with a copy (which shall not constitute notice) to: DLA PIPER LLP (US)  
500 8th Street, NW  
Washington, DC 20004  
Attn: Eric Eisenberg  
Fax: (202) 799-5211  
Email: [eric.eisenberg@us.dlapiper.com](mailto:eric.eisenberg@us.dlapiper.com)

## 11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

**11.1 Waiver of Jury Trial.** EACH OF BORROWER, COLLATERAL AGENT AND LENDERS UNCONDITIONALLY WAIVES ANY AND ALL RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS, ANY OF THE INDEBTEDNESS SECURED HEREBY, ANY DEALINGS AMONG BORROWER, COLLATERAL AGENT AND/OR LENDERS RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG BORROWER, COLLATERAL AGENT AND/OR LENDERS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**11.2 Governing Law and Jurisdiction.** THIS AGREEMENT, THE OTHER LOAN DOCUMENTS (EXCLUDING THOSE LOAN DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

**11.3 Submission to Jurisdiction.** Any legal action or proceeding with respect to the Loan Documents shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, Borrower hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts. Notwithstanding the foregoing, Collateral Agent and Lenders shall have the right to bring any action or proceeding against Borrower (or any property of Borrower) in the court of any other jurisdiction Collateral Agent or Lenders deem necessary or appropriate in order to realize on the Collateral or other security for the Obligations. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

**11.4 Service of Process.** Borrower irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable requirements of law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Borrower specified herein (and shall be effective when such mailing shall be effective, as provided therein). Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**11.5 Non-exclusive Jurisdiction.** Nothing contained in this Article 11 shall affect the right of Collateral Agent or Lenders to serve process in any other manner permitted by applicable requirements of law or commence legal proceedings or otherwise proceed against Borrower in any other jurisdiction.

## 12. GENERAL PROVISIONS

**12.1 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's prior written consent (which may be granted or withheld in Collateral Agent's discretion, subject to Section 12.5). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in (any such sale, transfer, assignment, negotiation, or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents (other than the Warrants, as to which assignment, transfer and other such actions are governed by the terms thereof); *provided, however*, that any such Lender Transfer (other than (i) any Transfer at any time that an Event of Default has occurred and is continuing, or (ii) a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents (other than the Warrants, as to which assignment, transfer and other such actions are governed by the terms thereof) shall require the prior written consent of the Collateral Agent (such approved assignee, an "**Approved Lender**"); and provided, further, that on the date it becomes a party to this Agreement, an Approved Lender (other than an Approved Lender that became a party to this Agreement by a Transfer at any time that an Event of Default has occurred and is continuing) must be capable, through its applicable lending office, of receiving payments of interest from Borrower without the imposition of any withholding taxes that would be required to be borne by Borrower or requiring the payment of any additional amounts

by Borrower pursuant to Section 2.5 hereof. Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. Collateral Agent shall use commercially reasonable efforts to provide notice to Borrower of each Lender Transfer promptly following such Lender Transfer, except for Lender Transfers an Affiliate of a Lender. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture fund or distressed debt fund, each as determined by Collateral Agent in its reasonable discretion at the time of such assignment. Collateral Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of the Lenders, and the Term Loan Commitments of, and principal amounts (and stated interest) of the Term Loans owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Borrower, Collateral Agent and Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Term Loans or other obligations under the Loan Documents (other than the Warrants, as to which assignment, transfer and other such actions are governed by the terms thereof) (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans or its other obligations under any Loan Document (other than the Warrants, as to which assignment, transfer and other such actions are governed by the terms thereof)) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Collateral Agent (in its capacity as Collateral Agent) shall have no responsibility for maintaining a Participant Register. Borrower agrees that each participant shall be entitled to the benefits of the provisions in Exhibit C attached hereto (subject to the requirements and limitations therein, including the requirements under Section 7 of Exhibit C attached hereto (it being understood that the documentation required under Section 7 of Exhibit C attached hereto shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to this Section 12.1; provided that such participant shall not be entitled to receive any greater payment under Exhibit C attached hereto, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in law that occurs after the participant acquired the applicable participation.

**12.2 Indemnification.** Borrower agrees to indemnify, defend and hold each Secured Party and their respective directors, officers, employees, consultants, agents, attorneys, or any other Person affiliated with or representing such Secured Party (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by

the Loan Documents; and (b) all losses and Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents (including reasonable attorneys' fees and expenses), except, in each case, for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further agrees to indemnify, defend and hold each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct. This Section shall not apply with respect to any Indemnified Taxes subject to indemnification under Section 2.5 or Excluded Taxes.

**12.3 Severability of Provisions.** Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

**12.4 Correction of Loan Documents.** Collateral Agent may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.

**12.5 Amendments in Writing; Integration.** (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature; and

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Lenders" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its Guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.5 or the definitions of the terms used in this Section 12.5

insofar as the definitions affect the substance of this Section 12.5; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Sections 12.7 or 12.8. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the immediately preceding sentence.

(b) Other than as expressly provided for in Section 12.5(a)(i)-(iii), Collateral Agent may, at its discretion, or if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**12.6 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, portable document format (.pdf) or other electronic transmission will be as effective as delivery of a manually executed counterpart hereof.

**12.7 Survival.** Except as otherwise provided in this Agreement, all covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.8 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**12.8 Confidentiality.** In handling any confidential information of Borrower, each of the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Term Loans (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, rule, regulation, regulatory or self-regulatory authority, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement or have agreed to similar confidentiality terms with the Lenders and/or Collateral

Agent, as applicable, with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent through no breach of this provision by the Lenders or the Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis so long as, to the extent such client databases, reporting purposes and market analysis are disclosed publicly, the Collateral Agent and the Lenders do not disclose the identity of the Borrower or the identity of any person associated with the Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.8 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.8.

**12.9 Right of Set Off.** Borrower hereby grants to Collateral Agent and to each Lender, a Lien, security interest and right of set off as security for all Obligations to Secured Parties hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of any Secured Party or any entity under the control of such Secured Party (including an Affiliate of Collateral Agent) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, any Secured Party may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmaturing and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED BY BORROWER.

**12.10 Cooperation of Borrower.** If necessary, Borrower agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment (or portion thereof) or Term Loan (or portion thereof) to an assignee in accordance with Section 12.1, (ii) make Borrower's management personnel available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments, the Term Loans or portions thereof (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent and the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment (or portions thereof) or Term Loan (or portions thereof) as Collateral Agent or such Lender may reasonably request. Subject to the provisions of Section 12.8, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment (or portions thereof), any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement, in each case subject to Section 12.8.

**12.11 Public Announcement.** Borrower hereby agrees that Collateral Agent and each Lender, may, make a public announcement of the transactions contemplated by this Agreement, and may publicize the same in marketing materials, newspapers and other publications, and otherwise, and in connection therewith may use Borrower's name, tradenames and logos; provided that until such time as the initial public announcement of the transaction contemplated by this Agreement has been made, Collateral Agent and each Lender agree that it shall only make such public announcement or other publicization with the

consent of Borrower (which consent may not be unreasonably conditioned, withheld or delayed). Notwithstanding the foregoing, such consent from Borrower shall not be required for any disclosures by Collateral Agent and the Lenders required by the Securities and Exchange Commission or other governmental agency and any other public disclosure with investors, other governmental agencies or other related persons, in each case, subject to applicable law and regulations.

**12.12 Collateral Agent and Lender Agreement.** Collateral Agent and the Lenders hereby agree to the terms and conditions set forth on Exhibit B attached hereto. Borrower acknowledges and agrees to the terms and conditions set forth on Exhibit B attached hereto.

**12.13 Time of Essence.** Time is of the essence for the performance of Obligations under this Agreement.

**12.14 Termination Prior to Maturity Date; Survival.** All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made). So long as Borrower has satisfied the Obligations (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made) in accordance with the terms of this Agreement, this Agreement may be terminated prior to the Maturity Date by Borrower, effective five (5) Business Days after written notice of termination is given to the Collateral Agent and the Lenders.

**12.15 Borrower Liability.** Any Borrower may, acting singly, request advances hereunder. Each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting advances hereunder. Each Borrower hereunder shall be jointly and severally obligated to repay all advances made hereunder, regardless of which Borrower actually receives said advance, as if each Borrower hereunder directly received all advances. Each Borrower waives (a) any suretyship defenses available to it under the Code or any other applicable law, and (b) any right to require Collateral Agent or any Lender to: (i) proceed against any Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Collateral Agent and/or any Lender may exercise or not exercise any right or remedy it has against any Borrower or any security it holds (including the right to foreclose by judicial or non judicial sale) without affecting any Borrower's liability. Notwithstanding any other provision of this Agreement or any other Loan Document, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of Collateral Agent and the Lenders under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by Borrower with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is made to a Borrower in contravention of this Section, such Borrower shall hold such payment in trust for Collateral Agent and the Lenders and such payment shall be promptly delivered to Collateral Agent for application to the Obligations, whether matured or unmatured.

**12.16 Electronic Execution of Certain Other Documents.** The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation assignments, assumptions, amendments, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the

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Collateral Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

*[Balance of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

SPECTRUM PHARMACEUTICALS, INC.

By /s/ Keith McGahan

Name: Keith McGahan

Title: Executive Vice President, Chief Legal Officer and  
Corporate Secretary

ALLOS THERAPEUTICS, INC.

By /s/ Keith McGahan

Name: Keith McGahan

Title: President, Chief Financial Officer and Secretary

TALON THERAPEUTICS, INC.

By /s/ Keith McGahan

Name: Keith McGahan

Title: President, Chief Financial Officer and Secretary

SPECTRUM PHARMACEUTICALS INTERNATIONAL HOLDINGS, LLC

By: SPECTRUM PHARMACEUTICALS, INC., its sole Member

By /s/ Keith McGahan

Name: Keith McGahan

Title: Executive Vice President, Chief Legal Officer and  
Corporate Secretary

***[Signature Page to Loan and Security Agreement]***

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**COLLATERAL AGENT AND LENDER:**

SLR INVESTMENT CORP.

By /s/ Anthony Storino

Name: Anthony Storino

Title: Authorized Signatory

**LENDERS:**

SUNS SPV LLC

SCP PRIVATE CREDIT INCOME FUND SPV, LLC

SCP PRIVATE CREDIT INCOME BDC SPV LLC

SCP PRIVATE CORPORATE LENDING FUND SPV LLC

SLR CP SF DEBT FUND SPV LLC

SLR HC FUND SPV, LLC

SLR HC BDC SPV LLC

By /s/ Anthony Storino

Name: Anthony Storino

Title: Authorized Signatory

***[Signature Page to Loan and Security Agreement]***

**SCHEDULE 1.1**

**Lenders and Commitments**

<b>Term A Loans</b>		
<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
SUNS SPV LLC	\$ 10,525,093.71	35.08%
SCP PRIVATE CREDIT INCOME FUND SPV, LLC	\$ 4,771,279.73	15.90%
SCP PRIVATE CREDIT INCOME BDC SPV LLC	\$ 3,559,352.85	11.86%
SCP PRIVATE CORPORATE LENDING FUND SPV LLC	\$ 4,634,506.69	15.45%
SLR CP SF DEBT FUND SPV LLC	\$ 1,113,662.55	3.71%
SLR HC FUND SPV, LLC	\$ 4,480,608.35	14.94%
SLR HC BDC SPV LLC	\$ 915,496.12	3.05%
<b>TOTAL</b>	<b>\$ 30,000,000.00</b>	<b>100.00%</b>

<b>Term B Loans</b>		
<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
SLR INVESTMENT CORP.	\$ 3,508,364.57	35.08%
SCP PRIVATE CREDIT INCOME FUND SPV, LLC	\$ 1,590,426.58	15.90%
SCP PRIVATE CREDIT INCOME BDC SPV LLC	\$ 1,186,450.95	11.86%
SCP PRIVATE CORPORATE LENDING FUND SPV LLC	\$ 1,544,835.56	15.45%
SLR CP SF DEBT FUND SPV LLC	\$ 371,220.85	3.71%
SLR HC FUND SPV, LLC	\$ 1,493,536.12	14.94%
SLR HC BDC SPV LLC	\$ 305,165.37	3.05%
<b>TOTAL</b>	<b>\$ 10,000,000.00</b>	<b>100.00%</b>

<b>Term C Loans</b>		
<b>Lender</b>	<b>Term Loan Commitment</b>	<b>Commitment Percentage</b>
SLR INVESTMENT CORP.	\$ 5,262,546.85	35.08%
SCP PRIVATE CREDIT INCOME FUND SPV, LLC	\$ 2,385,639.87	15.90%
SCP PRIVATE CREDIT INCOME BDC SPV LLC	\$ 1,779,676.42	11.86%
SCP PRIVATE CORPORATE LENDING FUND SPV LLC	\$ 2,317,253.35	15.45%
SLR CP SF DEBT FUND SPV LLC	\$ 556,831.27	3.71%
SLR HC FUND SPV, LLC	\$ 2,240,304.18	14.94%
SLR HC BDC SPV LLC	\$ 457,748.06	3.05%
<b>TOTAL</b>	<b>\$ 15,000,000.00</b>	<b>100.00%</b>

**Term D Loans**

<u>Lender</u>	<u>Term Loan Commitment</u>	<u>Commitment Percentage</u>
SLR INVESTMENT CORP.	\$ 3,508,364.57	35.08%
SCP PRIVATE CREDIT INCOME FUND SPV, LLC	\$ 1,590,426.58	15.90%
SCP PRIVATE CREDIT INCOME BDC SPV LLC	\$ 1,186,450.95	11.86%
SCP PRIVATE CORPORATE LENDING FUND SPV LLC	\$ 1,544,835.56	15.45%
SLR CP SF DEBT FUND SPV LLC	\$ 371,220.85	3.71%
SLR HC FUND SPV, LLC	\$ 1,493,536.12	14.94%
SLR HC BDC SPV LLC	\$ 305,165.37	3.05%
<b>TOTAL</b>	<b>\$ 10,000,000.00</b>	<b>100.00%</b>

**Aggregate (all Term Loans)**

<u>Lender</u>	<u>Term Loan Commitment</u>	<u>Commitment Percentage</u>
SLR INVESTMENT CORP.	\$ 22,804,369.70	35.08%
SCP PRIVATE CREDIT INCOME FUND SPV, LLC	\$ 10,337,772.76	15.90%
SCP PRIVATE CREDIT INCOME BDC SPV LLC	\$ 7,711,931.17	11.86%
SCP PRIVATE CORPORATE LENDING FUND SPV LLC	\$ 10,041,431.16	15.45%
SLR CP SF DEBT FUND SPV LLC	\$ 2,412,935.52	3.71%
SLR HC FUND SPV, LLC	\$ 9,707,984.77	14.94%
SLR HC BDC SPV LLC	\$ 1,983,574.92	3.05%
<b>TOTAL</b>	<b>\$ 65,000,000.00</b>	<b>100.00%</b>

**SCHEDULE 7.13(b)****Minimum Net Product Revenue**

<b><u>Measurement Date</u></b>	<b><u>Trailing 6 Month Net Product Revenue Covenant Level</u></b>
March 31, 2023	\$ 10,648,802
April 30, 2023	\$ 14,245,603
May 31, 2023	\$ 18,259,231
June 30, 2023	\$ 22,275,473
July 31, 2023	\$ 26,773,115
August 31, 2023	\$ 31,380,505
September 30, 2023	\$ 36,062,121
October 31, 2023	\$ 39,457,819
November 30, 2023	\$ 42,761,801
December 31, 2023	\$ 45,834,324
March 31, 2024	\$ 46,394,896
June 30, 2024	\$ 48,479,895
September 30, 2024	\$ 56,269,059
December 31, 2024	\$ 70,969,247
March 31, 2025	\$ 81,006,653
June 30, 2025	\$ 82,606,787
September 30, 2025	\$ 84,534,141
December 31, 2025	\$ 85,618,374
March 31, 2026	\$ 85,128,640
June 30, 2026	\$ 84,930,093
September 30, 2026	\$ 86,185,938
December 31, 2026	\$ 84,745,970

## EXHIBIT A

### Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following property:

All goods, Accounts (including health care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) more than 65% of the presently existing and hereafter arising issued and outstanding equity interests owned by any Loan Party of any Excluded Subsidiary which equity interests entitle the holder thereof to vote for directors or any other matter (provided, however, that immediately upon any change in the U.S. tax laws that would allow the pledge of a greater percentage of such voting equity interests without material adverse tax consequences to Borrower, the Collateral shall automatically and without further action required by, and without notice to, any Person include such greater percentage of voting equity interests of such Excluded Subsidiary from that time forward), (b) any interest of a Loan Party as a lessee or sublessee under a real property lease; (c) rights held under a license or other agreement that are not assignable by their terms without the consent of the counterparty thereof (but only to the extent such restriction on assignment is effective under Section 9-406, 9-407, 9-408 or 9-409 of the Code (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity); (d) any interest of a Loan Party as a lessee or borrower under an Equipment lease or Equipment financing if such Loan Party is prohibited by the terms of such agreement from granting a security interest in such lease or agreement or under which such an assignment or Lien would cause a default to occur under such lease. (e) any license, interest or contract, in each case if the granting of a Lien in such license, interest or contract is prohibited by or would constitute a default under the agreement governing such license, interest or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral," or (f) any "intent to use" United States Trademark applications for which a statement of use or an amendment to allege use has not been filed (but only until such statement is filed) solely to the extent, if any, that, and only during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent to use Trademark applications under applicable federal law; provided, however, that upon termination of such prohibition, such interest shall immediately become Collateral without any action by any Loan Party, Collateral Agent or any Lender.

## EXHIBIT B

### Collateral Agent and Lender Terms

#### 1. Appointment of Collateral Agent.

(a) Each Lender hereby appoints SLR (together with any successor Collateral Agent pursuant to Section 7 of this Exhibit B) as Collateral Agent under the Loan Documents and authorizes Collateral Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from Borrower, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Collateral Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) Without limiting the generality of clause (a) above, Collateral Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to [(i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Lender is hereby authorized to make such payment to Collateral Agent,] (ii) file and prove claims and file other documents necessary or desirable to allow the claims of Collateral Agent and Lenders with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Lender), (iii) act as collateral agent for the Secured Parties for purposes of the perfection of all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral as permitted pursuant to the Loan Agreement, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Collateral Agent and the other Lenders with respect to the Borrower and/or the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Collateral Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Collateral Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any Deposit Account maintained by Borrower or any Guarantor with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Collateral Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed. Collateral Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Exhibit B to the extent provided by Collateral Agent.

(c) Under the Loan Documents and except as expressly set forth in this Exhibit B, Collateral Agent (i) is acting solely on behalf of the Lenders, with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Collateral Agent", the terms "agent", "Collateral Agent" and "collateral agent" and similar terms in any Loan Document to refer to Collateral Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Collateral Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above. Except as expressly set forth in the Loan Documents, Collateral Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by SLR or any of its Affiliates in any capacity.

## **2. Binding Effect; Use of Discretion; E-Systems.**

**(a)** Each Lender, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Collateral Agent or the Required Lenders (or, if expressly required in any Loan Document, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Collateral Agent in reliance upon the instructions of the Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Collateral Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of Lenders.

**(b)** If Collateral Agent shall request instructions from the Required Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with any Loan Document, then Collateral Agent shall be entitled to refrain from such act or taking such action unless and until Collateral Agent shall have received instructions from the Required Lenders or all affected Lenders, as the case may be, and Collateral Agent shall not incur liability to any Person by reason of so refraining. Collateral Agent shall be fully justified in failing or refusing to take any action under any Loan Document (i) if such action would, in the opinion of Collateral Agent, be contrary to any Requirement of Law or any Loan Document, (ii) if such action would, in the opinion of Collateral Agent, expose Collateral Agent to any potential liability under any Requirement of Law or (iii) if Collateral Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Collateral Agent as a result of Collateral Agent acting or refraining from acting under any Loan Document in accordance with the instructions of the Required Lenders or all affected Lenders, as applicable.

**(c)** Collateral Agent is hereby authorized by Borrower and each Lender to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Term Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Collateral Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents (including, without limitation, borrowing base certificates) and similar items on, by posting to or submitting and/or completion, on E-Systems. Borrower and each Lender acknowledges and agrees that the use of transmissions via an E-System or electronic mail is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse, and Borrower and each Lender assumes and accepts such risks by hereby authorizing the transmission via E-Systems or electronic mail. Each “e-signature” on any such posting shall be deemed sufficient to satisfy any requirement for a “signature”, and each such posting shall be deemed sufficient to satisfy any requirement for a “writing”, in each case including pursuant to any Loan Document, any applicable provision of any Code, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter. All uses of an E-System shall be governed by and subject to, in addition to this Section, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related contractual obligations executed by Collateral Agent, Borrower and/or Lenders in connection with the use of such E-System. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED “AS IS” AND “AS AVAILABLE”. NO REPRESENTATION OR WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS.

**3. Collateral Agent's Reliance, Etc.** Collateral Agent may, without incurring any liability hereunder, (a) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, Borrower) and (b) rely and act upon any document and information (including those transmitted by electronic transmission) and any telephone message or conversation, in each case believed by it in good faith to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. None of Collateral Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and Borrower hereby waives and shall not assert (and Borrower shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence or willful misconduct of Collateral Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment of a court of competent jurisdiction) in connection with the duties of Collateral Agent expressly set forth herein. Without limiting the foregoing, Collateral Agent: (i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons, except to the extent that a court of competent jurisdiction determines in a final non-appealable judgment that Collateral Agent acted with gross negligence or willful misconduct in the selection of such Related Person; (ii) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document; (iii) makes no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of Borrower or any Related Person of Borrower in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to Borrower, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Collateral Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Collateral Agent in connection with the Loan Documents; and (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of Borrower or as to the existence or continuation or possible occurrence or continuation of any Event of Default, and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from Borrower or any Lender describing such Event of Default that is clearly labeled "notice of default" (in which case Collateral Agent shall promptly give notice of such receipt to all Lenders, provided that Collateral Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Collateral Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction); and, for each of the items set forth in clauses (i) through (iv) above, each Lender and Borrower hereby waives and agrees not to assert (and Borrower shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action it might have against Collateral Agent based thereon.

**4. Collateral Agent Individually.** Collateral Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, Borrower or any Affiliate of Borrower as though it were not acting as Collateral Agent and may receive separate fees and other payments therefor. To the extent Collateral Agent or any of its Affiliates makes any Term Loans or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Required Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Collateral Agent or such Affiliate, as the case may be, in its individual capacity as Lender, or as one of the Required Lenders.

**5. Lender Credit Decision; Collateral Agent Report.** Each Lender acknowledges that it shall, independently and without reliance upon Collateral Agent, any Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Collateral Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of Borrower and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Collateral Agent to the Lenders, Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of Borrower or any Affiliate of Borrower that may come in to the possession of Collateral Agent or any of its Related Persons. Each Lender agrees that it shall not rely on any field examination, audit or other report provided by Collateral Agent or its Related Persons (an “**Collateral Agent Report**”). Each Lender further acknowledges that any Collateral Agent Report (a) is provided to the Lenders solely as a courtesy, without consideration, and based upon the understanding that such Lender will not rely on such Collateral Agent Report, (b) was prepared by Collateral Agent or its Related Persons based upon information provided by Borrower solely for Collateral Agent’s own internal use, and (c) may not be complete and may not reflect all information and findings obtained by Collateral Agent or its Related Persons regarding the operations and condition of Borrower. Neither Collateral Agent nor any of its Related Persons makes any representations or warranties of any kind with respect to (i) any existing or proposed financing, (ii) the accuracy or completeness of the information contained in any Collateral Agent Report or in any related documentation, (iii) the scope or adequacy of Collateral Agent’s and its Related Persons’ due diligence, or the presence or absence of any errors or omissions contained in any Collateral Agent Report or in any related documentation, and (iv) any work performed by Collateral Agent or Collateral Agent’s Related Persons in connection with or using any Collateral Agent Report or any related documentation. Neither Collateral Agent nor any of its Related Persons shall have any duties or obligations in connection with or as a result of any Lender receiving a copy of any Collateral Agent Report. Without limiting the generality of the forgoing, neither Collateral Agent nor any of its Related Persons shall have any responsibility for the accuracy or completeness of any Collateral Agent Report, or the appropriateness of any Collateral Agent Report for any Lender’s purposes, and shall have no duty or responsibility to correct or update any Collateral Agent Report or disclose to any Lender any other information not embodied in any Collateral Agent Report, including any supplemental information obtained after the date of any Collateral Agent Report. Each Lender releases, and agrees that it will not assert, any claim against Collateral Agent or its Related Persons that in any way relates to any Collateral Agent Report or arises out of any Lender having access to any Collateral Agent Report or any discussion of its contents, and agrees to indemnify and hold harmless Collateral Agent and its Related Persons from all claims, liabilities and expenses relating to a breach by any Lender arising out of such Lender’s access to any Collateral Agent Report or any discussion of its contents.

**6. Indemnification.** Each Lender agrees to reimburse Collateral Agent and each of its Related Persons (to the extent not reimbursed by Borrower as required under the Loan Documents (including pursuant to Section 12.2 of the Agreement)) promptly upon demand for its Pro Rata Share of any out-of-pocket costs and expenses (including, without limitation, fees, charges and disbursements of financial, legal and other advisors and any Taxes or insurance paid in the name of, or on behalf of, Borrower) incurred by Collateral Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, amendment, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or

response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Loan Document. Each Lender further agrees to indemnify Collateral Agent and each of its Related Persons (to the extent not reimbursed by Borrower as required under the Loan Documents (including pursuant to Section 12.2 of the Agreement)), ratably according to its Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, to the extent not indemnified by the applicable Lender, Taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by, or asserted against Collateral Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Collateral Agent or any of its Related Persons under or with respect to the foregoing; provided that no Lender shall be liable to Collateral Agent or any of its Related Persons under this Section 6 of this Exhibit B to the extent such liability has resulted from the gross negligence or willful misconduct of Collateral Agent or, as the case may be, such Related Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent required by any applicable Requirement of Law, Collateral Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding Tax. If the IRS or any other Governmental Authority asserts a claim that Collateral Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason, or if Collateral Agent reasonably determines that it was required to withhold Taxes from a prior payment to or for the account of any Lender but failed to do so, such Lender shall promptly indemnify Collateral Agent fully for all amounts paid, directly or indirectly, by Collateral Agent as Tax or otherwise, including penalties and interest, and together with all expenses incurred by Collateral Agent. Collateral Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding Tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Collateral Agent is entitled to indemnification from such Lender under the immediately preceding sentence of this Section 6 of this Exhibit B.

**7. Successor Collateral Agent.** Collateral Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective, in accordance with the terms of this Section 7 of this Exhibit B. If Collateral Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Collateral Agent. If, after 30 days after the date of the retiring Collateral Agent's notice of resignation, no successor Collateral Agent has been appointed by the Required Lenders and has accepted such appointment, then the retiring Collateral Agent may, on behalf of the Lenders, appoint a successor Collateral Agent from among the Lenders. Effective immediately upon its resignation, (a) the retiring Collateral Agent shall be discharged from its duties and obligations under the Loan Documents, (b) the Lenders shall assume and perform all of the duties of Collateral Agent until a successor Collateral Agent shall have accepted a valid appointment hereunder, (c) the retiring Collateral Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Collateral Agent was, or because such Collateral Agent had been, validly acting as Collateral Agent under the Loan Documents, and (iv) subject to its rights under Section 2(b) of this Exhibit B, the retiring Collateral Agent shall take such action as may be reasonably necessary to assign to the successor Collateral Agent its rights as Collateral Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Collateral Agent, a successor Collateral Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Collateral Agent under the Loan Documents.

**8. Release of Collateral.** Each Lender hereby consents to the release and hereby directs Collateral Agent to release (or in the case of clause (b)(ii) below, release or subordinate) the following:

(a) any Guarantor or Borrower (other than the Parent) if all of the stock of such Subsidiary owned by Borrower is sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a valid waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations, or to be a Borrower, as applicable, pursuant to any Loan Document; and

(b) any Lien held by Collateral Agent for the benefit of the Secured Parties against (i) any Collateral that is sold or otherwise disposed of by any Loan Party in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any Collateral subject to a Lien that is expressly permitted under clause (c) of the definition of the term "Permitted Lien" and (iii) all of the Collateral and each Loan Party, upon (A) termination of all of the Commitments, (B) the payment in full in cash of all of the Obligations (other than (i) inchoate indemnity obligations, and (ii) other obligations that, by their terms, survive termination of this Agreement, in each case, for which no claim has been made), and (C) to the extent requested by Collateral Agent, receipt by Collateral Agent and Lenders of liability releases from each Loan Party in form and substance reasonably acceptable to Collateral Agent (the satisfaction of the conditions in this clause (iii), the "**Termination Date**").

**9. Setoff and Sharing of Payments.** In addition to any rights now or hereafter granted under any applicable Requirement of Law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default and subject to Section 10(d) of this Exhibit B, each Lender is hereby authorized at any time or from time to time upon the direction of Collateral Agent, without notice to Borrower or any other Person, any such notice being hereby expressly waived, to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of Borrower (regardless of whether such balances are then due to Borrower) and any other properties or assets at any time held or owing by that Lender or that holder to or for the credit or for the account of Borrower against and on account of any of the Obligations that are not paid when due. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares of the Obligations. Borrower agrees, to the fullest extent permitted by law, that (a) any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may purchase participations in accordance with the preceding sentence and (b) any Lender so purchasing a participation in the Term Loans made or other Obligations held by other Lenders or holders may exercise all rights of offset, bankers' liens, counterclaims or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Term Loans and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

**10. Advances; Payments; Non-Funding Lenders; Actions in Concert.**

(a) Advances; Payments. If Collateral Agent receives any payment with respect to a Term Loan for the account of the Lenders on or prior to 3:00 p.m. (New York time) on any Business Day, Collateral Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Collateral Agent receives any payment with respect to a Term Loan for the account of Lenders after 3:00 p.m. (New York time) on any Business Day, Collateral Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day.

(b) Return of Payments.

(i) If Collateral Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Collateral Agent or on behalf of from Borrower and such related payment is not received by Collateral Agent, then Collateral Agent will be entitled to recover such amount (including interest accruing on such amount at the rate otherwise applicable to such Obligation) from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Collateral Agent determines at any time that any amount received by Collateral Agent under any Loan Document must be returned to Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of any Loan Document, Collateral Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Collateral Agent on demand any portion of such amount that Collateral Agent has distributed to such Lender, together with interest at such rate, if any, as Collateral Agent is required to pay to Borrower or such other Person, without setoff, counterclaim or deduction of any kind and Collateral Agent will be entitled to set off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(c) [Non-Funding Lenders.

(i) Unless Collateral Agent shall have received notice from a Lender prior to the date of any Term Loan that such Lender will not make available to Collateral Agent such Lender's Pro Rata Share of such Term Loan, Collateral Agent may assume that such Lender will make such amount available to it on the date of such Term Loan in accordance with Section 2(b) of this Exhibit B, and Collateral Agent may (but shall not be obligated to), in reliance upon such assumption, make available a corresponding amount for the account of Borrower on such date. If and to the extent that such Lender shall not have made such amount available to Collateral Agent, such Lender and Borrower severally agree to repay to Collateral Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the day such amount is made available to Borrower until the day such amount is repaid to Collateral Agent, at a rate per annum equal to the interest rate applicable to the Obligation that would have been created when Collateral Agent made available such amount to Borrower had such Lender made a corresponding payment available. If such Lender shall repay such corresponding amount to Collateral Agent, the amount so repaid shall constitute such Lender's portion of such Term Loan for purposes of this Agreement.

(ii) To the extent that any Lender has failed to fund any Term Loan or any other payments required to be made by it under the Loan Documents after any such Term Loan is required to be made or such payment is due (a "**Non-Funding Lender**"), Collateral Agent shall be entitled to set off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from or on behalf of Borrower thereunder. The failure of any Non-Funding Lender to make any Term Loan or any payment required by it hereunder shall not relieve any other Lender (each such other Lender, an "**Other Lender**") of its obligations to make such Term Loan, but neither any Other Lender nor Collateral Agent shall be responsible for the failure of any Non-Funding Lender to make such Term Loan or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Loan Document. At Borrower's request, Collateral Agent or a Person reasonably acceptable to Collateral Agent shall have the right with Collateral Agent's consent and in Collateral Agent's sole discretion (but Collateral Agent or any such Person shall have no obligation) to purchase from any Non-Funding Lender, and each Lender agrees that if it becomes a Non-Funding Lender it shall, at Collateral Agent's request, sell and assign to Collateral Agent or such Person, all of the Term Loan Commitment (if any), and all of the outstanding Term Loan of that Non-Funding Lender for an amount equal to the aggregate outstanding principal balance of the Term Loan held by such Non-Funding Lender and all accrued interest with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed assignment agreement in form and substance reasonably satisfactory to, and acknowledged by, Collateral Agent.]

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(d) Actions in Concert. Anything in this Agreement to the contrary notwithstanding, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of any Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Collateral Agent or Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under any Loan Document shall be taken in concert and at the direction or with the consent of Collateral Agent or Required Lenders.

## EXHIBIT C

### Taxes; Increased Costs.

#### 1. Defined Terms. For purposes of this Exhibit C:

(a) “**Connection Income Taxes**” is Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

(b) “**Excluded Taxes**” is any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (i) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (A) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Term Loan or Term Loan Commitment pursuant to a law in effect on the date on which (A) such Lender acquires such interest in the Term Loan or Term Commitment or (B) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2 or Section 4 of this Exhibit C, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (iii) Taxes attributable to such Recipient’s failure to comply with Section 7 of this Exhibit C and (iv) any withholding Taxes imposed under FATCA.

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

(d) “**Foreign Lender**” is a Lender that is not a U.S. Person.

(e) “**Indemnified Taxes**” is (i) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (ii) to the extent not otherwise described in clause (i), Other Taxes.

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

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

(h) “**Recipient**” is Collateral Agent or any Lender, as applicable.

(i) “**U.S. Person**” is any Person that is a “United States person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

(j) “**Withholding Agent**” is Borrower and Collateral Agent.

**2. Payments Free of Taxes.** Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2 or Section 4 of this Exhibit C) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

**3. Payment of Other Taxes by Borrower.** Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Collateral Agent timely reimburse it for the payment of, any Other Taxes.

**4. Indemnification by Borrower.** Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under Section 2 of this Exhibit C or this Section 4) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Collateral Agent), or by Collateral Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

**5. Indemnification by the Lenders.** Each Lender shall severally indemnify Collateral Agent, within 10 days after demand therefor, for (a) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Collateral Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (b) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 12.1 of the Agreement relating to the maintenance of a Participant Register and (c) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Collateral Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Collateral Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Collateral Agent to the Lender from any other source against any amount due to Collateral Agent under this Section 5.

**6. Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to the provisions of this Exhibit C, Borrower shall deliver to Collateral Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Collateral Agent.

## 7. Status of Lenders.

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Collateral Agent, at the time or times reasonably requested by Borrower or Collateral Agent, such properly completed and executed documentation reasonably requested by Borrower or Collateral Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Collateral Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Collateral Agent as will enable Borrower or Collateral Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 7(b)(i), 7(b)(ii) and 7(b)(iv) of this Exhibit C) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(i) any Lender that is a U.S. Person shall deliver to Borrower and Collateral Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Collateral Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(ii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Collateral Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Collateral Agent), whichever of the following is applicable:

- (A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;
- (B) executed copies of IRS Form W-8ECI;
- (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate, in form and substance reasonably acceptable to Borrower and Collateral Agent, to the effect that such Foreign Lender (or other applicable Person) is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of Borrower within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" related to Borrower as described in Section 881(c)(3)(C) of the Internal Revenue Code (a "**U.S. Tax Compliance Certificate**") and (y) executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E; or

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

(iii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Collateral Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Collateral Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Collateral Agent to determine the withholding or deduction required to be made; and

(iv) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Borrower and Collateral Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Collateral Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Borrower or Collateral Agent as may be necessary for Borrower and Collateral Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(v) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Collateral Agent in writing of its legal inability to do so.

**8. Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to the provisions of this Exhibit C (including by the payment of additional amounts pursuant to the provisions of this Exhibit C), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under the provisions of this Exhibit C with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 8 (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 8, in no

event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 8 the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

**9. Increased Costs.** If any change in applicable law shall subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (ii) through (iv) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and the result shall be to increase the cost to such Recipient of making, converting to, continuing or maintaining any Term Loan or of maintaining its obligation to make any such Term Loan, or to reduce the amount of any sum received or receivable by such Recipient (whether of principal, interest or any other amount), then, upon the request of such Recipient, Borrower will pay to such Recipient such additional amount or amounts as will compensate such Recipient for such additional costs incurred or reduction suffered.

**10. Survival.** Each party's obligations under the provisions of this Exhibit C shall survive the resignation or replacement of Collateral Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Term Loan Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

**EXHIBIT D**

**Loan Payment Request Form**

Fax To: (212) 993-1698

Date: \_\_\_\_\_

<b>LOAN PAYMENT:</b>	
SPECTRUM PHARMACEUTICALS, INC.	
From Account # _____ (Deposit Account #)	To Account # _____ (Loan Account #)
Principal \$ _____	and/or Interest \$ _____
Authorized Signature: _____	Phone Number: _____
Print Name/Title: _____	

<b>LOAN ADVANCE:</b>	
Complete <i>Outgoing Wire Request</i> section below if all or a portion of the funds from this loan advance are for an outgoing wire.	
From Account # _____ (Loan Account #)	To Account # _____ (Deposit Account #)
Amount of Advance \$ _____	
All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:	
Authorized Signature: _____	Phone Number: _____
Print Name/Title: _____	

<b>OUTGOING WIRE REQUEST:</b>	
Complete only if all or a portion of funds from the loan advance above is to be wired.	
Beneficiary Name: _____	Amount of Wire: \$ _____
Beneficiary Bank: _____	Account Number: _____
City and State: _____	

Beneficiary Bank Transit (ABA) #: \_\_\_\_\_

Beneficiary Bank Code (Swift, Sort, Chip, etc.): \_\_\_\_\_

**(For International Wire Only)**

Intermediary Bank: \_\_\_\_\_

Transit (ABA) #: \_\_\_\_\_

For Further Credit to: \_\_\_\_\_

Special Instruction: \_\_\_\_\_

*By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).*

Authorized Signature: \_\_\_\_\_

2nd Signature (if required): \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Telephone #: \_\_\_\_\_

**EXHIBIT E**

**Compliance Certificate**

TO: SLR INVESTMENT CORP., as Collateral Agent and the Lenders party to the Loan Agreement (as defined below) on the date hereof

FROM: SPECTRUM PHARMACEUTICALS, INC., on behalf of each Borrower

The undersigned authorized officer (“**Officer**”) of SPECTRUM PHARMACEUTICALS, INC. (“**Parent**”) hereby certifies solely in his/her capacity as an officer of Parent and not in his/her individual capacity that in accordance with the terms and conditions of the Loan and Security Agreement dated as of September 21, 2022, by and among Parent, ALLOS THERAPEUTICS, INC., Delaware corporation with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Allos**”), TALON THERAPEUTICS, INC., Delaware corporation with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Talon**”) and SPECTRUM PHARMACEUTICALS INTERNATIONAL HOLDINGS, LLC, a Delaware limited liability company with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Spectrum International**” and together with Parent, Allos and Talon, and any other co-Borrower party thereto from time to time, individually and collectively, jointly and severally, “**Borrower**”), Collateral Agent, and the Lenders from time to time party thereto (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**,” capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below;

(b) There are no Defaults or Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower’s Subsidiaries, has timely filed all required tax returns and reports; Borrower, and each of Borrower’s Subsidiaries, has timely paid all foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 6.4 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement	Actual	Complies		
1)	Monthly cash balance and cash burn report, and accounts payable aging schedule	Monthly within 30 days		Yes	No	N/A
2)	Quarterly financial statements	Quarterly within 45 days		Yes	No	N/A
3)	Annual (CPA Audited) statements	Within 90 days after FYE or 5 days after filing with SEC		Yes	No	N/A
4)	Annual Financial Projections/Budget	Annually by Feb 28 <sup>th</sup> of each year, and when revised		Yes	No	N/A
5)	Non-ministerial material statements, reports and notices delivered to holders of Subordinated Debt	If applicable, concurrently with delivery of the Compliance Certificate		Yes	No	N/A
6)	8-K, 10-K and 10-Q Filings	Within 5 days of filing		Yes	No	N/A
7)	Compliance Certificate	Monthly within 30 days		Yes	No	N/A
8)	IP notice (events reasonably expected to materially and adversely affect value of IP or result in MAC)	When required		Yes	No	N/A
9)	Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		\$ _____	Yes	No	N/A
10)	Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		\$ _____	Yes	No	N/A
11)	Attach a schedule providing a summary of the total amount of cash, Cash Equivalents and value of the assets of each Foreign Subsidiary at the last day of the measurement period		\$ _____	Yes	No	N/A
12)	Provide calculation of monthly cash burn		\$ _____	Yes	No	N/A

**Deposit and Securities Accounts***(Please list all accounts; attach separate sheet if additional space needed)*

	Institution Name	Account Number	Account balance as of month end	New Account?		Account Control Agreement in place?		
				Yes	No	Yes	No	No
1)				Yes	No	Yes		No
2)				Yes	No	Yes		No
3)				Yes	No	Yes		No
4)				Yes	No	Yes		No

A copy of the month-end statement for each Collateral Account is attached hereto as Annex A.

A copy of the month-end statement of A/P Agings is attached hereto as Annex B.

**Financial Covenants**

Minimum Net Product Revenue (period ending _____) <sup>1</sup>	Actual Net Product Revenue (trailing twelve month)	Minimum Net Product Revenue per Section 7.13(a)(i)	Complies		
	\$ _____	\$ 100,000,000	Yes	No	N/A <sup>2</sup>
	Actual Net Product Revenue (trailing six month)	Minimum Net Product Revenue per Section 7.13(a)(ii)			
	\$ _____	\$ _____			
Minimum cash and Cash Equivalents (subject to Control Agreement)	Lowest balance since delivery of last Compliance Certificate	Minimum Required			
	\$ _____	\$25,000,000.00 at all times prior to later of Liquidity Milestone and July 31, 2023	Yes	No	N/A

<sup>1</sup> Commencing with the period ending March 31, 2023.

<sup>2</sup> Compliance with Section 7.13(a) is only required with respect to either 7.13(a)(i) or 7.13(a)(ii).

**Other Matters**

- |     |  |     |    |
|-----|--|-----|----|
| 1)  | Have there been any changes in Key Persons since the last Compliance Certificate?  | Yes | No |
| 2)  | Have there been any transfers/sales/disposals/retirement of Collateral or Intellectual Property prohibited by the Loan Agreement?  | Yes | No |
| 3)  | Has any litigation or governmental proceeding commenced or been threatened in writing, against Borrower or any Subsidiary that could reasonably be expected to result in damages or costs to Borrower or any Subsidiaries in excess of \$250,000?            | Yes | No |
| 4)  | Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate. | Yes | No |
| 5)  | Has Borrower or any Subsidiary entered into or amended any Material Agreement? If yes, please explain and provide a copy of the Material Agreement(s) and/or amendment(s).   | Yes | No |
| 6)  | Has Borrower or any Guarantor acquired any commercial tort claim or letter of credit right, in each case in an amount greater than \$250,000? If yes, provide the general details thereof.   | Yes | No |
| 7)  | Has Borrower or any Subsidiary obtained any material Governmental Approval? If yes, provide a copy of such Governmental Approval.  | Yes | No |
| 8)  | Has there been any commencement of, or material development in, any proceeding contemplated by Section 5.8 of the Loan Agreement? If yes, provide a copy of such written notice.   | Yes | No |
| 9)  | Have there been any returns, recoveries, disputes or claims regarding Inventory that involve more than \$250,000 individually or in the aggregate in the applicable calendar year?   | Yes | No |
| 10) | Has Borrower otherwise provided the Collateral Agent with all notices required to be delivered under Sections 6.2(a) of the Loan Agreement?  | Yes | No |

[Signature Page Follows]

**Exceptions**

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

SPECTRUM PHARMACEUTICALS, INC.

By: \_\_\_\_\_

Name:

Title:

Date:

**COLLATERAL AGENT USE ONLY**

Received by: \_\_\_\_\_ Date: \_\_\_\_\_

Verified by: \_\_\_\_\_ Date: \_\_\_\_\_

Compliance Status: Yes                      No

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**Annex A**

Month-End Collateral Account Statements

(see attached)

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**Annex A**

Month-End A/P Agings

(see attached)

EXHIBIT F

CORPORATE BORROWING CERTIFICATE

BORROWER: [ ]
LENDERS: SLR INVESTMENT CORP., as Collateral Agent and Lender and the Lenders listed on Schedule 1.1 of the Loan Agreement

DATE: September 21, 2022

I hereby certify, in my capacity as an officer of the Borrower and not in any personal capacity, as follows, as of the date set forth above:

- 1. I am the Secretary, Assistant Secretary or other officer of Borrower. My title is as set forth below.
2. Borrower's exact legal name is set forth above. Borrower is a [corporation / limited liability company] existing under the laws of the State of Delaware.
3. Attached hereto as Exhibit A and Exhibit B, respectively, are true, correct and complete copies of (i) Borrower's [Certificate of Incorporation / Certificate of Formation] (including amendments), as filed with the Secretary of State of the State of Delaware; and (ii) Borrower's [Bylaws / Operating Agreement]. Neither such [Certificate of Incorporation / Certificate of Formation] nor such [Bylaws / Operating Agreement] have been amended, annulled, rescinded, revoked or supplemented, and such [Certificate of Incorporation / Certificate of Formation] and such [Bylaws / Operating Agreement] remain in full force and effect as of the date hereof.
4. Attached hereto as Exhibit C are resolutions duly and validly adopted by Borrower's [board of directors] at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized [corporate / limited liability company] action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, and the Lenders may rely on them until each Lender receives written notice of revocation from Borrower.
5. The persons listed below are Borrower's officers or employees with their titles and signatures shown next to their names.

Table with 3 columns: Name, Title, Signature. Each row contains a placeholder [ ] for Name and Title, and a horizontal line for Signature.

[Signature Page Follows]

[Signature Page to Corporate Borrowing Certificate]

[BORROWER]

By: \_\_\_\_\_  
Name:  
Title:

\*\*\* *If the Secretary, Assistant Secretary or other certifying officer executing above is one of the officers described in paragraph 5 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.*

I, the \_\_\_\_\_ of Borrower, hereby certify, solely in my capacity as an officer of Borrower, and not in any individual capacity, that \_\_\_\_\_ is the duly elected or appointed \_\_\_\_\_ of Borrower, and his/her signature above is his/her genuine signature or a true facsimile thereof.

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Corporate Borrowing Certificate]*

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**EXHIBIT A**

**Certificate of Incorporation / Certificate of Formation (including amendments)**

[see attached]

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**EXHIBIT B**

**Bylaws / Operating Agreement**

[see attached]

**EXHIBIT G**

**ACH LETTER**

SLR INVESTMENT CORP.  
500 Park Avenue, 3rd Floor  
New York, NY 10022  
Attention: Anthony Storino  
Fax: (212) 993-1698  
Email: astorino@slrcp.com

Re: Loan and Security Agreement dated as of September 21, 2022 (the “**Agreement**”) by and among SPECTRUM PHARMACEUTICALS, INC., a Delaware corporation with offices located at 2 Atlantic Avenue, 6<sup>th</sup> Floor, Boston, MA 02110 (“**Parent**”), ALLOS THERAPEUTICS, INC., Delaware corporation with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Allos**”), TALON THERAPEUTICS, INC., Delaware corporation with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Talon**”) and SPECTRUM PHARMACEUTICALS INTERNATIONAL HOLDINGS, LLC, a Delaware limited liability company with offices located at 18200 Von Karman Avenue, Suite 700, Irvine, CA 92612 (“**Spectrum International**”) and together with Parent, Allos and Talon, individually and collectively, jointly and severally, “**Borrower**”), SLR INVESTMENT CORP. (“**SLR**”), as collateral agent (in such capacity, “**Collateral Agent**”) and the Lenders listed on Schedule 1.1 thereof or otherwise a party thereto from time to time, including SLR in its capacity as a Lender (each a “**Lender**” and collectively, the “**Lenders**”). Capitalized terms used but not otherwise defined herein shall have the meanings given them under the Agreement.

In connection with the above referenced Agreement, the Borrower hereby authorizes the Collateral Agent to, at its discretion and with prior notice of at least one (1) Business Day, initiate debit entries to the Borrower’s account indicated below (i) on each payment date of all Obligations then due and owing, (ii) at any time any payment due and owing with respect to Lender Expenses, and (iii) upon an Event of Default, any other Obligations outstanding, in each case pursuant to Section 2.3(e) of the Agreement. The Borrower authorizes the depository institution named below to debit to such account.

DEPOSITORY NAME	BRANCH
CITY	STATE AND ZIP CODE
TRANSIT/ABA NUMBER	ACCOUNT NUMBER

This authority will remain in full force and effect so long as any amounts are due under the Agreement.

**SPECTRUM PHARMACEUTICALS, INC.**

By: \_\_\_\_\_  
Name:  
Title:  
Date:



## Spectrum Pharmaceuticals Announces Debt Financing Agreement with SLR Capital Partners with \$30 Million Funded at Closing

— Multiple tranche debt financing provides Spectrum with up to \$65 million —  
— Funding provides additional capital to optimize commercial launch of ROLVEDON™ —  
— Cash runway extended through 2024 —

**BOSTON – September 23, 2022** - Spectrum Pharmaceuticals, Inc. (NasdaqGS: SPPI) (“Spectrum” or the “Company”), a biopharmaceutical company focused on novel and targeted oncology therapies, today announced that it has entered into a five-year debt financing agreement with investment affiliates managed by SLR Capital Partners, LLC (SLR) for a term loan facility of up to \$65 million. The Company believes this transaction, combined with Spectrum’s existing cash balance, provides sufficient capital to optimize the commercial launch of ROLVEDON™ (eflapegrastim-xnst) injection, which received U.S. Food and Drug Administration (FDA) approval on September 9, 2022, as well as fund Spectrum’s operations through 2024.

“We are pleased to announce this financing agreement and to partner with SLR, an experienced healthcare and life sciences lender and investor. This capital commitment immediately strengthens our balance sheet and is anticipated to provide the additional resources necessary for a successful launch of ROLVEDON,” said Tom Riga, President and Chief Executive Officer of Spectrum Pharmaceuticals. “We expect this transaction will further extend our cash runway through 2024, offering operational flexibility during our transition to a commercial stage company.”

Under the terms of the agreement, Spectrum will have access to up to \$65 million in debt financing, divided into four tranches, the first of which was a \$30 million loan drawn upon closing on September 21, 2022. The remaining \$35 million will be made available in three additional tranches subject to the achievement of pre-specified regulatory and financial milestones. The tranches are available for drawdown at Spectrum’s discretion at various points until November 15, 2023.

The loan facility maturity date is September 1, 2027, and payments consist of 36 monthly interest-only payments, followed by 24 monthly payments of principal and accrued interest. The Company holds the option to extend the interest only period for an additional year if certain financial milestones are achieved. In connection with the financing, and with each advance of the loan, Spectrum will issue warrants to the lenders under the financing to purchase shares of the Company’s common stock in an amount equal to 1.00% of the applicable lender’s loan amount divided by an exercise price calculated as of the applicable funding date.

Armentum Partners served as financial advisor to the Company on the transaction. Additional information regarding the transaction can be found in the Company’s current and future periodic reports with the Securities and Exchange Commission (SEC).

### **About Spectrum Pharmaceuticals, Inc.**

Spectrum Pharmaceuticals, Inc. is a biopharmaceutical company focused on acquiring, developing, and commercializing novel and targeted oncology therapies. Spectrum has a strong track record of successfully executing across the biopharmaceutical business model, from in-licensing and acquiring differentiated drugs, clinically developing novel assets, successfully gaining regulatory approvals and commercializing in a competitive healthcare marketplace. Spectrum has a late-stage pipeline with novel assets that serve areas of unmet need. This pipeline has the potential to transform the company in the near future. For additional information on Spectrum please visit [www.sppirx.com](http://www.sppirx.com).

### **Notice Regarding Forward-looking Statements**

Certain statements in this press release may constitute “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995, as amended to date. These forward-looking statements relate to a variety of matters, including, without limitation, statements that relate to Spectrum’s business and its future, including the extension of the Company’s cash runway through 2024; future availability under SLR’s capital commitment, including the Company’s ability to achieve certain milestones required in order to extend the interest only period and to require additional funding under the loan; the success of the Company’s commercial launch of ROLVEDON and the sufficiency of SLR’s capital commitment to support the Company’s planned commercialization efforts; the potential therapeutic benefits of ROLVEDON; the potential market opportunity for ROLVEDON; the potential of the Company’s pipeline to transform the Company in the near future and other statements that are not purely statements of historical fact. These forward-looking statements are made on the basis of the current beliefs, expectations and assumptions of the management of Spectrum and are subject to significant risks and uncertainties that could cause actual results to differ materially from what may be expressed or implied in these forward-looking statements. Risks that could cause actual results to differ include, but are not limited to, the possibility that ROLVEDON may not be more effective, safer or more cost efficient than competing drugs; our dependence on third parties for clinical trials, manufacturing, distribution and quality control; the possibility that our existing and new applications to the FDA and other regulatory agencies may not receive approval in a timely manner or at all; the possibility that our efforts to acquire or in-license and develop additional drug candidates may fail and other risks that are described in further detail in the company’s reports filed with the SEC. The Company does not plan to update any such forward-looking statements and expressly disclaims any duty to update the information contained in this press release except as required by law. For a further discussion of risks and uncertainties that could cause actual results to differ from those expressed in these forward-looking statements, as well as risks relating to the business of Spectrum in general, see the risk disclosures in the Annual Report on Form 10-K of Spectrum for the year ended December 31, 2021, and in subsequent reports on Forms 10-Q and 8-K and other filings made with the SEC by Spectrum.

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**Contacts:**

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Chief Executive Officer

949.788.6700

[InvestorRelations@sppirx.com](mailto:InvestorRelations@sppirx.com)

Lisa Wilson

In-Site Communications, Inc.

212.452.2793

[lwilson@insitecony.com](mailto:lwilson@insitecony.com)

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### **Spectrum Pharmaceuticals Provides Update on Pozitotinib Following FDA Oncologic Drugs Advisory Committee Meeting**

**BOSTON – September 22, 2022** – Spectrum Pharmaceuticals (NasdaqGS: SPPI) (“Spectrum” or the “Company”), a biopharmaceutical company focused on novel and targeted oncology therapies, today announced that the U.S. Food and Drug Administration’s (“FDA”) Oncologic Drugs Advisory Committee (“ODAC”) met to review pozitotinib for the treatment of patients with previously treated locally advanced or metastatic non-small cell lung cancer (“NSCLC”) harboring HER2 exon 20 insertion mutations. The committee voted 9-4 that the current benefits of pozitotinib did not outweigh its risks.

“We are disappointed by the outcome of the ODAC meeting, as patients with NSCLC HER2 exon 20 insertion mutations are in need of additional effective and safe therapies,” stated Tom Riga, President and Chief Executive Officer of Spectrum Pharmaceuticals. “We plan to carefully evaluate our options for this program as we approach the November 24, 2022, PDUFA date. We would like to thank lung cancer patients and their families, as well as investigators and their staff, for their support.”

ODAC is an independent panel of experts that reviews and evaluates data concerning the efficacy and safety of marketed and investigational products for use in the treatment of cancer. The committee makes appropriate recommendations to the FDA, but these recommendations are not binding and the final decision regarding product approval will be made solely by the FDA.

#### **About Pozitotinib**

Pozitotinib is a novel, oral epidermal growth factor receptor tyrosine kinase inhibitor (EGFR TKI) that inhibits the tyrosine kinase activity of EGFR as well as HER2 and HER4, which, in turn, leads to the inhibition of the proliferation of tumor cells that overexpress these receptors. Mutations or overexpression/amplification of EGFR family receptors have been associated with a number of different cancers, including non-small cell lung cancer (NSCLC), breast cancer, and gastric cancer. HER2 exon 20 insertion mutations are a rare subset accounting for approximately 2-4% in NSCLC. There is no approved therapy for either treatment-naïve or previously treated NSCLC with HER2 exon 20 insertion mutations. Spectrum Pharmaceuticals holds an exclusive license from Hanmi Pharmaceutical (“Hanmi”) to develop, manufacture, and commercialize pozitotinib worldwide, excluding Korea and China. Pozitotinib is currently being investigated by the Company and Hanmi in several mid-stage trials in multiple solid tumor indications.



## **About Spectrum Pharmaceuticals, Inc.**

Spectrum Pharmaceuticals is a biopharmaceutical company focused on acquiring, developing, and commercializing novel and targeted oncology therapies. Spectrum has a strong track record of successfully executing across the biopharmaceutical business model, from in-licensing and acquiring differentiated drugs, clinically developing novel assets, successfully gaining regulatory approvals and commercializing in a competitive healthcare marketplace. Spectrum has a late-stage pipeline with novel assets that serve areas of unmet need. This pipeline has the potential to transform the Company in the near future. For additional information on Spectrum Pharmaceuticals please visit [www.sppirx.com](http://www.sppirx.com).

## **Notice Regarding Forward-looking Statements – Spectrum Pharmaceuticals**

Certain statements in this press release may constitute “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995, as amended to date. These forward-looking statements relate to a variety of matters, including, without limitation, statements that relate to Spectrum’s business and its future, including the likelihood and timing of FDA approval of poziotinib, if FDA approval is received, the success and timing of the Company’s commercialization efforts, the results of the confirmatory study for poziotinib, the potential therapeutic benefits of poziotinib, the potential market opportunity for poziotinib, the future potential of Spectrum’s existing drug pipeline and other statements that are not purely statements of historical fact. These forward-looking statements are made on the basis of the current beliefs, expectations, and assumptions of the management of Spectrum and are subject to significant risks and uncertainties that could cause actual results to differ materially from what may be expressed or implied in these forward-looking statements. Risks that could cause actual results to differ include, but are not limited to, the possibility that poziotinib may not be more effective, safer, or more cost-efficient than competing drugs, our dependence on third parties for clinical trials, manufacturing, distribution and quality control, the possibility that our existing and new applications to the FDA and other regulatory agencies may not receive approval in a timely manner or at all, the possibility that our efforts to acquire or in-license and develop additional drug candidates may fail and other risks that are described in further detail in the Company’s reports filed with the Securities and Exchange Commission (SEC). The

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Company does not plan to update any such forward-looking statements and expressly disclaims any duty to update the information contained in this press release except as required by law. For a further discussion of risks and uncertainties that could cause actual results to differ from those expressed in these forward-looking statements, as well as risks relating to the business of Spectrum in general, see the risk disclosures in the Annual Report on Form 10-K of Spectrum for the year ended December 31, 2021, and in subsequent reports on Forms 10-Q and 8-K and other filings made with the SEC by Spectrum.

SPECTRUM PHARMACEUTICALS, INC.<sup>®</sup> is a registered trademark of Spectrum Pharmaceuticals, Inc and its affiliate. REDEFINING CANCER CARE<sup>™</sup> and the Spectrum Pharmaceuticals logos are trademarks owned by Spectrum Pharmaceuticals, Inc. Any other trademarks are the property of their respective owners.

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**Spectrum Contacts:**

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