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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the Fiscal Year Ended: December 31, 2021

Or

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

For the transition period from to

Commission File Number: 001-35060

PACIRA BIOSCIENCES, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**51-0619477**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

5401 West Kennedy Boulevard, Suite 890
Tampa, Florida
33609
(Address and Zip Code of Principal Executive Offices)

(813) 553-6680
(Registrant's Telephone Number, Including Area Code)

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

Title of each class	**Trading symbol**	**Name of each exchange on which registered**
Common Stock, par value $0.001 per share	PCRX	Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes x No o

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes x No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth

company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		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 pursuant to Section 13(a) of the Exchange Act. o

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes x No o

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

The aggregate market value of the registrant's voting stock held by non-affiliates of the registrant, based upon the closing sale price of the common stock as reported on the Nasdaq Global Select Market on June 30, 2021, the last trading day of the registrant's most recently completed second fiscal quarter, of $60.68 per share was approximately $1.6 billion. Shares of common stock held by each director and executive officer (and their respective affiliates) and by each person who owns 10 percent or more of the outstanding common stock or who is otherwise believed by the registrant to be in a control position have been excluded. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 27, 2022, 44,847,728 shares of the registrant's common stock, $0.001 par value per share, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Annual Report on Form 10-K incorporates certain information by reference from the registrant's proxy statement for the 2022 annual meeting of stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of the registrant's fiscal year ended December 31, 2021.

SUMMARY OF RISK FACTORS

This risk factor summary includes those risks most material to our business, financial condition, results of operations or prospects. A full discussion of the risks outlined in this summary, as well as those risks not outlined below, appear in Part I, Item 1A. *Risk Factors* in this Annual Report.

- Our success depends primarily on our ability to successfully commercialize EXPAREL® (bupivacaine liposome injectable suspension) and ZILRETTA® (triamcinolone acetonide extended-release injectable suspension).
- Our efforts to successfully commercialize EXPAREL and ZILRETTA are subject to many internal and external challenges.
- That the commercial success of our products may be severely hindered if we are unable to achieve and maintain adequate levels of third-party payer coverage and reimbursement for the products we offer, on reasonable pricing terms.
- The significant competition we face from other pharmaceutical, medical device and biotechnology companies.
- The regulatory approval for any approved product being limited to those specific indications and conditions for which clinical safety and efficacy have been demonstrated, and risks related to allegations of our failure to comply with such approved indications.
- If we are unable to establish and maintain effective marketing and sales capabilities or enter into agreements with third parties to market and sell our products.
- Our reliance on third parties to perform many essential services for EXPAREL, ZILRETTA and iovera°® and the fact that we will rely on third parties for any other products that we commercialize.
- That we may need to increase the size of our organization and effectively manage our sales force, and we may experience difficulties in managing such growth.
- Our inability to manage our business effectively if we are unable to attract and retain key personnel.
- The potential product liability exposure we may face.
- Our failure to manufacture our products in sufficient quantities and at acceptable quality and pricing levels, or to fully comply with CGMP (as defined below).
- That we may need to expand our manufacturing operations or outsource such operations to third parties.
- Our inability to continue manufacturing adequate supplies of our products.
- That our co-production and other agreements with Thermo Fisher (as defined below) may involve unanticipated expenses and delays.
- Our reliance on third parties for the timely supply of specified raw materials and equipment for the manufacture of EXPAREL, ZILRETTA and iovera°.
- That our future growth depends on our ability to identify, develop, acquire or in-license products.
- That we make substantial investments in research and development and if those investments are unsuccessful, it could materially adversely affect our business, financial condition and results of operations.
- The use of hazardous materials in our business and that we must comply with environmental laws and regulations.
- The risk of system failures.
- That any collaboration arrangements that we may enter into in the future may not be successful.
- The expense, length and uncertain outcomes of our trials and if our trials fail to demonstrate the safety and efficacy of our drug products or medical devices, it could prevent or significantly delay obtaining regulatory approvals.
- Our dependence on contract research organizations.
- Our dependence on clinical investigators and clinical sites to enroll patients in our clinical trials and sometimes other third parties to manage the trials and to perform related data collection and analysis.
- Guidelines and recommendations published by various organizations could reduce the demand for or use of our products.
- Periodic litigation, which could result in losses or unexpected expense of time and resources.
- If a regulatory or enforcement agency determines that we are promoting or have in the past promoted the “off-label” use of our products.
- That we may not receive regulatory approval for any of our product candidates, or the approval may be delayed for various reasons.
- The regulatory clearance process, which may result in substantial delays, unexpected or additional costs and other unforeseen factors and limitations on the types and uses of products we would be able to commercialize.
- That a regulatory authority may determine that our products or any of our product candidates have undesirable side effects.
- The substantial penalties we could face if we do not comply with federal, state and foreign laws and regulations relating to the healthcare business.
- The highly regulated and technically complex design, development, manufacture, supply and distribution of our products.
- Our failure to comply with the extensive regulatory requirements to which we and our products are subject.

- If the government or third-party payers fail to provide adequate coverage and payment rates for EXPAREL, ZILRETTA, iovera° or any future products, or if hospitals or ASCs (as defined below) choose to use therapies that are less expensive.
- Public concern regarding the safety of drug products such as EXPAREL and ZILRETTA and medical device products such as iovera°.
- That the patents and the patent applications that we have covering our pMVL (as defined below) products are limited to specific injectable formulations, processes and uses of drugs encapsulated in our pMVL drug delivery technology and our market opportunity for our product candidates may be limited by the lack of patent protection for the active ingredient itself and other formulations and delivery technology and systems that may be developed by competitors.
- That the patents and the patent applications that we have covering iovera° are primarily limited to specific handheld cryogenic needle devices that are cooled by a cryogen and methods for applying cryotherapy to nerve tissue using the cryogenic devices.
- Our inability ensure the protection of our proprietary rights and that all patents will eventually expire.
- If we are sued for infringing intellectual property rights of third parties.
- That we may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.
- Servicing our indebtedness, which requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial indebtedness.
- That our Credit Agreement and the Indentures (each as defined below) each impose significant operating and financial restrictions on us and certain of our subsidiaries, which may prevent us from capitalizing on business opportunities.
- That we may not have the ability to raise the funds necessary to settle conversions of the Notes (as defined below) in cash to the extent elected or to repurchase the Notes upon a fundamental change, and our future indebtedness may contain limitations on our ability to pay cash upon conversion of the Notes or limitations on our ability to repurchase the Notes.
- That our indebtedness could adversely affect our business, financial condition, and results of operations, as well as the ability to meet payment obligations under our Credit Agreement and the Notes.
- The risk that despite our current level of indebtedness, we may be able to incur substantially more debt.
- The provisions of our charter documents and Delaware law that may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.
- That our common stock price may be subject to significant fluctuations and volatility.
- Our intention to not pay dividends on our common stock for the foreseeable future.
- That future sales in the public market or issuances of our common stock could lower the market price for our common stock.
- That raising additional funds by issuing securities would cause dilution to existing stockholders and raising funds through lending and licensing arrangements may restrict our operations or require us to relinquish proprietary rights.
- A pandemic, epidemic or outbreak of a contagious disease (such as the novel coronavirus (COVID-19) pandemic), or fear of such an event.
- Our failure to maintain the privacy and security of personal and business information.
- That we may face risks related to environmental, social and corporate governance, or ESG, issues.
- The significant losses we have incurred since our inception and that we may incur additional losses in the future.
- That we may need additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.
- The potential significant fluctuations in our quarterly operating results.
- Our inability to successfully integrate the businesses and personnel of acquired companies and businesses, and inability to realize the anticipated synergies and benefits of such acquisitions.
- Our inability to realize the benefits from the Flexion Acquisition (as defined below) being substantially dependent on the commercial success of ZILRETTA and the cost savings resulting from the timely and effective integration of the operations of Pacira and Flexion (as defined below).
- The use of our net operating loss carryforwards and research and development tax credits being limited.
- Changes in data privacy and protection laws and regulations, particularly in Europe and the State of California.
- Risks related to cybersecurity threats and incidents.
- Significant changes in the global climate, extreme weather conditions and water availability.
- Our international operations, which expose us to numerous and sometimes conflicting legal and regulatory requirements.

PACIRA BIOSCIENCES, INC.
ANNUAL REPORT ON FORM 10-K
FOR THE YEAR ENDED DECEMBER 31, 2021

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Forward-Looking Statements

This Annual Report on Form 10-K (the "Annual Report") and certain other communications made by us contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Private Securities Litigation Reform Act of 1995, including, without limitation, statements related to: the Flexion Acquisition (as defined below) and the costs and benefits thereof, our growth and future operating results and trends, our strategy, plans, objectives, expectations (financial or otherwise) and intentions, future financial results and growth potential, anticipated product portfolio, development programs, patent terms, development of products, strategic alliances and intellectual property. For this purpose, any statement that is not a statement of historical fact should be considered a forward-looking statement. We often use the words "believe," "anticipate," "plan," "estimate," "expect," "intend," "may," "will," "would," "could," "can" and similar expressions to help identify forward-looking statements. We cannot assure you that our estimates, assumptions and expectations will prove to have been correct. Actual results may differ materially from these indicated by such forward-looking statements as a result of various important factors, including risks relating to, among others: risks associated with acquisitions, such as the risk that the businesses will not be integrated successfully, that such integration may be more difficult, time-consuming or costly than expected or that the expected benefits of the transaction will not occur; risks related to future opportunities and plans for Flexion and its products, including uncertainty of the expected financial performance of Flexion and its products; the possibility that if we do not achieve the perceived benefits of the Flexion Acquisition as rapidly or to the extent anticipated by financial analysts or investors, the market price of our shares could decline; the impact of the COVID-19 pandemic on elective surgeries, our manufacturing and supply chain, global and United States, or U.S., economic conditions; and our business, including our revenues, financial condition and results of operations; the success of our sales and manufacturing efforts in support of the commercialization of EXPAREL® (bupivacaine liposome injectable suspension), iovera°® and ZILRETTA® (triamcinolone acetonide extended-release injectable suspension) the rate and degree of market acceptance of EXPAREL, ZILRETTA and iovera°; the size and growth of the potential markets for EXPAREL, ZILRETTA and iovera° and our ability to serve those markets; our plans to expand the use of EXPAREL, ZILRETTA and iovera° to additional indications and opportunities, and the timing and success of any related clinical trials for EXPAREL, ZILRETTA and iovera°; the commercial success of EXPAREL, ZILRETTA and iovera°; the related timing and success of United States Food and Drug Administration, or FDA, supplemental New Drug Applications, or sNDAs, and premarket notification 510(k)s; the related timing and success of European Medicines Agency, or EMA, Marketing Authorization Applications, or MAA; our plans to evaluate, develop and pursue additional product candidates utilizing our proprietary multivesicular liposome, or pMVL, drug delivery technology; the approval of the commercialization of our products in other jurisdictions; clinical trials in support of an existing or potential pMVL-based product; our commercialization and marketing capabilities and our ability to successfully construct an additional EXPAREL manufacturing suite in San Diego, California; the outcome of any litigation; the ability to successfully integrate Flexion or any future acquisitions into our existing business; the recoverability of our deferred tax assets; assumptions associated with contingent consideration payments; and factors discussed in Part I-Item 1A. *Risk Factors*. In addition, the forward-looking statements included in this Annual Report represent our views as of the date of this press release. Important factors could cause our actual results to differ materially from those indicated or implied by forward-looking statements, and as such we anticipate that subsequent events and developments will cause our views to change. Except as required by applicable law, we undertake no intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, and readers should not rely on the forward-looking statements as representing our views as of any date subsequent to the date of the filing of this Annual Report.

These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from those expressed or implied by these statements. These factors include the matters discussed and referenced in Part I-Item 1A. *Risk Factors*.

PART I

Item 1. Business

References

Pacira BioSciences, Inc., a Delaware corporation, is the holding company for our California operating subsidiary named Pacira Pharmaceuticals, Inc. In March 2007, we acquired Pacira Pharmaceuticals, Inc. from SkyePharma Holdings, Inc. (now a subsidiary of Vectura Group plc), or Skyepharma (referred to herein as the "Skyepharma Acquisition"). In April 2019, we acquired MyoScience, a privately held medical technology company (referred to herein as the "MyoScience Acquisition") and in November 2021, we acquired Flexion Therapeutics, Inc., a publicly traded biopharmaceutical company (referred to herein as the "Flexion Acquisition"). Unless the context requires otherwise, references to "Pacira," "we," the "Company," "us" and "our" in this Annual Report refers to Pacira BioSciences, Inc., a Delaware corporation, and its subsidiaries.

Corporate Information

We were incorporated in Delaware under the name Blue Acquisition Corp. in December 2006 and changed our name to Pacira, Inc. in June 2007. In October 2010, we changed our name to Pacira Pharmaceuticals, Inc. and in April 2019, we changed our name to Pacira BioSciences, Inc. Our principal executive offices are located in Tampa, Florida.

Trademarks and Service Marks

Pacira®, EXPAREL®, ZILRETTA®, iovera°®, the Pacira logo and other trademarks or service marks of Pacira appearing in this Annual Report are the property of Pacira, and when first used in each part of this report, include the ® symbol.

This Annual Report contains additional trade names, trademarks and service marks of other companies, which may or may not appear with the ® or ™ symbol. The absence of these symbols does not in any way imply that the respective owner(s) will not assert their rights to such marks to the fullest extent under applicable law. Our use of trademarks or trade names of other companies should not suggest any endorsement, sponsorship or other relationship with or by such companies.

Overview

We are the industry leader in our commitment to non-opioid pain management and providing a non-opioid option to as many patients as possible to redefine the role of opioids as a rescue therapy only. We are advancing a pipeline of unique, safe, best-in-class products across a variety of therapeutic areas that include acute postsurgical pain; acute and chronic osteoarthritis, or OA, pain of the knee; low back and other areas; spasticity and stellate ganglion block of the sympathetic nerves. We have three commercialized non-opioid treatments: EXPAREL® (bupivacaine liposome injectable suspension), a long-acting, local analgesic currently approved for postsurgical pain management; ZILRETTA® (triamcinolone acetonide extended-release injectable suspension), an extended-release, intra-articular, corticosteroid injection indicated for the management of OA knee pain; and iovera°®, a novel, handheld device for delivering immediate, long-acting, drug-free pain control using precise, controlled doses of cold temperature to a targeted nerve.

Flexion Acquisition

On November 19, 2021, we completed the Flexion Acquisition pursuant to an Agreement and Plan of Merger (the "Merger Agreement"), dated as of October 11, 2021, by and among us, Oyster Acquisition Company Inc., a Delaware corporation and wholly owned subsidiary of Pacira ("Purchaser"), and Flexion Therapeutics, Inc., a Delaware corporation ("Flexion"). Following the completion of a successful tender offer for the shares of Flexion's common stock, and pursuant to the terms of the Merger Agreement and in accordance with Section 251(h) of the General Corporation Law of the State of Delaware, Purchaser merged with and into Flexion with Flexion surviving as a wholly owned subsidiary of Pacira. We changed the name of Flexion to Pacira Therapeutics, Inc. after completing the merger. As part of the Flexion Acquisition, we acquired ZILRETTA, the first and only extended-release, intra-articular, or IA (meaning in the joint), injection indicated for the management of OA knee pain. ZILRETTA is a non-opioid therapy that employs a proprietary microsphere technology to provide pain relief. The addition of ZILRETTA to our innovative non-opioid product portfolio directly aligns with our mission to provide an opioid alternative to as many patients as possible and address medical needs along the neural pain pathway.

The total consideration for the Acquisition was approximately $578.8 million consisting of (i) $448.5 million of cash paid to Flexion shareholders and to settle restricted stock units and certain stock options; (ii) an $85.1 million cash payment of Flexion debt not to be assumed by us and (iii) $45.2 million of estimated fair value of contingent consideration related to contingent value rights that were issued to Flexion shareholders and certain equity award holders in conjunction with the

Flexion Acquisition. The consideration is subject to adjustments based on the estimated fair value of the potential milestone payments. We funded the cash portion of the purchase price with cash on hand. For more information, see Note 5, *Acquisitions*, to our consolidated financial statements included herein.

Strategy

To achieve our goal of global leadership in non-opioid pain management and regenerative health solutions, we are advancing a three-pronged strategy:

- *Expanding the use of our opioid-free commercial assets.* The COVID pandemic and opioid crises have intensified the need for opioid alternatives. In the U.S., EXPAREL is the only opioid-free, long-acting local and regional analgesic approved for infiltration, field blocks and interscalene brachial plexus nerve block to produce local or regional postsurgical analgesia. EXPAREL is also approved for infiltration in pediatric patients aged six years and older in the U.S. In Europe, EXPAREL is approved as a brachial plexus block or femoral nerve block for treatment of post-operative pain in adults, and as a field block for treatment of somatic post-operative pain from small- to medium-sized surgical wounds in adults. Anesthesia-driven postsurgical management with long-acting field and nerve blocks utilizing EXPAREL are enabling the migration of complex, painful surgeries to outpatient sites of care. ZILRETTA is the first and only extended-release, intra-articular therapy that can provide major relief for OA knee pain for three months and has the potential to become an alternative to hyaluronic acid, or HA, and platelet rich plasma, or PRP, injections or other early intervention treatments. With the iovera° system, healthcare providers can replace narcotics and radiofrequency ablation with an innovative drug-free nerve block. We believe the iovera° system is also highly complementary to ZILRETTA. In addition to our current commercial opportunities, we are advancing label expansion activities. For EXPAREL, we are advancing two Phase 3 studies in lower extremity nerve block procedures, as well as a development program for pediatric patients under six years of age. For ZILRETTA, we plan to initiate a Phase 3 study in shoulder OA and we are defining label expansion studies to include safety superiority in patients with Type 2 diabetes and repeat dosing for OA knee pain. For iovera°, we are developing new iovera° Smart Tips for chronic lower back pain and spine procedures. We are also advancing plans to develop iovera° as a treatment for spasticity.

- *Advancing our clinical-stage pipeline within multiple areas of unmet need.* We are advancing our pipeline of clinical-stage assets that utilize our proprietary multivesicular liposome (pMVL) technology. The pMVL carrier matrix consists of microscopic, spherical, lipid-based particles composed of a honeycomb of numerous, non-concentric, internal aqueous chambers containing the encapsulated active agent. Each chamber is separated from adjacent chambers by lipid membranes. Following injection, the pMVL particles release the active agent over an extended period as the lipid membranes erode or reorganize. We are preparing to launch a Phase 2 study of Dexamethosone-pMVL for low back pain (“PCRX-401”), a Phase 2 study of high-dose bupivacaine-pMVL for five or more days of pain relief (“PCRX-501”), and a Phase 2 study of low-dose bupivacaine-pMVL for epidural analgesia.

- *Accessing complementary innovative assets using a combination of strategic investment, in-licensing, or acquisition.* We believe EXPAREL, ZILRETTA, iovera° and our pMVL drug delivery technology offer a strong foundation to address the opioid epidemic. Building on these proprietary assets, we have also made investments in the musculoskeletal and chronic pain spaces. We plan to continue to advance these two key areas with a focus on the knee and spine continuums of care and chronic pain. We are using a combination of strategic investments to support promising early stage platforms, as well as in-licensing or acquisition transactions to build-out a pipeline of innovation to improve patients’ journeys along the neural pain pathway.

The Opioid Epidemic

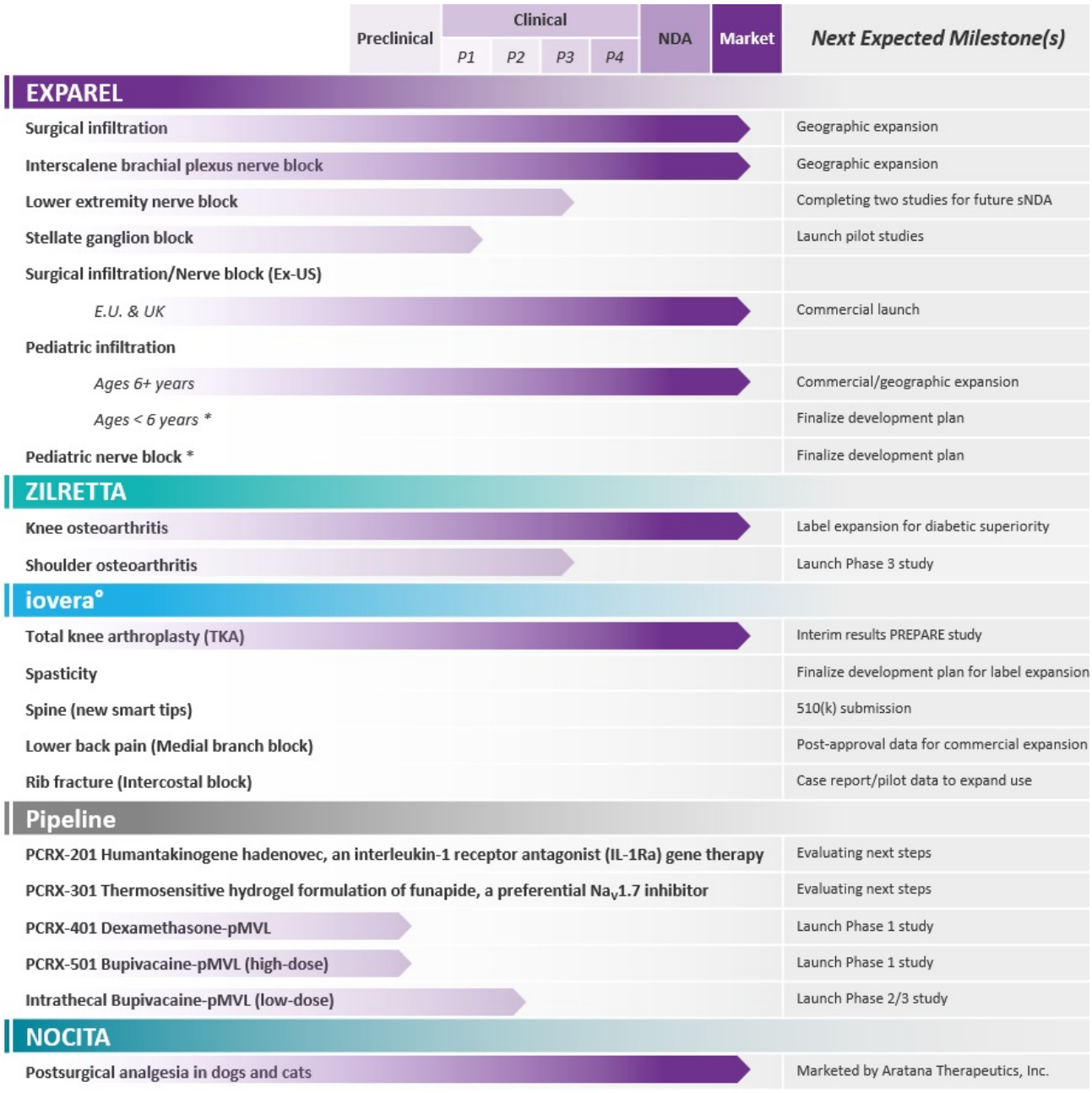
Opioid addiction in the U.S. has reached epidemic proportions, with the U.S. Centers for Disease Control and Prevention, or CDC, reporting that overdose deaths rose by 29 percent to an unprecedented amount of more than 100,000 in the U.S. in the 12-months ending April 2021. This represents a worsening of the drug overdose epidemic in the U.S. and is the largest number of drug overdoses for a 12-month period ever recorded. The recent increase in drug overdose mortality began in 2019 and continued into 2020, prior to the declaration of the COVID-19 National Emergency in the U.S. The increases in drug overdose deaths appear to have accelerated during the COVID-19 pandemic. Synthetic opioids are the primary driver of the increases in overdose deaths, with deaths from synthetic opioids and psychostimulants also increasing in the 12-months ending April 2021.

In 2018, new research showed that patients received nearly 100 to 200 opioid pills to help manage pain from four common procedures ranging from rotator cuff repair and hip replacement to knee replacement and sleeve gastrectomy. Further, one-quarter of orthopedic surgery patients were prescribed a daily dose of opioids equal to 90 milligrams of morphine or more, which are doses so potent that the CDC says they put patients at high risk for overdose. A 2017 report shows that across the

seven orthopedic and soft tissue surgical procedures examined, patients were prescribed an average of 82 opioid pills each to help manage postsurgical pain. The research also indicates that close to nine percent of surgical patients became newly persistent users in 2017, continuing to take these opioids at least three to six months after their procedure. Among patients having knee replacement surgery or a colectomy, newly persistent opioid users climbed as high as 15 percent and 17 percent, respectively. Further, women were 40 percent more likely to become persistent opioid users than men; and among persistent users, females were prescribed 15 percent more opioids than their male counterparts. These findings come from the report, *United States for Non-Dependence: An Analysis of the Impact of Opioid Overprescribing in America*, based on an analysis of 2016 adjudicated medical and pharmacy claims data conducted by QuintilesIMS.

Product Portfolio and Product Candidate Pipeline

Our current product portfolio and product candidate pipeline, along with anticipated milestones over the next 12 to 18 months, are summarized in the table below:



* Pediatric FDA action date of March 22, 2021 was for infiltration in patients aged 6 to 17 years old. Study designs have not been finalized for pediatric populations in infiltration or nerve block in patients aged 0 to less than 6 years old.

- TAP block is a transversus abdominis plane field block

- NOCITA® is a registered trademark of Aratana Therapeutics, Inc., a wholly owned subsidiary of Elanco Animal Health, Inc.

Our Commercial Products

EXPAREL (bupivacaine liposome injectable suspension)

EXPAREL was approved by the FDA in October 2011 and was commercially launched in April 2012. In the U.S., EXPAREL is currently indicated in patients six years of age and older for single-dose infiltration to produce postsurgical local analgesia, and in adults as an interscalene brachial plexus nerve block to produce postsurgical regional analgesia. Safety and efficacy have not been established in other nerve blocks. In November 2020, the European Commission, or EC, granted marketing authorization for EXPAREL as a brachial plexus block or femoral nerve block for treatment of post-operative pain in adults, and as a field block for treatment of somatic post-operative pain from small- to medium-sized surgical wounds in adults. We launched EXPAREL in the United Kingdom, or U.K., and select European Union, or E.U., countries in November 2021. Since its initial approval in 2011, more than 10 million patients have been treated with EXPAREL.

EXPAREL consists of bupivacaine, an amide-type local anesthetic, encapsulated in our pMVL drug delivery technology, which delivers bupivacaine over time for extended analgesia. We believe that EXPAREL addresses a significant medical need for a safe and effective long-acting non-opioid postsurgical analgesic and plays a significant role in opioid minimization strategies. EXPAREL is designed for recovery with minimal opioid use by (i) delivering targeted local analgesia at the surgical site; (ii) reliably releasing bupivacaine over time for prolonged analgesia; (iii) eliminating the need for catheters and pumps that may hinder recovery; and (iv) providing long-lasting pain control while reducing the need for opioids.

Our net product sales of EXPAREL in 2021 were $506.5 million. For the years ended December 31, 2021, 2020 and 2019, net product sales of EXPAREL accounted for 94%, 96% and 98% of our total revenues, respectively.

ZILRETTA (triamcinolone acetonide extended-release injectable suspension)

ZILRETTA was approved by the FDA in October 2017 and launched in the U.S. shortly thereafter. We market ZILRETTA through our ZILRETTA and iovera° sales force of approximately 50 Treatment Solutions Mangers who are providing clinicians with two unique OA treatment options to individualize patient care. ZILRETTA is the first and only extended-release, intra-articular therapy for patients confronting OA knee pain. ZILRETTA employs a proprietary microsphere technology combining triamcinolone acetonide, or TA, a commonly administered, immediate-release corticosteroid, with a poly lactic-co-glycolic acid, or PLGA, matrix to provide extended pain relief. PLGA is a proven extended-release delivery vehicle that is metabolized to carbon dioxide and water as it releases drug in the IA space and is used in other approved drug products and surgical devices. The ZILRETTA microspheres slowly and continuously release triamcinolone acetonide into the knee to provide significant pain relief for 12 weeks, with some people experiencing pain relief through 16 weeks.

We added ZILRETTA to our commercial offering with the completion of the Flexion Acquisition in November 2021. ZILRETTA net product sales were $102.7 million for the year ended December 31, 2021. The vast majority of the 2021 ZILRETTA sales occurred prior to the completion of the Flexion Acquisition and prior to our ownership of Flexion. We recognized ZILRETTA net product sales of $12.7 million during the post-closing period of November 19, 2021 to December 31, 2021.

The iovera° system

The iovera° system is an FDA-approved, non-opioid handheld cryoanalgesia device used to produce precise, controlled doses of cold temperature only to targeted nerves. It has been FDA 510(k) cleared for use in pain applications since March 2014. We believe the iovera° system is highly complementary to EXPAREL and ZILRETTA as a non-opioid therapy that alleviates pain using a non-pharmacological nerve block to disrupt pain signals being transmitted to the brain from the site of injury or surgery. For the year ended December 31, 2021, our net product sales of iovera° were $16.2 million.

EXPAREL Clinical Benefits

We believe EXPAREL can replace the use of bupivacaine delivered via elastomeric pumps as the foundation of a multimodal regimen for long-acting postsurgical pain management. Based on our clinical data, EXPAREL:

- provides long-lasting local or regional analgesia;
- is a ready-to-use formulation;
- expands easily with saline or lactated Ringer’s solution to reach a desired volume;

- leverages existing interscalene brachial plexus nerve block, field block and infiltration administration techniques; and
- facilitates treatment of a variety of surgical sites.

We believe EXPAREL is a key component of long-acting postsurgical pain management regimens that reduce the need for opioids. Based on the clinical data from our Phase 3 and Phase 4 clinical studies as well as data from retrospective health outcomes studies, EXPAREL significantly reduces opioid usage while improving postsurgical pain management.

In our Phase 3 hemorrhoidectomy trial, EXPAREL:

- delayed the median time to rescue analgesic use (opioids) to 15 hours for patients treated with EXPAREL versus one hour for patients treated with placebo;
- significantly increased the percentage of patients requiring no opioid rescue medication through 72 hours post-surgery to 28%, compared to 10% for placebo;
- resulted in 45% less opioid usage through 72 hours post-surgery compared to placebo; and
- increased the percentage of patients who were pain free at 24 hours post-surgery compared to placebo.

In our Phase 3 trial as an interscalene brachial plexus nerve block for upper extremity surgeries, EXPAREL:

- decreased total opioid consumption by 78% ($p<0.0001$) from zero to 48 hours after surgery;
- reduced pain scores by 46% versus placebo ($p<0.0001$); and
- allowed 13% of patients who received EXPAREL to remain opioid-free for 48 hours after surgery ($p<0.01$) compared to one opioid-free patient in the placebo arm.

EXPAREL can improve patient satisfaction and outcomes. We believe EXPAREL:

- provides effective pain control without the need for expensive and difficult-to-use delivery technologies that extend the duration of action for bupivacaine, such as elastomeric pumps, or opioids administered through patient-controlled analgesia, or PCA, when used as part of a multimodal postsurgical pain regimen;
- reduces the need for patients to be constrained by elastomeric pumps and PCA systems, which are barriers to earlier ambulation and may introduce catheter-related issues, including infection; and
- promotes maintenance of early postsurgical pain management, which may reduce the time spent in the intensive care unit.

Key EXPAREL Markets

EXPAREL-based enhanced recovery after surgery, or ERAS, protocols are becoming a cornerstone of opioid-sparing postsurgical pain management and enabling the shifting of many complex, painful orthopedic procedures to the 23-hour stay environment.

Orthopedics

EXPAREL is used across multiple orthopedic procedures, including joint reconstruction, shoulder, spine, extremity procedures, and hip fractures.

Total joint arthroplasties are expected to grow rapidly in the coming years with a significant migration of these procedures from the inpatient hospital setting to outpatient sites of care. EXPAREL-based regional analgesia as part of multimodal pain management protocols in enhanced ERAS pathways is supporting this surgical migration. The clinical and economic benefits of EXPAREL in total joint arthroplasty procedures have been demonstrated in clinical studies with EXPAREL use associated with significant reductions in opioid consumption, well-controlled pain management, shorter recovery time, same-day discharge to home and high patient satisfaction.

EXPAREL is being adopted in an increasing number of spine surgeries as a key component of a multimodal pain management solution enabling rapid recovery after surgery and a reduced reliance on opioids, which have been the mainstay in postsurgical pain control in the spine area for decades. Two important patient groups are driving the spine market: first, pediatric cases, like adolescent scoliosis patients, who are undergoing highly invasive surgeries and who until very recently only had opioids available to treat their pain, and second, adult degenerative patients who are often coming into surgery opioid-tolerant and who may have already had multiple back surgeries. Managing postsurgical pain in these adult degenerative patients

can be challenging due to their established opioid tolerance, but with EXPAREL, healthcare providers can control their pain with a non-opioid approach, and when feasible based on surgical intervention and patient characteristics, move many historical inpatient procedures to the 23-hour stay environment.

EXPAREL administered as a brachial plexus nerve block is a key and growing part of our business. An EXPAREL brachial plexus block provides pain coverage for the upper quadrant for use in rotator cuff, shoulder arthroplasty, elbow, wrist, and hand procedures. Like other regional field blocks, our anesthesiologist customers see the strong advantages of using brachial plexus blocks as a vehicle for shifting procedures to the outpatient setting by replacing antiquated pumps and catheters, which often become dislodged and prevent a procedure from taking place in a 23-hour site of care. Additionally, EXPAREL reimbursement is consistently improving as payers and self-insured employers continue to drive the shift from inpatient to outpatient care for a variety of surgeries.

Abdominal and Colorectal

A variety of truncal blocks have emerged for use in abdominal and colorectal procedures. Transversus abdominis plane, or TAP, and erector spine plane blocks represent a significant market where EXPAREL is providing long-acting pain control in the abdominal region and supporting the migration of these procedures to the 23-hour setting. We expect the expanding use of EXPAREL field blocks as the foundation of enhanced recovery protocols across various abdominal and colorectal procedures to continue to be a significant growth driver.

Women's Health

There is a significant and growing demand among women for managing pain with non-opioid options. Opioid addiction in women is growing at an alarming rate and studies have shown that women are 40% more likely than men to become newly persistent users of opioids following surgery. Women's Health continues to be an important source of growth as anesthesia-driven EXPAREL-based TAP and pectoralis blocks take hold as institutional protocol for C-section, abdominoplasty, gynecologic oncology, mastectomy and breast reconstruction procedures.

Cardiothoracic

Cardiothoracic surgery is considered one of the most painful types of surgical procedures for both open and minimally invasive procedures. As a result, opioids are widely used, but are often inadequate. Poorly controlled postoperative pain leads to the development of chronic persistent pain in as many as 40% of these patients and persistent opioid use after surgery is seen in over 10% of such patients. Regional anesthesia approaches have been evolving, with EXPAREL replacing thoracic epidurals as an alternative method of producing long-lasting analgesia.

Pediatrics

In March 2021, the FDA approved our sNDA to expand the EXPAREL label to include use in patients six years of age and older for single-dose infiltration to produce postsurgical local analgesia. EXPAREL is the first and only FDA-approved long-acting local analgesic for the pediatric population as young as age six.

Opioids, short-acting local anesthetics and catheter-based devices have been the historical mainstay in pediatric postsurgical pain management despite safety implications and limited studies in children. The risks and complications of adult-based pain management approaches may be magnified in children with 50 percent of children reporting moderate to severe pain in the hospital after surgery and 20 percent of children reporting chronic pain 12 months after surgery.

EXPAREL is redefining the paradigm of care for postsurgical pain management in children as the market's only clinically proven safe alternative for long-acting, non-opioid postsurgical pain control in children aged 6 and over. There are approximately one million pediatric procedures per year in the U.S. We are working with prominent thought leaders who are providing a rapid transfer of best-practice for establishing EXPAREL-based protocols as the new standard of care.

Third Molar (Wisdom Tooth) Procedures

Third molar (wisdom tooth) extractions are among the most common dental procedures in the U.S. and are performed in up to 5 million patients every year. Oral surgery, including third molar extraction, is associated with a defined period of pain and discomfort that traditionally leads to prescriptions for opioids. A large retrospective review of the Medicaid database found that of 2.8 million patients who underwent surgical tooth extraction, 1.2 million, or roughly 42 percent, filled a prescription for opioids within seven days after surgery, with a median of 120 morphine milligram equivalents dispensed per patient. A study of

the effect of EXPAREL on postoperative opioid prescribing after third molar extraction showed that patients who received EXPAREL were prescribed significantly fewer opioids, including refills, compared to those who did not receive EXPAREL. The study, *A Retrospective Cross-Sectional Study of the Effect of Liposomal Bupivacaine on Postoperative Opioid Prescribing After Third Molar Extraction*, was published in The Journal of Oral and Maxillofacial Surgery in July 2021. In this retrospective analysis, researchers reviewed data from 600 patients who underwent third molar extractions between 2012 and 2018. De-identified data from 300 patients who received EXPAREL were compared to data from 300 patients who did not receive an infiltration of EXPAREL. Data from two outpatient oral surgery centers were included in this analysis. Patients in the EXPAREL treatment group received:

- 59 percent fewer opioids, including refills, compared to patients in the non-EXPAREL group ($p<0.0001$)
- Fewer additional opioid prescriptions compared to the non-EXPAREL group (3.3% of patients required a refill vs. 7.7% of patients, respectively)

In September 2017, we announced a collaboration with Aetna, one of the nation's leading diversified health care benefits companies, with the support of the American Association of Oral and Maxillofacial Surgeons (AAOMS). This national program aims to reduce the number of opioid tablets dispensed to patients undergoing impacted third molar extractions by at least 50 percent through the utilization of EXPAREL to provide prolonged non-opioid postsurgical pain control. Aetna now includes the cost of EXPAREL as a covered expense for impacted third molar extractions performed by surgeons who have completed training on use of the product.

ZILRETTA Clinical Benefits

ZILRETTA combines a commonly administered steroid, TA, with PLGA, delivering a 32 milligram dose of TA to provide extended therapeutic concentrations in the joint and persistent analgesic effect.

Based on the strength of its pivotal and other clinical trials, we believe that ZILRETTA represents an important treatment option for the millions of patients in the U.S. in need of safe and effective extended relief from OA knee pain. The pivotal Phase 3 trial, on which the approval of ZILRETTA was based, showed that ZILRETTA significantly reduced OA knee pain for 12 weeks, with some people experiencing pain relief through Week 16. Both the magnitude and duration of pain relief provided by ZILRETTA in clinical trials were clinically meaningful with the magnitude of pain relief amongst the largest seen to date in OA clinical trials. The overall frequency of treatment-related adverse events in these trials was similar to those observed with placebo, and no drug-related serious adverse events were reported. We believe that ZILRETTA holds the potential to become the corticosteroid of choice given its safety and efficacy profile, and the fact that it is the first and only extended-release corticosteroid on the market. In September 2021, the American Association of Orthopaedic Surgeons, or AAOS, updated its evidence-based clinical practice guidelines, finding ZILRETTA can improve patient outcomes over traditional immediate-release corticosteroids.

iovera° Clinical Benefits

There is a growing body of clinical data demonstrating success with iovera° treatment for OA of the knee. Surgical intervention is typically a last resort for patients suffering from OA of the knee. In one study, the majority of the patients suffering from OA of the knee experienced pain relief up to 150 days after being treated with iovera°.

Preliminary findings demonstrated reductions in opioids, including:

- The daily morphine equivalent consumption in the per protocol group analysis was significantly lower at 72 hours ($p<0.05$), 6 weeks ($p<0.05$) and 12 weeks ($p<0.05$).
- Patients who were administered iovera° were far less likely to take opioids six weeks after surgery. The number of patients taking opioids six weeks after TKA in the control group was three times the number of patients taking opioids in the cryoanalgesia group (14% vs. 44%, $p<0.01$).
- Patients in the iovera° group demonstrated a statistically significant reduction in pain scores from their baseline pain scores at 72 hours ($p<0.05$) and at 12 weeks ($p<0.05$).

We believe these data validate iovera° as a clinically meaningful non-opioid alternative for patients undergoing TKA, and that iovera° offers the opportunity to provide patients with non-opioid pain control well in advance of any necessary surgical intervention through a number of key product attributes:

- iovera° is safe and effective with immediate pain relief that can last for months as the nerve regenerates over time;
- iovera° is repeatable;

- The iovera° technology does not risk damage to the surrounding tissue;
- iovera° is a convenient handheld device with a single-use procedure-specific Smart Tip; and
- iovera° can be delivered precisely using ultrasound guidance or an anatomical landmark.

In September 2021, the AAOS updated its evidence-based clinical practice guidelines, reporting that denervation therapy—including cryoneurolysis—may reduce knee pain and improve function in patients with symptomatic OA of the knee.

The Osteoarthritis Market

OA is the most common form of arthritis. It is also called degenerative joint disease and occurs most frequently in the hands, hips and knees. With OA, the cartilage within a joint begins to break down and the underlying bone begins to change. These changes usually develop slowly and get worse over time. OA can cause pain, stiffness and swelling. In some cases it also causes reduced function and disability; some people are no longer able to do daily tasks or work. According to the CDC, OA affects over 32.5 million adults in the U.S.

The lifetime risk of developing symptomatic knee OA is 45 percent. The prevalence of symptomatic knee OA increases with each decade of life, with the annual incidence of knee OA being highest between age 55 and 64 years old. There are 14 million individuals in the U.S. who have symptomatic knee OA, and nearly two million are under the age of 45. Surgical intervention is typically a last resort for patients suffering from OA of the knee.

With the addition of ZILRETTA to our product offering, we can now offer clinicians the flexibility to individualize OA knee pain treatment with either ZILRETTA or a drug-free nerve block with iovera° based on patient factors and preference, physician training, site of care and reimbursement considerations.

Label and Global Expansion Activities

EXPAREL

- *Pediatrics.* We are working with the FDA to finalize a regulatory pathway to expand the EXPAREL label for patients under six years of age, as well as the administration of EXPAREL as a nerve block in the pediatric setting. We are working with both the FDA and the European Medicines Agency, or EMA, to harmonize our pediatric clinical studies as much as possible between the two regions.
- *Lower extremity nerve block.* We are advancing two Phase 3 studies of EXPAREL as a nerve block in lower extremity surgeries. One is a popliteal sciatic nerve block for bunionectomy and the second is an adductor canal block for TKA. We believe positive results from these studies will form the basis for an sNDA submission seeking label expansion to include lower extremity nerve blocks. We believe the addition of this indication is significant as anesthesia-driven regional approaches using nerve and field blocks continue to expand as institutional protocols.
- *Stellate ganglion block.* We believe a long-acting stellate ganglion block with EXPAREL has the potential to be an effective approach for managing ventricular tachycardia (commonly referred to as “electrical storm”), a life-threatening clinical condition characterized by the recurrence of hemodynamically unstable ventricular tachycardia and/or ventricular fibrillation. We are planning pilot studies that will separately evaluate long-acting stellate ganglion blocks with EXPAREL and iovera° for managing electrical storm.
- *Global expansion.* We have prioritized the European and Latin American markets for global expansion. In Europe, we were granted marketing authorization by the EC in November 2020 for EXPAREL as a brachial plexus block or femoral nerve block for treatment of post-operating pain in adults and as a field block for treatment of somatic post-operative pain from small- to medium-sized surgical wounds in adults. We launched EXPAREL in the U.K. and targeted E.U. countries in the fourth quarter of 2021. In Latin America, we have a distribution agreement with Eurofarma Laboratories S.A., or Eurofarma, for the development and commercialization of EXPAREL. Eurofarma has the exclusive right to market and distribute EXPAREL in 19 countries in Latin America, including Argentina, Brazil, Colombia and Mexico. In addition, Eurofarma will be responsible for regulatory filings for EXPAREL in these countries. We will receive royalties and are also eligible to receive regulatory- and commercial-based milestone payments that are triggered by the achievement of certain events.

ZILRETTA

We believe ZILRETTA's extended-release profile may also provide effective treatment for OA pain of the shoulder, and we intend to initiate a Phase 3 trial investigating ZILRETTA in shoulder OA in 2022. In addition, we are planning a comparative safety study of ZILRETTA in patients with Type 2 diabetes and are evaluating a repeat dosing study.

The iovera° System

We recently launched a next-generation iovera° handheld device, which we believe is more efficient, easier to use and more durable. We are also developing new iovera° Smart Tips for certain procedures and are developing a specific tip for a medial branch block for treating chronic low-back pain, as well as spine procedures. We are also seeking a label expansion for the treatment of spasticity, which we believe is a significant long-term opportunity for iovera°. Additionally, we expect to begin selling iovera° in the E.U. through a contracted sales force in the first quarter of 2022.

Clinical Development Programs

PCRX-201 and PCRX-301 (Formerly FX-201 and FX-301)

PCRX-201 and PCRX-301 were added to our portfolio as part of the Flexion Acquisition. PCRX-201 is a gene therapy product candidate designed to provide "on demand" production of an anti-inflammatory protein, interleukin-1 receptor antagonist (IL-1Ra) whenever inflammation is detected in the joint. PCRX-301, is a locally administered $Na_V1.7$ inhibitor, known as funapide, formulated for extended release in a thermosensitive hydrogel. The initial development of PCRX-301 was intended to support administration as a peripheral analgesic lower extremity nerve block for management of post-operative pain.

pMVL-Based Clinical Programs

Given the proven safety, flexibility and customizability of our pMVL drug delivery technology platform for acute, sub-acute and chronic pain applications, we have several pMVL-based products in clinical development. Following data readouts from preclinical and feasibility studies for these candidates, we have prioritized three programs for clinical development: (i) PCRX-401, a dexamethasone-pMVL for low back pain; (ii) PCRX-501, a high-dose bupivacaine-pMVL for extended pain relief and (iii) a low-dose bupivacaine-pMVL for intrathecal analgesia. We are planning to initiate a Phase 2 study for low-dose bupivacaine-pMVL for intrathecal analgesia in late 2022.

External Innovation

In parallel to our internal clinical programs, our business development team continues to pursue innovative acquisition targets that are complementary to EXPAREL, ZILRETTA and iovera° and are of great interest to the surgical and anesthesia audiences we are already calling on today. We are using a combination of strategic investments, in-licensing and acquisition transactions to buildout a pipeline of innovation to improve patients' journeys along the neural pain pathway. Select strategic investments we have made to support promising early stage platforms are summarized below.

Company	Development Stage	Description of Platform Technology	Potential Therapeutic Areas
Coda Therapeutics, Inc.	Preclinical	Chemogenetic platform to reverse the aberrant neuronal activity underlying neurological disorders using optimized adeno-associated virus (AAV) vectors	Neuropathic pain
Genascence Corporation	Phase 1	Adeno-Associated Vector (AAV)-based gene therapy targeting Interleukin 1 Receptor Antagonist (IL-1Ra)	Knee OA
GeneQuine Biotherapeutics GmbH	Preclinical	Next-generation gene transfer vehicles that enter joint cells to confer multi-year gene expression	OA and other musculoskeletal disorders
Spine BioPharma, LLC	Phase 3-ready	Remedisc 7-amino acid chain peptide that binds to and induces down regulation of transforming growth factor, beta 1 (TGFβ1)	Degenerative disc disease

Sales and Marketing

We have built our sales and marketing organization to commercialize our products. Our primary target audiences are healthcare practitioners who influence pain management decisions including anesthesiologists, surgeons, pharmacists and physician extenders (including physician assistants, nurse practitioners and registered nurses).

Our field team, consisting of sales representatives, account managers, scientific and medical affairs personnel and reimbursement and market access professionals, executes on a full range of activities to broaden the use of our non-opioid products for pain management, including:

- providing publications and abstracts showing clinical efficacy and safety, health outcomes and review articles;
- working in tandem with hospital staff, such as anesthesiologists, surgeons, heads of quality, pharmacists, executives and registered nurses, to provide access and resources for drug utilization or medication use evaluations and health outcomes studies, which provide retrospective and prospective analyses for our hospital customers using their own hospital data to demonstrate the true cost of opioid-based postsurgical pain control;
- working with Key Opinion Leaders (KOLs) and advisory boards to address topics of best practice techniques as well as guidelines and protocols for the use of our products, meeting the educational and training needs of our physician, surgeon, anesthesiologist, pharmacist and registered nurse customers
- undertaking education initiatives such as center of excellence programs; preceptorship programs; opioid-sparing and ERAS pain protocols and predictive models for enhanced patient care; interactive discussion forums; patient education platforms leveraging public relations, advocacy partnerships and public affairs efforts where appropriate; web-based training and virtual launch programs;
- collaborating with healthcare providers towards improving the knowledge and management of pain in surgical and OA patients with a focus on opioid risk and non-opioid alternatives and engaging our field-based medical teams in system-wide partnerships to address the national opioid epidemic, with a goal of studying alternative postsurgical pain management options that focus on optimization and opioid alternative strategies; and
- facilitating reimbursement and the shift of procedures to hospital outpatient and ambulatory surgical center, or ASC, sites of care.

Pacira Innovation and Training Center of Tampa

In October 2020, we opened the Pacira Innovation and Training center of Tampa (the “PITT”). We designed this facility to help advance clinician understanding of the latest local, regional and field block approaches for managing pain. The PITT provides an unparalleled training environment for healthcare providers working to reduce or eliminate patient exposure to opioids. The PITT supports a full range of educational events to advance clinician understanding of the latest local, regional, and field block approaches for managing pain and reducing or eliminating exposure to opioids. Our corporate headquarters are also located at the PITT.

The PITT consists of approximately 13,000 square-feet of fully adaptable space and is equipped with state-of-the-art technology and audio/visual capabilities and features several distinct training spaces including a simulation lab equipped with seven ultrasound scanning stations; a lecture hall featuring a 4½-foot tall by 24-foot wide liquid crystal display video wall to support live, virtual and even global presentations; and a green-screen broadcast studio designed to livestream content with single or multiple hosts.

In addition to our EXPAREL programs, we are hosting ongoing workshops to train new users on best practice techniques for iovera° administration at the PITT. Led by healthcare professionals, these labs include didactic lectures and hands-on trainings including live model nerve scanning and identification using ultrasound and peripheral nerve stimulation.

The PITT also serves as a venue for national anesthesia provider organizations to host their own workshops and training sessions.

We have started the process for opening a second innovation and training center that will be located in Houston, Texas.

DePuy Synthes Sales Inc.

In July 2020, we announced the conclusion of a co-promotion agreement with DePuy Synthes Sales, Inc., or DePuy Synthes, part of the Johnson & Johnson family of companies to market and promote the use of EXPAREL for orthopedic procedures in the U.S. market. The collaboration began in January 2017 and concluded in January 2021. During that time

DePuy Synthes field representatives collaborated with the Pacira field teams to support EXPAREL use and education in orthopedic surgical settings. In addition to partnering with DePuy Synthes in support of orthopedic surgical procedures, Pacira field representatives remained the overall EXPAREL account managers and commercial leads for soft tissue surgeons, anesthesiologists and ASCs. Through this collaboration we significantly expanded the use of EXPAREL and solidified its role in opioid-sparing protocols across a range of orthopedic procedures. Our decision to conclude the partnership was due to the evolution of orthopedic practice from an inpatient hospital experience to the ambulatory setting with anesthesia-driven regional approaches playing an increasingly essential role. This growing market is already served by our field-based teams.

Other Agreements

MyoScience Acquisition

In April 2019, we completed the MyoScience Acquisition. The consideration included an initial cash payment of $120.0 million, reduced by $1.0 million for post-closing purchase price adjustments and indemnification obligations incurred to date, plus contingent milestone payments up to an aggregate of $100.0 million of which $43.0 million is available at December 31, 2021. Upon the completion of the MyoScience Acquisition, we renamed MyoScience Pacira CryoTech, Inc. For more information on the MyoScience Acquisition, refer to Note 5, *Acquisitions*, to our consolidated financial statements included herein.

SkyePharma Holdings, Inc. (Now a Subsidiary of Vectura Group plc)

In connection with the stock purchase agreement related to the Skyepharma Acquisition, we agreed to certain earn-out and milestone payments. Milestones were based on net sales of DepoBupivacaine products collected, including EXPAREL, and certain other yet-to-be-developed products. The milestones were as follows:

- $10.0 million upon the first commercial sale in the U.S. (met April 2012);
- $4.0 million upon the first commercial sale in the U.K., France, Germany, Italy or Spain (met November 2021);
- $8.0 million when annual net sales collected reach $100.0 million (met September 2014);
- $8.0 million when annual net sales collected reach $250.0 million (met June 2016); and
- $32.0 million when annual net sales collected reach $500.0 million (met December 2021).

In the fourth quarter of 2021, we met both remaining milestones: $4.0 million upon the first commercial sale in the U.K., France, Germany, Italy or Spain which was paid in the fourth quarter of 2021; and $32.0 million when annual net sales collected reached $500.0 million, which was paid in the first quarter of 2022. See Note 9, *Goodwill and Intangible Assets*, to our consolidated financial statements included herein for further information related to the Skyepharma Acquisition.

Research Development Foundation

Pursuant to an agreement with the Research Development Foundation, or RDF, we were required to pay RDF a low single-digit royalty on the collection of revenues from certain products for as long as certain patents assigned to us under the agreement remain valid. RDF has the right to terminate the agreement for an uncured material breach by us, in connection with our bankruptcy or insolvency or if we directly or indirectly oppose or dispute the validity of the assigned patent rights.

Our U.S. Patent No. 11,033,495 issued on June 15, 2021. Thereafter, RDF asserted that the issuance of that patent extends our royalty obligations under the agreement until 2041. We disagreed and explained that the royalty period under the agreement was set to end on December 24, 2021 with the expiration of our U.S. Patent No. 9,585,838. Because of the disagreement over the interpretation of the agreement, in December 2021, we filed a declaratory judgment lawsuit in the U.S. District Court for the District of Nevada (21-cv-02241). The lawsuit seeks a declaration from the court that we owe no royalties to RDF with respect to our EXPAREL product after December 24, 2021. During the pendency of the lawsuit, we will continue to pay royalties to RDF under protest. We are unable to predict the outcome of this action at this time.

Aratana Therapeutics, Inc.

In December 2012, we entered into an Exclusive License, Development and Commercialization Agreement and related Supply Agreement with Aratana Therapeutics, Inc., a wholly owned subsidiary of Elanco Animal Health, Inc., or Aratana. Under the agreements, we granted Aratana an exclusive royalty-bearing license, including the limited right to grant sublicenses, for the development and commercialization of our bupivacaine liposome injectable suspension product for use in animals. In August 2016, the FDA's Center for Veterinary Medicine, or CVM, approved NOCITA® (bupivacaine liposome injectable suspension), as a local post-operative analgesia for cranial cruciate ligament surgery in dogs (NOCITA is a registered trademark of Aratana). In August 2018, the CVM expanded the NOCITA label to include its use as a peripheral nerve block to provide regional postoperative analgesia following onychectomy in cats. In June 2019, the CVM approved a 10mL vial size for NOCITA. Aratana began purchasing our bupivacaine liposome injectable suspension product in 2016.

We are eligible to receive up to $40.0 million upon the achievement of commercial milestones. Aratana is required to pay us a tiered double-digit royalty on certain net sales made in the U.S. If the product is approved by foreign regulatory agencies for sale outside of the U.S., Aratana will be required to pay us a tiered double-digit royalty on such net sales. Royalty rates will be reduced by a certain percentage upon the entry of a generic competitor for animal health indications into certain jurisdictions or if Aratana must pay royalties to third parties under certain circumstances.

Either party has the right to terminate the license agreement in connection with (i) an insolvency event involving the other party that is not discharged in a specified period of time; (ii) a material breach of the agreement by the other party that remains uncured for a specified cure period or (iii) the failure to achieve a minimum annual revenue as set forth in the agreement, all on specified notice. We may terminate the agreement in connection with (i) Aratana's failure to pay any amounts due under the agreement; (ii) Aratana's failure to achieve regulatory approval in a particular jurisdiction with respect to such jurisdiction or (iii) Aratana's failure to achieve its first commercial sale within a certain amount of time on a country by country basis after receiving regulatory approval, all on specified notice. Aratana may terminate the license agreement (i) upon the entry of a generic competitor for animal health indications on a country by country basis or (ii) at any time on a country by country basis except with respect to the U.S. and any country in the E.U., all on specified notice. The parties may also terminate the license agreement by mutual consent. The license agreement will terminate automatically if we terminate the supply agreement. In the event that the license agreement is terminated, all rights to the product (on a jurisdiction by jurisdiction basis) will be terminated and returned to us. Unless terminated earlier pursuant to its terms, the license agreement is effective until July 2033, after which Aratana has the option to extend the agreement for an additional five-year term, subject to certain requirements.

Eurofarma Laboratories S.A.

In June 2021, we entered into a distribution agreement with Eurofarma for the development and commercialization of EXPAREL in Latin America. Under the terms of the agreement, Eurofarma obtained the exclusive right to market and distribute EXPAREL in 19 countries in Latin America, including Argentina, Brazil, Colombia, and Mexico. In addition, Eurofarma is responsible for regulatory filings for EXPAREL in these countries. We will receive royalties based on Eurofarma's future commercialization of the product and are also eligible to receive milestone payments that are triggered by the achievement of certain regulatory and commercial events.

Verve Medical Products, Inc.

In July 2021, we entered into a licensing agreement with Verve Medical Products, Inc. for the distribution of iovera° in Canada. We began selling iovera° in Canada in the fourth quarter of 2021.

Hong Kong Pharma Tainuo Ltd.

In March 2020, Flexion entered into an exclusive license agreement with Hong Kong Pharma Tainuo Ltd., or HK Tainuo, and Jiangsu Tainuo Pharmaceutical Co. Ltd., or Jiangsu Tainuo, a subsidiary of China Shijiazhuang Pharmaceutical Co, Ltd., for the development and commercialization (other than manufacturing) of ZILRETTA in Greater China (consisting of mainland China, Hong Kong, Macau and Taiwan). Under the terms of the agreement, HK Tainuo made upfront payments to Flexion in 2020. We are eligible to receive up to $32.5 million in aggregate development, regulatory and commercial sales milestone payments. All payments received from HK Tainuo are subject to applicable Hong Kong withholding taxes. HK Tainuo is responsible for the clinical development, product registration and commercialization of ZILRETTA in Greater China and Jiangsu Tainuo serves as the guarantor of HK Tainuo's obligations and responsibilities under the agreement. We are solely responsible for the manufacture and supply of ZILRETTA to HK Tainuo for all clinical and commercial activities. The terms related to product manufacturing and supply, including pricing and minimum purchase requirements agreed to in the license

agreement, will be covered by a separate supply agreement. All amounts owed to us are nonrefundable and non-creditable once paid.

Significant Customers

We had three wholesalers each comprising 10 percent or more of our total revenue for the year ended December 31, 2021: Cardinal Health, Inc., McKesson Drug Company and AmerisourceBergen Health Corporation, which accounted for 31%, 28% and 26% of our total revenues, respectively. These wholesalers process orders for EXPAREL under a drop-ship program. EXPAREL is delivered directly to end-users without the wholesalers ever taking physical possession of the product. None of our customers of ZILRETTA or iovera° accounted for 10 percent or more of our total revenue for the year ended December 31, 2021.

Manufacturing and Research Facilities

Internal Facilities

We manufacture EXPAREL and iovera° handpieces at our facility in San Diego, California. We also have a mixed-use research and development, manufacturing and office facility which sits adjacent to our EXPAREL and iovera° manufacturing facility, and a warehouse located within five miles of these facilities. We refer to these three buildings as the Science Center Campus, and together they consist of approximately 195,000 square feet. Our manufacturing facilities are inspected regularly and approved by the FDA, EMA, Medicines and Healthcare Products Regulatory Agency, or MHRA, and the Environmental Protection Agency (EPA). Our iovera° facility in Fremont, California, consists of approximately 20,000 square feet of mixed-use manufacturing, research and development and office space.

We purchase raw materials and components from third-party suppliers to manufacture EXPAREL, ZILRETTA and iovera°. In most instances, alternative sources of supply are available, although switching to an alternative source would, in some instances, take time and could lead to delays in manufacturing our product candidates. While we have not experienced shortages of our raw materials in the past, such suppliers may not sell these raw materials to us at the times that we need them or on commercially reasonable terms and we do not have direct control over the availability of these raw materials from our suppliers.

All manufacturing of products, initial product release and stability testing are conducted by us and our manufacturing partners in accordance with Current Good Manufacturing Practices, or CGMP.

Our EXPAREL manufacturing facility at the Science Center Campus is an approximately 84,000 square foot structure located on a five-acre site. It was custom built as a pharmaceutical research and development and manufacturing facility. Activities in this facility include the manufacture of EXPAREL bulk product on dedicated production lines and its fill/finish into vials, microbiological and quality control testing, product storage, development of analytical methods and manufacturing of development products. We are expanding our EXPAREL manufacturing capacity at our Science Center Campus as we expect the demand for EXPAREL will increase.

Our 90,000 square-foot mixed-use research and development, manufacturing and office facility is located adjacent to our EXPAREL manufacturing facility and was completely renovated in 2020 to meet our specifications. This building houses our Science Center related research and development activities and general and administrative functions, as it includes both laboratories and the building infrastructure necessary to support the formulation, analytical testing, clinical and process development activities for manufacturing additional commercial product indications and new pipeline products. Our pilot plant suite for early stage clinical product production is located in this building and there is additional space for future expansion opportunities.

We also have an approximately 21,000 square foot warehouse that serves as the main CGMP warehouse for our San Diego operations, primarily being used for the storage of production materials. It contains ambient as well as cold temperature CGMP warehouse storage and also features a quality control clean room for sampling incoming materials.

Our Fremont, California facility has been leased since 2015. It is dedicated to the iovera° product line and consists of approximately 20,000 square feet of space for manufacturing, quality control, research and development and the warehousing of raw materials and finished goods. We have expanded our iovera° manufacturing capacity through a third party, Providien Device Assembly, LLC, or Providien, as explained below.

Distribution of our pMVL products, including EXPAREL, requires cold-chain distribution, whereby a product must be maintained between specified temperatures. We have validated processes for continuous monitoring of temperature from manufacturing through delivery to the end-user.

Co-Production Facilities

Thermo Fisher Scientific Pharma Services

In April 2014, we and Thermo Fisher entered into a Strategic Co-Production Agreement, Technical Transfer and Service Agreement and Manufacturing and Supply Agreement (the "EXPAREL Manufacturing and Supply Agreement") to collaborate in the manufacture of EXPAREL. Thermo Fisher undertook certain technical transfer activities and construction services needed to prepare Thermo Fisher's Swindon, England facility for the manufacture of EXPAREL in two dedicated manufacturing suites. We provided Thermo Fisher with the equipment necessary to manufacture EXPAREL and pay fees to Thermo Fisher based on Thermo Fisher's achievement of certain technical transfer and construction milestones. We also reimburse Thermo Fisher for certain nominal expenses and additional services. In February 2019, we announced that commercial production of EXPAREL was underway at the first Thermo Fisher suite. We developed a second dedicated suite that is expected to enable another doubling of EXPAREL manufacturing capacity. We began commercial production of EXPAREL out of that second suite in August 2021.

The initial term of the EXPAREL Manufacturing and Supply Agreement is 10 years from the date of FDA approval of the first manufacturing suite, which was received in May 2018. We pay fees to Thermo Fisher for their operation of the manufacturing suites and the amount of EXPAREL produced by Thermo Fisher. We also reimburse Thermo Fisher for purchases made on our behalf, certain nominal expenses and additional services. We may terminate this agreement upon one month's notice if a regulatory authority causes the withdrawal of EXPAREL from the U.S. or any other market that represents 80 percent of our overall sales, or at any time for convenience by providing between 18 and 36 months' notice (depending on the number of years after the FDA approval date). Either party may terminate the EXPAREL Manufacturing and Supply Agreement in the event of the breach or bankruptcy of the other party.

Prior to the Flexion Acquisition, in July 2015, Flexion and Thermo Fisher entered into a Manufacturing and Supply Agreement (the "ZILRETTA Manufacturing and Supply Agreement") and a Technical Transfer and Service Agreement related to the manufacture of ZILRETTA at the same Thermo Fisher site in Swindon, England where our EXPAREL suites are located. Thermo Fisher agreed to undertake certain transfer activities and construction services needed to prepare its facility for the commercial manufacture of ZILRETTA in dedicated manufacturing suites. Flexion provided Thermo Fisher with certain equipment and materials necessary to manufacture ZILRETTA. We make monthly payments to Thermo Fisher for such activities and reimburse Thermo Fisher for certain material, equipment and miscellaneous expenses and additional services.

The initial term of the ZILRETTA Manufacturing Agreement that we assumed as part of the Flexion Acquisition expires in October 2027. We pay a monthly base fee to Thermo Fisher for the operation of the manufacturing suites and a per product fee for each vial of ZILRETTA based upon a forecast of commercial demand. We also reimburse Thermo Fisher for purchases of materials and equipment made on our behalf, certain nominal expenses and additional services. The ZILRETTA Manufacturing Agreement will remain in full effect unless and until it expires or is terminated. Upon termination of the ZILRETTA Manufacturing Agreement (other than termination by us in the event that Thermo Fisher does not meet the construction and manufacturing milestones or for a breach by Thermo Fisher), we will be obligated to pay for the costs incurred by Thermo Fisher associated with the removal of our manufacturing equipment and for Thermo Fisher's termination costs up to a specified capped amount.

Providien Device Assembly

In January 2020, we and Providien entered into a Manufacturing and Supply Agreement (the "Providien Agreement") to collaborate in the manufacture of iovera° Smart Tips at Providien's Tijuana, Mexico facility. The initial term of the Providien Agreement is five years. We will pay fees based on the amount of iovera° Smart Tips delivered by Providien. The Providien Agreement may be terminated by either party upon one years' written notice without cause. We may terminate the Providien Agreement upon thirty days' written notice in the event that iovera° is withdrawn from the market or no longer sold by us. Either party may terminate the Providien Agreement in the event of the breach or bankruptcy of the other party.

Intellectual Property and Exclusivity

We seek to protect our products, our product candidates and our technologies through a combination of patents, trade secrets, proprietary know-how, regulatory exclusivity and contractual restrictions on disclosure. We note that the patents and

applications described below are only examples intended to highlight the variety of coverage provided by our existing and constantly developing portfolio.

Patents and Patent Applications

We seek to protect the proprietary position of our products and product candidates by, among other methods, filing U.S. and foreign patent applications related to our proprietary technology, inventions and improvements that are important to the development of our business. As of December 31, 2021, there are over 13 families of patents and patent applications relating to various aspects of the pMVL drug delivery technology and 25 families of patents and patent applications relating to various aspects of the technology used by iovera°. There is one family of patents and patent applications relating to various aspects of the technology used by ZILRETTA. Patents have been issued in numerous countries, with an emphasis on the North American, European and Japanese markets. These patents generally have a term of 20 years from the date of the non-provisional filing unless referring to an earlier filed application. Some of our expired U.S. patents had a term of 17 years from the grant date. Our issued patents expire at various dates in the future, as discussed below, with the last currently issued patent for the pMVL drug delivery technology expiring in 2041, the last currently issued patent for ZILRETTA expiring in 2031 and the last currently issued patent for the iovera° technology expiring in 2040.

Patents and Patent Applications for our pMVL and pMVL Products

A patent relating to product-by-process and process in connection with the production of multivesicular liposomes was issued on March 7, 2017. This patent is listed in the Orange Book for EXPAREL and includes a patent term adjustment that equates to an expiration date of December 24, 2021. Several Track One patent applications directed to various aspects of an improved EXPAREL manufacturing process were filed in January 2021 and, if granted, would provide patent protection through 2041. Additionally, we have filed several patent applications directed to other important aspects of the EXPAREL technology which, if granted, would provide additional patent protection through 2040 and beyond.

In June 2021, the United States Patent and Trademark Office, or USPTO, issued U.S. Patent No. 11,033,495 related to EXPAREL. The patent, "*Manufacturing of Bupivacaine Multivesicular Liposomes*," claims composition of EXPAREL prepared by the improved manufacturing process. In November 2021, the USPTO issued U.S. Patent Nos. 11,185,506 and 11,179,336, claiming the improved EXPAREL manufacturing process and EXPAREL composition, respectively. All three patents will have an expiration date of January 22, 2041. U.S. Patent Nos. 11,033,495 and 11,179,336 are currently listed in the FDA's "*Approved Drug Products with Therapeutic Equivalence Evaluations*" (the "Orange Book"). Additionally, we recently received four Notices of Allowance from the USPTO for four EXPAREL patents that have been examined and will issue. Two patents claim chemical composition of EXPAREL and two claim product-by-process. After issuance, we will submit these patents for listing in the Orange Book. After listing, the Orange Book would have a total of six EXPAREL patents each with an expiration date of January 22, 2041.

Issued patents for EXPAREL in the U.S. relating to methods for modifying the rate of drug release of the product candidate and the composition of the product candidate expired in January 2017 and September 2018, respectively. In the U.S., a patent relating to the composition of the product was issued in September 2014 and expired in September 2018. A patent relating to the method of treatment using EXPAREL was issued in December 2015 and expired in September 2018. In Europe, granted patent(s) related to the composition of EXPAREL expired in September 2018. A patent relating to methods of modifying the rate of drug release of the product candidate expired in January 2018. In addition, a patent relating to the process for making the product candidate expired in November 2018.

In April 2010, a provisional patent was filed relating to an alternative process to manufacture EXPAREL and other pMVL-based products. The process offers many advantages, including larger scale production and lower manufacturing costs. In April 2011, we filed an international patent application providing the basis for several national phase patent applications, for example in Europe, China, Japan, Israel and India which, if granted, could potentially prevent others from using this process until at least 2031. In the U.S., we also filed a series of patent applications directed to the alternative manufacturing process. Eight of the patent applications were issued as patents as of December 2020. Patents that claim the process and apparatus will expire at the latest in November 2033. One of the patents claims a product made by the process and expires in April 2031. As of December 31, 2021, we have four granted patents in China, one granted patent in Europe, one granted patent in Japan and one granted patent in Israel, protecting various aspects of the alternative process, including the methods of using the apparatus and the apparatus itself.

Patents and Patent Applications for ZILRETTA

A composition of matter patent has been issued by the USPTO for ZILRETTA, with a patent term into 2031. The USPTO has also issued two patents directed at the methods of manufacturing and using ZILRETTA with patent terms into 2031. Considerable expertise and effort were required to carry out the large body of original work underlying the formulation of ZILRETTA, including experimenting with, and observing the effects of over 50 steroid and PLGA formulations. We believe our extensive know-how and trade secrets relating to the manufacturing process for ZILRETTA, including those that relate to precise pharmaceutical release profiles, represent a meaningful entry barrier.

We own three U.S. ZILRETTA patents as well as counterpart foreign patents and patent applications covering composition of matter, methods of manufacture, and methods of use. Our U.S. ZILRETTA patents have expiration dates in 2031. The ZILRETTA composition of matter invention is the result of several unique discoveries relating to a narrow drug load specification, a certain release profile of polymers, specific polymer weights and ratios, and clinical efficacy observed within a dose-range. The U.S. patents directed to ZILRETTA's composition of matter and methods of use are listed in the FDA Orange Book. We also have two U.S. patents directed at compositions of matter similar to ZILRETTA, as well as methods of making and using the same, with patent terms into 2031.

In 2021, we had one patent granted in Hong Kong, further expanding our global intellectual property portfolio, which includes patents in the U.S., Australia, Canada, China, E.U., Indonesia, India, Japan, Malaysia, Mexico, New Zealand, the Philippines, the Russian Federation, Saudi Arabia, Singapore, South Africa, South Korea, Taiwan and Ukraine. These foreign patents cover the composition of matter, methods of manufacturing, and methods of using ZILRETTA and are similar in scope to the protection in the U.S. described above.

We have also in-licensed intellectual property, owned by the Southwest Research Institute, or SwRI, which gives us exclusive rights to SwRI patents covering our proprietary microsphere manufacturing technology used in the production of ZILRETTA. These patents are scheduled to expire in 2025.

PCRX-201 (Formerly FX-201)

In December 2017, Flexion acquired the global rights to PCRX-201 from GeneQuine, including a direct exclusive license of certain foundational patents, patent applications, and other proprietary rights owned by the Baylor College of Medicine, or Baylor, that are related to PCRX-201 for human applications. These patents generally cover the composition of matter and method of use of PCRX-201 in the treatment of OA. In 2019, the USPTO issued patent number 10,301,647, which covers the composition of matter and method of use of PCRX-201 in the treatment of OA with a term through January 2033. In addition, the Baylor patents related to PCRX-201 are issued in Europe, with an expiry date in 2032, and in Australia, Japan, China, India and Eurasia with expiry dates in 2033. We are continuing to prosecute one U.S. Baylor patent application related to PCRX-201. Further, we have a pending Patent Cooperation Treaty, or PCT, application covering composition of matter and effective dosages of PCRX-201 in the treatment of OA in humans, which, if granted, is expected to provide protection until 2040.

We also have a U.S. provisional application covering composition of matter and method of use of PCRX-201 for the treatment of degenerative disc disease (DDD), which, if granted, is expected to provide protection until 2042.

PCRX-301 (Formerly FX-301)

In September 2019, Flexion acquired the global rights to develop and commercialize funapide from Xenon Pharmaceuticals, Inc., or Xenon, which we have formulated for extended release with our proprietary thermosensitive hydrogel as PCRX-301. As part of the transaction with Xenon, we acquired foundational patents and patent applications covering the composition of matter, methods of use, and methods of manufacture related to funapide. We own patents directed to funapide granted in the U.S. as well as Australia, Canada, China, Europe, Hong Kong, Mexico and New Zealand with expiry dates in 2030. In addition, we have a PCT patent application covering composition of matter, method of use, and method of manufacture for PCRX-301, which, if granted, is expected to provide protection until 2040.

We also have a U.S. provisional application covering a composition of matter, method of use, and method of manufacture for PCRX-301 with different amounts of polar organic solvent and solubility enhancer, which if converted and granted, is expected to provide protection until 2042.

Patents and Patent Applications for iovera°

Issued patents in the U.S. afford us a wide range of coverage of various aspects of the iovera° technology. For example, several of our earliest filed patents cover the structural aspects of a handheld cryogenic device with single needle and needle arrays, tissue-penetrating needle probes that may be detachable, fused silica tubing fluid delivery paths, methods of applying cryotherapy using the cryogenic device and methods for using replaceable needle probes. These patents are set to expire between 2025 and 2032. An important patent family specifically directed to systems and methods of treating pain offers both broad and variable coverage of cryogenic device features and methods of using the same for pain management, including single-use needle probes, particular needle sizes and shapes. Patents in this family are set to expire between 2025 and 2028. Another important patent family has broad disclosure and coverage of a variety of indications for treatment by cryogenic devices, including joint function and stiffness, OA, occipital neuralgia, spasticity, neuroma and other nerve entrapment indications and is set to expire between 2033 and 2037.

Additionally, there are several patents and pending patent applications directed to other important aspects of the iovera° technology. For example, patents covering the probe filtration system are set to expire in 2033 and patents on the Smart Tip technology are set to expire between 2034 and 2037. Other patents and applications cover methods of using needles with blunt tips and aspects of cryogenic devices coupled with a neurostimulator for locating nerves. We also have three design patent families that cover the current handheld cryogenic device, its charging station dock and combinations thereof. To obtain coverage of our developing next-generation technology, we filed eight new non-provisional and PCT applications in 2020, which if granted, could potentially prevent others from using this next-generation technology until at least 2040. In addition, we filed four new design patent families in 2021 in the U.S. and foreign jurisdictions covering ornamental aspects of our next-generation cryogenic device.

Additional Intellectual Property

We have a provisional application covering composition of matter, method of use, and method of manufacture for formulations of an anesthetic drug of amino amide group (lidocaine, bupivacaine and ropivacaine) formulated in a triblock copolymer component (one or more PLGA-polyethylene glycol-PLGA triblock copolymers), which if converted and granted, is expected to provide protection until 2042.

Trade Secrets and Proprietary Information

Trade secrets play an important role in protecting our pMVL-based products and pipeline, ZILRETTA and iovera° and provide protection beyond patents and regulatory exclusivity. The scale-up and commercial manufacture of pMVL-based and iovera° products involve processes, custom equipment and in-process and release analytical techniques that we believe are unique to us. The expertise and knowledge required to understand the critical aspects of our pMVL manufacturing steps requires knowledge of both traditional and non-traditional emulsion processing and traditional pharmaceutical production, overlaid with all of the challenges presented by aseptic manufacturing. ZILRETTA is also manufactured using custom equipment and proprietary processes with respect to certain of the formulation and manufacturing techniques related to the TA-formulated PLGA microspheres in ZILRETTA, including those that relate to its precise pharmaceutical release profile. The iovera° system relies on manufacturing techniques that are able to provide the precision and tight tolerances required for a self-contained handheld cryogenic device. Additionally, the iovera° device includes proprietary software for device operations during cryotherapy treatments.

We seek to protect our proprietary information, including our trade secrets and proprietary know-how, by requiring our employees, consultants and other advisors to execute proprietary information and confidentiality agreements upon the commencement of their employment or engagement. These agreements generally provide that all confidential information developed or made known during the course of the relationship with us be kept confidential and not be disclosed to third parties except in specific circumstances. In the case of our employees, the agreements also typically provide that all inventions resulting from work performed for us, utilizing our property or relating to our business and conceived or completed during employment shall be our exclusive property to the extent permitted by law. Where appropriate, agreements we obtain with our consultants also typically contain similar assignment of invention obligations. Further, we require confidentiality agreements from third parties that receive our confidential data or materials.

Competition

EXPAREL

The pharmaceutical industry is intensely competitive and subject to rapid and significant technological change. Our competitors include organizations such as major multinational pharmaceutical companies, established biotechnology companies, specialty pharmaceutical companies and generic drug companies. Many of our competitors have greater financial and other resources than we have, such as more commercial resources, larger research and development staffs and more extensive marketing and manufacturing organizations. As a result, these companies may obtain marketing approval more rapidly than we are able and may be more effective in developing, selling and marketing their products. Smaller or early stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies.

Our competitors may succeed in developing, acquiring or licensing on an exclusive basis technologies and drug products that are more effective or less costly than EXPAREL or any other products that we are currently selling through partners or developing or that we may develop, which could render our products obsolete and noncompetitive. We expect any products that we develop and commercialize to compete on the basis of, among other things, efficacy, safety, convenience of administration and delivery, price and the availability of reimbursement from government and other third-party payers.

EXPAREL competes with well-established products with similar indications. Competing products available for postsurgical pain management include opioids such as morphine, fentanyl, meperidine and hydromorphone, each of which is available generically from several manufacturers, and several of which are available as proprietary products using novel delivery systems. Ketorolac, a non-steroidal anti-inflammatory drug, or NSAID, is also available generically in the U.S. from several manufacturers, and Caldolor (ibuprofen for injection), an NSAID, has been approved by the FDA for pain management and fever in adults. EXPAREL also competes with currently marketed non-opioid products such as bupivacaine, marcaine, ropivacaine and other anesthetics/analgesics, all of which are also used in the treatment of postsurgical pain and are available as either oral tablets, injectable dosage forms or administered using novel delivery systems. Additional products may be developed for the treatment of acute pain, including new injectable NSAIDs, novel opioids, new formulations of currently available opioids and NSAIDs, long-acting local anesthetics and new chemical entities as well as alternative delivery forms of various opioids and NSAIDs. Currently EXPAREL also competes with elastomeric pumps/catheter devices intended to provide bupivacaine over several days and with off-label combinations of other approved analgesics, called “cocktails”, that are physician-combined in an attempt to extend the duration of pain control.

ZILRETTA

Immediate-release steroids and HA injections are currently the two marketed classes of IA products that compete directly with ZILRETTA. Also available are stem cell and PRP injections, but these require on-site preparation from tissue or blood taken from the patient and have generated questionable efficacy in controlled clinical trials. Because these are minimally manipulated autologous therapies, they do not require and have not received FDA review or approval. For that reason, they are generally not reimbursed by payers, and patients must pay out of pocket to receive these therapies. Furthermore, the American Association of Hip & Knee Surgeons (AAHKS) issued a position statement indicating that it cannot recommend biologic therapies, including stem cell and PRP injections, for the treatment of advanced hip or knee arthritis.

iovera°

The medical device industry is intensely competitive and subject to rapid and significant technological change. The cryotherapy pain management field in particular is a growing industry due to increased attention on opioid usage for pain, which has created a rapidly emerging market and has fueled an increased interest in opioid alternatives. Many of our competitors in our space have greater financial and other resources than we have, such as more commercial resources, larger research and development staffs and more extensive marketing and manufacturing organizations. As a result, these companies may obtain marketing approval more rapidly than we are able and may be more effective in developing, selling and marketing their products. The rise of various small and early stage companies in the cryotherapy pain management field may also prove to be significant competitors, particularly if they enter into collaborative arrangements with large, established companies.

Our competitors are continuously engaged in trials and attempts to develop new products or approaches in hopes of capturing the pain management market. They may succeed in developing, acquiring or licensing on an exclusive basis, technologies that are more effective or less costly than the iovera° system, which could render the iovera° system obsolete and noncompetitive. As a result, it is critical that we continue to innovate and to increase marketing efforts in our primary markets. We expect any products that we develop and commercialize to compete on the basis of, among other things, efficacy, safety,

convenience of administration and delivery, price and the availability of reimbursement from government and other third-party payers.

Besides pharmaceutical products for pain management, iovera° competes with medical devices that ablate or degenerate peripheral nerves to treat indications such as joint pain, neuralgia and OA pain. Competing products include cryotherapy devices as well as other devices such as cooled radio-frequency ablation devices that block or degenerate peripheral nerves involved in conducting pain signals. Avanos Medical, Inc. markets these medical devices in the U.S. Additional non-opioid products or entirely different approaches may also be developed for pain management by one or more of our competitors.

Government Regulation

In the U.S., prescription drug and medical device products are subject to extensive pre- and post-market regulation by the FDA, including regulations that govern the research, development, testing, manufacturing, distribution, safety, efficacy, approval, labeling, storage, record keeping, reporting, advertising and promotion of such products under the Federal Food, Drug and Cosmetic Act, or FDCA, and its implementing regulations. Outside the U.S., prescription drug and medical device products are regulated by comparable agencies (including the EMA and MHRA in the E.U. and U.K. as well as authorities in Canada and Latin America), laws and regulations. Failure to comply with applicable regulatory requirements may result in, among other things, refusal to approve pending applications, withdrawal of an approval, warning letters, clinical holds, civil or criminal penalties, recall or seizure of products, injunction, debarment, partial or total suspension of production or withdrawal of the product from the market. Any agency or judicial enforcement action could have a material adverse effect on the Company.

Regulatory Environment

Pharmaceuticals

In the U.S., generally the FDA must approve any new drug, including a new use of a previously approved drug, before marketing of the drug occurs in the U.S. This process generally involves:

- completion of preclinical laboratory and animal testing and formulation studies in compliance with the FDA's Good Laboratory Practice regulations;
- submission to the FDA of an IND application for human clinical testing, which must become effective before human clinical trials may begin for unapproved use in the U.S.;
- approval by an independent Institutional Review Board, or IRB, at each clinical trial site before each trial may be initiated;
- performance of adequate and well-controlled human clinical trials in accordance with the FDA's Good Clinical Practices, or GCP, to establish the safety and efficacy of the proposed drug product for each intended use;
- completion of process validation, quality product release and stability;
- submission of a New Drug Application, or NDA, to the FDA;
- satisfactory completion of an FDA pre-approval inspection of the product's manufacturing facility or facilities to assess compliance with CGMP requirements and to ensure that the facilities, methods and controls are adequate to preserve the drug's identity, quality and purity;
- satisfactory completion of an FDA advisory committee review, if applicable; and
- review and approval by the FDA of the NDA.

The preclinical and clinical testing and approval process requires substantial time, effort and financial resources, and we cannot be certain that the FDA will grant approvals for any of our product candidates on a timely basis, if at all. Preclinical tests include laboratory evaluation of product chemistry, formulation and stability, as well as studies to evaluate toxicity in animals. The results of preclinical tests, together with manufacturing information, analytical data and a proposed clinical trial protocol and other information, are submitted as part of an IND application to the FDA. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA places the trial on a clinical hold because of, among other things, concerns about the conduct of the clinical trial or about exposure of human research subjects to unreasonable health risks. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. Thus, submission of an IND does not by itself automatically result in FDA authorization to commence a clinical trial. In addition, the FDA requires us to amend an existing IND for each successive clinical trial conducted during product development. Further, an IRB covering each site proposing to conduct the clinical trial must review and approve the plan for any clinical trial along with informed consent information for subjects before the clinical trial commences at that center. The IRB also must monitor the clinical trial

until it is completed. The FDA, the IRB or the sponsor may suspend a clinical trial at any time, on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk. We may also suspend or terminate a clinical trial based on evolving business objectives and/or the competitive climate.

Clinical trials involve the administration of the product candidate to healthy volunteers or patients having the disease being studied under the supervision of qualified investigators in accordance with GCP requirements, which include the requirement that all research subjects provide their informed consent for their participation in any clinical trial. Sponsors of clinical trials generally must register at the National Institutes of Health (NIH)-maintained website (www.clinicaltrials.gov) and report key findings and parameters. For purposes of an NDA submission and approval, typically, the conduct of human clinical trials occurs in the following three pre-market sequential phases, which may overlap or be combined:

- *Phase 1:* Sponsors initially conduct clinical trials in a limited population, either patients or healthy volunteers, to test the product candidate for safety, dose tolerance, absorption, metabolism, distribution, excretion and clinical pharmacology, and, if possible, to gain early evidence of effectiveness. In the cases of some products for severe or life-threatening diseases, especially when the product may be too inherently toxic to ethically administer to healthy volunteers, the initial human testing often is conducted only on patients having the specific disease.
- *Phase 2:* Sponsors conduct clinical trials generally in a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted indications and to determine dose tolerance, optimal dosage and dosing schedule. Sponsors may conduct multiple Phase 2 clinical trials to obtain information prior to beginning larger and more extensive Phase 3 clinical trials.
- *Phase 3:* These include expanded controlled and uncontrolled trials, including pivotal clinical trials. When Phase 2 evaluations suggest the effectiveness of a dose range of the product and acceptability of such product's safety profile, sponsors undertake Phase 3 clinical trials in larger patient populations to obtain additional information needed to evaluate the overall benefit and risk balance of the drug and to provide an adequate basis to develop labeling.

Some clinical trials may be overseen by an independent group of qualified experts organized by the clinical trial sponsor, known as a data safety monitoring board or committee. This group provides authorization for whether or not a trial may move forward at designated check points based on access to certain data from the trial. The process of completing clinical testing and obtaining FDA approval for a new drug is likely to take a number of years and requires the expenditure of substantial resources. If an application is submitted, there can be no assurance that the FDA will review and approve the NDA. In addition, sponsors may elect to conduct, or be required by the FDA to, conduct post-approval clinical trials to further assess the drug's safety or effectiveness after NDA approval, generate new data and best-practice administration techniques. Studies in an indication after approval are typically referred to as Phase 4 clinical trials.

The requirements for drug approval and the clinical trials that approvals are based on are similar in other countries, however each regulatory agency will have differing policies, procedures and processes that we must comply with in each market we wish to sell our products in. There also can be no assurance that approval or utilization of our products will be identical in different jurisdictions. For example, EXPAREL is approved in femoral nerve block for treatment of post-operative pain in adults in Europe, but the FDA has not approved this indication in the U.S.

Medical Devices

In the U.S., the Medical Device Amendments of 1976 to the FDCA and its subsequent amendments regulate the design, manufacture and marketing of medical devices. Medical devices that require notification submitted as a 510(k) clearance request must be reviewed and cleared by the FDA before we can begin marketing them. To request 510(k) clearance, we must be able to demonstrate that the medical device is substantially equivalent to a previously cleared and legally marketed 510(k) medical device. Medical devices require extensive clinical testing which consists of safety and efficacy studies, followed by pre-market approval, or PMA, applications for specific surgical indications. The FDA's Quality System Regulations, or QSRs, set forth standards for our product design and manufacturing processes, require the maintenance of certain records and provide for inspections of our facilities by the FDA. There are also certain requirements of state, local and foreign governments that must be complied with in the manufacture and marketing of our products. A new indication for 510(k) clearance may or may not require a clinical trial—for instance, expanding the use of iovera° to treat spasticity will, and we expect to commence a clinical trial in 2022.

Review and Approval Process

Pharmaceuticals

Assuming successful completion of all required testing in accordance with all applicable regulatory requirements, sponsors submit the results of product development, preclinical studies and clinical trials to the FDA as part of an NDA requesting approval to market the product for one or more indications. NDAs must also contain extensive information relating to the product's pharmacology, chemistry, manufacture, controls and proposed labeling, among other things. In addition, 505(b)(2) applications must contain a patent certification for each patent listed in the FDA's Orange Book that covers the drug referenced in the application and upon which the third-party studies were conducted. For some drugs, the FDA may require Risk Evaluation and Mitigation Strategies, or REMS, which could include medication guides, physician communication plans or restrictions on distribution and use, such as limitations on who may prescribe the drug or where it may be dispensed or administered. Currently, the FDA does not require a REMS for EXPAREL but the EMA and MHRA do.

If the FDA accepts a submission for substantive review, the FDA typically reviews the NDA in accordance with established timeframes. Under PDUFA, the FDA establishes goals for NDA review time through a two-tiered classification system: Priority Review and Standard Review. A Priority Review designation is given to drugs that address an unmet medical need by offering major advances in treatment or providing a treatment where no adequate therapy currently exists. Standard Review applies to all applications that are not eligible for Priority Review. The FDA aims to complete Standard Reviews of NDAs within 12 months of submission (ten months after the Day 60 filing date) and Priority Reviews within eight months of submission (six months after the Day 60 filing date). For an sNDA, the FDA aims to complete its Standard Review within 10 months of submission and Priority Reviews within six months of submission. Review processes may sometimes extend beyond these target completion dates due to FDA requests for additional information or clarification, difficulties scheduling an advisory committee meeting, negotiations regarding REMS or FDA workload issues, but in general under PDUFA the FDA is supposed to complete its reviews within the target timeframes despite these factors. The FDA may refer the application to an advisory committee for review, evaluation and recommendation as to the application's approval. The recommendations of an advisory committee do not bind the FDA, but the FDA generally follows such recommendations.

Under PDUFA, NDA applicants must pay significant NDA user fees upon submission. In addition, manufacturers of approved prescription drug products must pay annual program fees.

Before approving an NDA, the FDA will inspect the facility or facilities where the product is manufactured. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with CGMP requirements and are adequate to ensure consistent production of the product within required specifications. Additionally, the FDA will typically inspect one or more clinical sites to ensure compliance with GCP before approving an NDA.

After the FDA evaluates the NDA and the manufacturing facilities, it may issue an approval letter or a Complete Response Letter, or CRL, to indicate that the review cycle for an application is complete and that the application is not ready for approval. CRLs generally outline the deficiencies in the submission and may require substantial additional testing or information in order for the FDA to reconsider the application. Even if such additional information is submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data from clinical trials are not always conclusive and the FDA may interpret data differently than we do. If the FDA requires a REMS plan, it could include medication guides, physician communication plans or elements to assure safe use, such as restricted distribution methods, patient registries and other risk minimization tools. The FDA also may approve an NDA contingent on, among other things, changes to proposed labeling, a commitment to conduct one or more post-market studies or clinical trials and the correction of identified manufacturing deficiencies, including the development of adequate controls and specifications. If and when the deficiencies have been addressed to the FDA's satisfaction, the FDA will typically issue an approval letter. An approval letter authorizes commercial marketing of the drug with specific prescribing information for specific indications.

Outside the U.S., although timelines vary as do specific regulatory procedures, the same general principals hold including the potential for a REMS plan which could entail other requirements, including but not limited to patient registries and risk minimization tools.

Medical Devices

In the U.S., authorization to bring a medical device to market is generally obtained in one of two ways. The first pathway, a pre-market notification (the 510(k) process), requires demonstration that the new device is substantially equivalent to an already legally marketed medical device. The second pathway, a PMA, requires an independent demonstration that a medical

device is safe and effective for its intended use. In general, PMAs require a much longer time horizon and can be much more expensive than obtaining clearance through the 510(k) process. A PMA must be submitted to the FDA if it is determined that the device is not eligible for the 510(k) clearance process. A PMA must be supported by extensive data including, but not limited to, technical, preclinical and clinical trials, manufacturing and labeling to demonstrate reasonable evidence of the device's safety and efficacy to the FDA's satisfaction.

To obtain 510(k) clearance, we must file with the FDA a pre-market notification demonstrating that our proposed device is substantially equivalent to a previously cleared and legally marketed 510(k) device or a device that was in commercial distribution before May 28, 1976 for which the FDA has not yet called for the submission of a PMA. 510(k) clearance for a predecessor device to iovera° was first obtained in March 2009 when the focus of MyoScience was cosmetic applications (i.e. facial wrinkle reduction). The MyoScience business focus shifted to pain management in 2014, and since then there have been a number of advancements that led to three additional 510(k) submissions and clearances to support iovera° and the subsequent growth of the iovera° product line.

After a device receives 510(k) clearance or a PMA approval, it may be changed or modified. Any modification that could significantly affect its safety or effectiveness, or that would constitute a significant change in its intended use, will require a new clearance or approval. Regulations provide that the manufacturer initially determines when a specific modification requires notification to FDA. The FDA has issued draft guidance that, if finalized and implemented, will result in manufacturers needing to seek a significant number of new clearances for changes made to legally marketed devices. The FDA reviews the manufacturer's decision to file a 510(k) or PMA for modifications during facility audits.

Section 505(b)(2) New Drug Applications

For pharmaceutical products, as an alternate path to FDA approval, particularly for modifications to drug products previously approved by the FDA, an applicant may submit an NDA under Section 505(b)(2) of the FDCA. Section 505(b)(2) was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, also known as the Hatch-Waxman Act, and permits the submission of an NDA where at least some of the information required for approval comes from preclinical and/or clinical trials not conducted by or for the applicant. The FDA interprets Section 505(b)(2) of the FDCA to permit the applicant to rely upon the FDA's previous findings of safety and effectiveness for an approved product. The FDA may also require companies to perform additional clinical trials or measurements to support any change from the previously approved product. The FDA may then approve the new product candidate for all or some of the label indications for which the referenced product has been approved, as well as for any new indication sought by the Section 505(b)(2) applicant.

Applications under Section 505(b)(2) are subject to any non-patent exclusivity period applicable to the referenced product, which may delay approval of the 505(b)(2) application even if the FDA has completed its substantive review and determined the drug should be approved. In addition, 505(b)(2) applications must include patent certifications to any patents listed in the FDA's Orange Book as covering the referenced product. If the 505(b)(2) applicant seeks to obtain approval before the expiration of an applicable listed patent, the 505(b)(2) applicant must provide notice to the patent owner and NDA holder of the referenced product. If the patent owner or NDA holder brings a patent infringement lawsuit within 45 days of such notice, the 505(b)(2) application cannot be approved for 30 months or until the 505(b)(2) applicant prevails, whichever is sooner. If the 505(b)(2) applicant loses the patent infringement suit, the FDA may not approve the 505(b)(2) application until the patent expires, plus any period of pediatric exclusivity.

In any future NDA submissions for our product candidates, we intend to follow the development and approval pathway permitted under the FDCA that we believe will maximize the commercial opportunities for these product candidates.

Post-Approval Requirements

Pharmaceuticals

After approval, the NDA sponsor must comply with comprehensive requirements governing, among other things, drug listing, recordkeeping, manufacturing, marketing activities, product sampling, distribution and annual reporting. Additionally, adverse events must be reported to the FDA in a timely fashion, and pharmacovigilance programs to proactively look for adverse events are mandated by the FDA. An adverse event is any undesirable experience associated with the use of a medical product in a patient. A serious adverse event is an adverse event that results in death, is life-threatening or results in hospitalization or disability, among other things. If the events suggest a new safety signal for the drug in question, that could lead to the need for additional safety statements in the labeling of the product or additional REMS. Additionally, adverse events found in other drugs could also mean that we have to abide by additional safety measures and include warnings in our labeling. Similar reporting and pharmacovigilance obligations exist with regulatory agencies outside the U.S.

If new safety issues are identified following approval, the FDA can require the NDA sponsor to revise the approved labeling to reflect the new safety information; conduct post-market studies or clinical trials to assess the new safety information and implement a REMS program to mitigate newly identified risks. The FDA may also require post-approval testing, including Phase 4 trials, and surveillance programs to monitor the effect of approved products which have been commercialized, and the FDA has the authority to prevent or limit further marketing of a product based on the results of these post-marketing programs. Drugs may be marketed only for approved indications and in accordance with the provisions of the FDA-approved label. Further, if we modify a drug, including any changes in indications, labeling or manufacturing processes or facilities, the FDA may require us to submit and obtain FDA approval of a new or supplemental NDA, which may require us to develop additional data or conduct additional preclinical studies and clinical trials.

In addition, drug manufacturers and other entities involved in the manufacture and distribution of approved drugs are required to register their establishments with the FDA and state agencies and are subject to periodic unannounced inspections by the FDA and these state agencies for compliance with CGMP requirements. Changes to the manufacturing process are strictly regulated and often require prior FDA approval before being implemented. FDA regulations also require investigation and correction of any deviations from CGMP and impose reporting and documentation requirements upon us and any third-party manufacturers that we may decide to use.

If after approval the FDA determines that the product does not meet applicable regulatory requirements or poses unacceptable safety risks, the FDA may take other regulatory actions, including initiating suspension or withdrawal of the NDA approval. Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the product, complete withdrawal of the product from the market or product recalls;
- fines, warning letters or holds on post-approval clinical trials;
- refusal of the FDA to approve pending applications or supplements to approved applications, or suspension or revocation of product license approvals;
- product seizure or detention, or refusal to permit the import or export of products; or
- injunctions or the imposition of civil or criminal penalties.

The FDA strictly regulates marketing, labeling, advertising and promotion of products that are placed on the market. These regulations include standards and restrictions for direct-to-consumer advertising, industry-sponsored scientific and educational activities, promotional activities involving the internet and off-label promotion. While physicians may prescribe for off-label uses, manufacturers may only promote for the approved indications and in accordance with the provisions of the approved label. The FDA has very broad enforcement authority under the FDCA, and failure to abide by these regulations can result in penalties, including the issuance of a warning letter directing entities to correct deviations from FDA standards, a requirement that future advertising and promotional materials be pre-cleared by the FDA, and state and federal civil and criminal investigations and prosecutions.

In addition, the distribution of prescription pharmaceutical products is subject to the Prescription Drug Marketing Act, or PDMA, which regulates the distribution of drugs and drug samples at the federal level and sets minimum standards for the registration and regulation of drug distributors by the states. Both the PDMA and state laws limit the distribution of prescription pharmaceutical product samples and impose requirements to ensure accountability in distribution, including a drug pedigree which tracks the distribution of prescription drugs.

Medical Devices

The FDA has broad post-market and regulatory obligations that we must adhere to. We are subject to unannounced inspections by the FDA to determine our compliance with QSRs and other rules and regulations.

After a medical device is placed on the market, numerous regulatory requirements apply. These include, but are not limited to:

- QSRs, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, documentation and other quality assurance procedures during product design and throughout the manufacturing process;

- Labeling regulations and FDA prohibitions against the promotion of products for uncleared, unapproved or off-label uses; and
- Medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur.

Failure to comply with regulatory requirements can result in enforcement action by the FDA, which may include any of the following sanctions:

- restrictions on the marketing or manufacturing of the product, complete withdrawal of the product from the market or product recalls;
- fines, warning letters or holds on post-approval clinical trials;
- the potential withdrawal of 510(k) clearance or other approvals that were previously granted;
- refusal of the FDA to approve pending applications or supplements to approved applications, or suspension or revocation of product license approvals;
- product seizure or detention, or refusal to permit the import or export of products;
- injunctions or the imposition of civil or criminal penalties; or
- requiring us to repair, replace and/or refund the cost of any medical device we have manufactured or distributed.

If any of these events were to occur, they could have a material adverse effect on our business.

International Regulation

In addition to regulations in the U.S., we are subject to a variety of foreign regulations governing clinical trials and the commercial sales and distribution of our products. Whether or not we obtain FDA approval for a product, we must obtain approval by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process and requirements vary from country to country, and the time may be longer or shorter than that necessary for FDA approval.

For example, in Europe, there are several tracks for marketing approval for pharmaceuticals, for product approval and post-approval regulatory processes, depending on the type of product for which approval is sought. Under the centralized procedure, a company submits a single application to the EMA. The marketing application is similar to the NDA in the U.S. and is evaluated by the Committee for Medicinal Products for Human Use, or CHMP, the expert scientific committee of the EMA. If the CHMP determines that the marketing application fulfills the requirements for quality, safety and efficacy, it will submit a favorable opinion to the EC. The CHMP opinion is not binding, but is typically adopted by the EC. A marketing application approved by the EC is valid in all E.U. member states and is recognized by the MHRA. The centralized procedure is required for all biological products, orphan medicinal products and new treatments for neurodegenerative disorders, and it is available for certain other products, including those which constitute a significant therapeutic, scientific or technical innovation.

As with FDA, EMA or MHRA approval, we may not be able to secure additional regulatory approvals in a timely manner, if at all. Additionally, as in the U.S., post-approval regulatory requirements, such as those regarding product manufacture, marketing or distribution would apply to any product that is approved in Europe, the U.K., Canada and Latin America, and failure to comply with such obligations could have a material adverse effect on our ability to successfully commercialize any product.

In addition to regulations in Europe and the U.S., we will be subject to regulations governing clinical trials, product approvals, and commercial distribution in the U.K, Canada, Latin America and any other jurisdictions in which EXPAREL, ZILRETTA, iovera° or any other future product is approved.

Third-Party Payer Coverage and Reimbursement

The commercial success of our products and product candidates will depend, in part, upon the availability of coverage and reimbursement from third-party payers at the federal, state and private levels. Government payer programs, including Medicare and Medicaid, private health care insurance companies and managed care plans may deny coverage or reimbursement for a product or therapy in whole or in part if they determine that the product or therapy is not medically appropriate or necessary. Also, third-party payers have attempted to control costs by limiting coverage and the amount of reimbursement for particular procedures, medical devices or drug treatments. The U.S. Congress and state legislatures from time to time propose and adopt

initiatives aimed at cost containment that could impact our ability to sell our products at a price level high enough to realize an appropriate return on our investment, which would materially impact our results of operations.

In March 2010, President Obama signed into law the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act (collectively, the "Affordable Care Act"), a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. The Affordable Care Act revised the definition of "average manufacturer price" for reporting purposes, which could increase the amount of Medicaid drug rebates owed to states by pharmaceutical manufacturers for covered outpatient drugs. The Affordable Care Act also established a new Medicare Part D coverage gap discount program, in which drug manufacturers must agree to offer 50% point-of-sale discounts off negotiated prices of applicable brand name drugs to eligible beneficiaries during their coverage gap period as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D. Substantial new provisions affecting compliance have also been enacted, which may require us to modify our business practices with healthcare practitioners. There have been proposed in Congress a number of legislative initiatives regarding healthcare, including possible repeal of the Affordable Care Act. At this time, it remains unclear whether there will be any changes made to the Affordable Care Act. The full impact that the Affordable Care and other new laws will have on our business is uncertain. However, such laws appear likely to continue the pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs. Moreover, in the coming years, additional changes could be made to governmental healthcare programs that could significantly impact the success of our products.

The marketability of our products may suffer if the government and third-party payers fail to provide adequate coverage and reimbursement. In addition, emphasis on managed care in the U.S. has increased, and we expect will continue to increase, the pressure on pharmaceutical and medical device pricing. Some third-party payers require pre-approval of coverage for new or innovative devices or drug therapies before they will reimburse healthcare providers that use such therapies, or place limits on the amount of reimbursement. Coverage policies and third-party payer reimbursement rates may change at any time. Even if favorable coverage and reimbursement status is attained for our products, less favorable coverage policies and reimbursement rates may be implemented in the future.

In international markets, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. There can be no assurance that our products will be considered medically reasonable and necessary for a specific indication, that our products will be considered cost-effective by third-party payers or that an adequate level of reimbursement will be available so that the third-party payers' reimbursement policies will not adversely affect our ability to sell our products profitably.

Marketing/Data Exclusivity

Market exclusivity provisions under the FDCA can delay the submission or approval of certain applications of other companies seeking to reference another company's NDA. The FDA may grant three or five years of marketing exclusivity in the U.S. for the approval of new or supplemental NDAs, including Section 505(b)(2) NDAs, for, among other things, new indications, dosages or dosage forms of an existing drug, if new clinical investigations that were conducted or sponsored by the applicant are essential to the approval of the application. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active moiety, which is the molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an Abbreviated New Drug Application, or ANDA, or a Section 505(b)(2) NDA submitted by another company for another version of such drug where the applicant does not own or have a legal right of reference to all the data required for approval. However, such an application may be submitted after four years if it contains a certification of patent invalidity or non-infringement to one of the patents listed with the FDA by the innovator NDA holder. The FDCA also provides three years of marketing exclusivity for an NDA, or supplement to an existing NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application, for example new indications, dosages or strengths of an existing drug. Additionally, six months of marketing exclusivity in the U.S. is available under Section 505A of the FDCA if, in response to a written request from the FDA, a sponsor submits and the agency accepts requested information relating to the use of the approved drug in the pediatric population. This six-month pediatric exclusivity period is not a standalone exclusivity period, but rather is added to any existing patent or non-patent exclusivity period for which the drug product is eligible. In the past, based on our clinical trial program for EXPAREL, the FDA granted three years of marketing exclusivity to EXPAREL, which expired in October 2014. In Europe, manufacturers qualify for 8 years of data exclusivity upon marketing authorization approval and an additional two years of market exclusivity, for a total of 10 years of regulatory exclusivity.

Manufacturing Requirements

We must comply with the FDA's CGMP requirements and comparable regulations in other countries. The CGMP provisions include requirements relating to the organization of personnel, buildings and facilities, equipment, control of components and drug product containers and closures, production and process controls, packaging and labeling controls, holding and distribution, laboratory controls, records and reports and returned or salvaged products. The manufacturing facilities for our products must meet CGMP requirements to the satisfaction of the FDA and other authorities pursuant to a pre-approval inspection before we can use them to manufacture our products. We and any third-party manufacturers we engage or with which we partner are also subject to periodic inspections of facilities by the FDA and other authorities, including procedures and operations used in the testing and manufacture of our products to assess our compliance with applicable regulations. Failure to comply with these and other statutory and regulatory requirements subjects a manufacturer to possible legal or regulatory action, including warning letters, the seizure or recall of products, injunctions, consent decrees placing significant restrictions on or suspending manufacturing operations and civil and criminal penalties. Adverse experiences with the product or product complaints must be reported and could result in the imposition of market restrictions through labeling changes or in product removal. Product approvals may be withdrawn if compliance with regulatory requirements is not maintained or if problems concerning safety or efficacy of the product occur following approval.

Regulations Pertaining to Sales and Marketing

We are subject to various federal and state laws pertaining to health care "fraud and abuse," including anti-kickback laws and false claims laws. Anti-kickback laws generally prohibit a prescription drug or medical device manufacturer from soliciting, offering, receiving, or paying any remuneration to generate business, including the purchase or prescription of a particular drug or device. Although the specific provisions of these laws vary, their scope is generally broad and there may be no regulations, guidance or court decisions that clarify how the laws apply to particular industry practices. There is therefore a possibility that our practices might be challenged under the anti-kickback or similar laws. False claims laws prohibit anyone from knowingly and willingly presenting, or causing to be presented for payment to third-party payers (including Medicare and Medicaid) claims for reimbursed drugs, procedures or services that are false or fraudulent, claims for items or services not provided as claimed, or claims for medically unnecessary items or services. Our activities relating to the sale and marketing of our products may be subject to scrutiny under these laws. Violations of fraud and abuse laws may be punishable by criminal or civil sanctions, including fines and civil monetary penalties and exclusion from federal health care programs (including Medicare and Medicaid). In the U.S., federal and state authorities are paying increased attention to enforcement of these laws within the pharmaceutical and medical device industries and private individuals have been active in alleging violations of the laws and bringing suits on behalf of the government under the federal civil False Claims Act. If we were subject to allegations concerning, or were convicted of violating, these laws, our business could be harmed.

Laws and regulations have been enacted by the federal government and various states to regulate the sales and marketing practices of pharmaceutical and medical device manufacturers. The laws and regulations generally limit financial interactions between manufacturers and health care providers or require disclosure to the government and public of such interactions. The laws include the federal Physician Payment Sunshine Act, or "sunshine" provisions, enacted in 2010 as part of the Affordable Care Act. The sunshine provisions apply to pharmaceutical and medical device manufacturers with products reimbursed under certain government programs and require those manufacturers to disclose annually to the federal government (for re-disclosure to the public) certain payments made to physicians and certain other healthcare practitioners or to teaching hospitals. State laws may also require disclosure of pharmaceutical and medical device pricing information and marketing expenditures. Many of these laws and regulations contain ambiguous requirements. Given the lack of clarity in laws and their implementation, our reporting actions could be subject to the penalty provisions of the pertinent federal and state laws and regulations. Outside the U.S., other countries have implemented requirements for disclosure of financial interactions with healthcare providers and additional countries may consider or implement such laws.

Regenerative Medicine Advanced Therapies

As part of the 21st Century Cures Act, Congress amended the FDCA to create the regenerative medicine advanced therapies, or RMAT, designation. The RMAT designation is intended to facilitate efficient development and expedite review of regenerative medicine advanced therapies, which are intended to treat, modify, reverse, or cure a serious or life-threatening disease or condition. RMAT covers cell therapies, gene therapies, therapeutic tissue engineering products, human cell and tissue products, and combination products using any such therapies or products. A sponsor may request that the FDA designate a regenerative medicine advanced therapy concurrently with or at any time after submission of an IND. The FDA has 60 calendar days to determine whether the criteria are met, including whether there is preliminary clinical evidence indicating the potential to address unmet medical needs for a serious or life-threatening disease or condition. A Biologics License Application (BLA) for a regenerative medicine advanced therapy may be eligible for priority review or accelerated approval through surrogate or intermediate endpoints reasonably likely to predict long-term clinical benefit, or reliance upon data obtained from a meaningful number of clinical trial sites. Benefits of such designation also include early interactions with the FDA to discuss any potential surrogate or intermediate endpoint to be used to support accelerated approval. A regenerative medicine advanced therapy that is granted accelerated approval and is subject to post-approval requirements may fulfill such requirements through the submission of clinical evidence, clinical studies, patient registries, or other sources of real-world evidence, such as electronic health records; the collection of larger confirmatory data sets; or post-approval monitoring of all patients treated with such therapy prior to its approval.

Healthcare Privacy and Security Laws

We may be subject to, or our marketing activities may be limited by, the Health Insurance Portability and Accountability Act, or HIPAA and its implementing regulations, which established uniform standards for certain “covered entities” (healthcare providers, health plans and healthcare clearinghouses) governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of protected health information. The American Recovery and Reinvestment Act of 2009, commonly referred to as the economic stimulus package, included sweeping expansion of HIPAA’s privacy and security standards called the Health Information Technology for Economic and Clinical Health Act, or HITECH, which became effective in February 2010. Among other things, HITECH makes HIPAA’s privacy and security standards directly applicable to “business associates”—independent contractors or agents of covered entities that receive or obtain protected health information in connection with providing a service on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney’s fees and costs associated with pursuing federal civil actions.

Environmental Matters

Our research and development processes and our manufacturing processes involve the controlled use of hazardous materials and chemicals and produce waste products, including pharmaceutical residues. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of hazardous materials and waste products, including those related to pharmaceutical residues. While we believe we are in compliance with applicable environmental regulations, the failure to fully comply with any such regulations could result in the imposition of penalties, fines and/or sanctions which could have a material adverse effect on our business. It is possible, however, that environmental issues may arise in the future which we cannot now predict.

We are working towards improving our sustainable footprint through key practices like waste reduction, water recycling, and using energy efficient equipment where possible. We have a focus on raising awareness and educating associates on reducing our internal use of consumables and natural resources. In addition, we have a broad range of recycling and waste management initiatives at our manufacturing facilities and corporate offices. For example, at our internal manufacturing facilities we have addressed our use and recycling of paper products, aluminum cans, glass, electronics and plastic, as well as disposal of non-recyclables and effective water management.

Cybersecurity

We operate a risk-based cybersecurity program dedicated to protecting the confidentiality, integrity and availability of our information. We utilize a layered approach in protecting against, and the detection of, cyber-attacks, and leverage outside partnerships to gain intelligence on threats and continue to adjust our protection mechanisms to be effective. All employees receive information security training (including data protection and fraud awareness) on an annual basis, and we use state-of-the-art technology to monitor systems for anomalous behavior. In the event an incident were to occur, a Security Incident Response Team would be convened that consists of members from many functions, including legal counsel. Additionally, we carry a Cyber Insurance policy to help cover investigation and mitigation expenses.

Although we have numerous controls to protect against common attacks, some attacks may still be effective. Our controls are designed to detect, triage and eradicate these attacks. Over the past three years, there have been no known material breaches, and no expenses related to the investigation of such breaches.

Corporate Citizenship

We are the industry leader in our commitment to non-opioid pain management and providing a non-opioid option to as many patients as possible to redefine the role of opioids as a rescue therapy only. We are dedicated to the principles of social responsibility and good corporate governance. Our Board of Directors is comprised of industry leaders with extensive and diverse experience spanning business and scientific leadership. We hold ourselves to the highest standards and our Code of Business Conduct and Ethics reflects the business practices and principles of behavior that support this commitment. We are deeply invested in the welfare of our patients and employees, the environment and the communities where we live and work. We conduct our operations and manage our product and pipeline programs in a responsible manner and strive to comply with applicable laws, rules and regulations.

In 2021, we provided support for charitable medical missions in Honduras and Ghana by donating EXPAREL to help support surgeries for patients in need and have also supported the Louisiana State University Opioid Minimization Initiative as well as made a commitment to donate EXPAREL to not-for-profit children’s hospitals each year over the next three years.

Human Capital

Pacira Core Values

We are a team of dedicated and highly talented professionals focused on driving improved patient outcomes with opioid-reducing strategies. We are an organization built on high ethical standards, an unwavering commitment to patients and transparent communications. We have a drive and a desire to improve the world around us and make a meaningful difference in the lives of patients, families, communities and society.

The six core values that underpin everything we do are:

- *Patients*: Their safety and welfare are our top priority at all times
- *People*: Our greatest asset
- *Passion*: We are passionate about what we do
- *Think*: Our thoughts are shared generously
- *Trust*: Building trust is essential
- *Teamwork*: The cornerstone of our business success

Total Rewards

In order to attract and retain talent, we maintain broad-based benefits that are provided to all employees, including our 401(k) retirement plan with an employer matching contribution, employee stock purchase plan, flexible spending accounts, medical, dental and vision care plans, healthcare and dependent care savings accounts, life insurance, short- and long-term disability policies, paid vacation, paid sick time and paid company holidays. Additionally, we reward employees driving significant value creation with a variety of long-term and short-term incentives including a recognition platform, annual performance bonuses, stock options, restricted stock units and a long-term performance cash incentive. We also offer our executives the opportunity to participate in a deferred compensation plan with an employer match. We encourage our employees to give back in their communities and offer one paid day off per year to volunteer. We regularly benchmark our

rewards programs, adjusting as needed, to ensure our total rewards are competitive. We are committed to paying all our employees a fair and living wage.

Talent Management

We have a desire to cultivate and develop our future leaders. We regularly assess and identify our emerging talent and support their development with programs including leadership development, executive coaching and mentoring. We track turnover and employee engagement among other metrics, and conduct stay and exit interviews to ensure our talent strategy serves our goal of attracting, developing and retaining top talent to serve as our future leaders and stewards of our vision. We offer targeted selection training for interviewers to ensure a consistent methodology applied in identifying and hiring the best candidates for open positions. We offer a number of critical skills programs including management skills training for people managers, as well as project management and communications training.

Employee Wellbeing, Health and Safety

Pacira is committed to the total wellbeing of our employees and their families. We offer a range of benefits designed to meet individual needs and help employees and their families live healthy lives. This includes a variety of tools to promote total wellbeing in the areas of health, wealth, work and life to keep our employees and their families healthy, lower their healthcare costs and reduce stress. For example, we provide access to free biometric screenings, an employee assistance program, or EAP, and host in-person and webinar trainings on stress management and other EAP benefits, access to telemedicine including mental health visits, a health advocate service to help employees and their families navigate the healthcare system, activity challenges and more. We offer our eligible employees flexible work arrangements—including remote working opportunities, flexible schedules and reduced schedules to help achieve an appropriate work/life balance. Benefits that protect financial wellbeing are also provided, including but not limited to: a paid parental leave benefit, insurance to help protect assets during times of short- and long-term disability, life insurance and accidental death and dismemberment insurance, financial education seminars on savings, debt and other financial topics, access to discounts on a variety of products and services and incentives to engage in a new or maintain a wellbeing activity. In addition, we maintain a recognition program based on our core values, known as *Celebrate*, through which we recognize each other's commitment to making a meaningful difference for our patients and communities and create a shared culture where everyone is responsible for living up to and sustaining our core values.

We have a formal Environmental Health and Safety (EHS) Program. It is our policy that everyone is entitled to a safe and healthful place to work. We recognize that accident prevention, employee wellness and efficiency of operations are directly related to quality, production and cost. Pacira operates its facilities in a manner that protects the health of its employees and minimizes the impact of its operations on the environment.

Diversity, Equity and Inclusion

We are committed to intentionally cultivating a culture of inclusion where all feel welcomed and valued for their backgrounds, perspectives and experiences. We hold one another accountable to promote trust and transparency in support of our communities and collective purpose. In support of this diversity, equity and inclusion vision, we have developed a strategy and multi-year roadmap, prioritizing education and training, and have also developed a global labor and human rights policy. Our executive team and senior leaders have received training on Unconscious Bias and Inclusive Leadership. We list our job postings on state job banks and distribute them to community engaged veteran, minority, women and diversity organizations. We are committed to evaluating our people processes to ensure we are attracting, developing, promoting and retaining diverse talent.

In 2018, we established P.O.W.E.R. (Preparing Our Women for Excellence and Results), an employee resource group open to all Pacira colleagues, focused on promoting leadership values, fostering a community of support and the advancement of women through professional development and networking opportunities.

In 2020, we established a cross-functional diversity, equity and inclusion employee council to serve as an advisory board, comprised of employees who lead, advocate for, inform and communicate our corporate diversity, equity and inclusion strategic initiatives around four key areas: leadership development, diversity recruiting, culture and communications.

COVID-19 Pandemic

The health and safety of our employees has always been important to us, which is why we took responsible action in response to the COVID-19 pandemic. We covered the cost of COVID-19 testing and treatment for our employees and covered family members under our benefit plans and extended our paid sick leave for COVID-related absences. We amended our 401(k)

savings plan to enhance loan eligibility and repayment terms and to permit certain distributions. We implemented additional safety protocols and guidelines at our manufacturing sites and required our non-manufacturing personnel to work from home, including our field sales force and clinical education teams which continue to support our customers remotely. With the reopening of many states, the ability of our sales representatives to renew their in-person engagement efforts, in conjunction with these remote efforts, has occurred across all sites of care, with more focus on physician offices and ASCs. Our offices have since re-opened with strict safety, social distancing and hygiene guidelines implemented, and we continue to support remote working as appropriate.

Employees

As of December 31, 2021, we had 697 employees, all of which are full-time. 30 of these employees are Flexion employees who remain with us on a transitional basis of up to eight months. All of our employees are based in the U.S. except for nine located in England and one located in the Netherlands. None of our employees are represented by a labor union, and we consider our current employee relations to be good.

Available Information

Our corporate website is located at www.pacira.com. We file reports and other information with the United States Securities and Exchange Commission, or SEC, as required by the Exchange Act, which are accessible on the SEC's website at www.sec.gov. We also make available free of charge through our website our Annual Report, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy statements and any amendments to those reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Exchange Act. We make these reports available through our website as soon as reasonably practicable after we electronically file such reports with, or furnish such reports to, the SEC. In addition, we regularly use our corporate website to post information regarding our business, product development programs and governance, and we encourage investors to use our website, particularly the information in the sections entitled "Investors" and "News," as a source of information about us. The foregoing references to our corporate website are not intended to, nor shall they be deemed to, incorporate information on our corporate website into this Annual Report by reference, and the inclusion of our website address in this Annual Report is an inactive textual reference only and is not intended to be an active link to our website.

Item 1A. Risk Factors

In addition to the other information in this Annual Report, any of the factors set forth below could significantly and negatively affect our business, financial condition, results of operations or prospects. The trading price of our common stock may decline due to these risks. This section contains forward-looking statements. You should refer to the explanation of the qualifications and limitations on forward-looking statements beginning on page 1 of this Annual Report. These risk factors are not the only risks facing our Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results.

Risks Related to the Development and Commercialization of our Products and Product Candidates

Our success depends primarily on our ability to successfully commercialize EXPAREL and ZILRETTA.

We have invested a significant portion of our efforts and financial resources in the development and commercialization of our lead product, EXPAREL, which was first approved by the FDA on October 28, 2011 and commercially launched in April 2012. EXPAREL was approved by the EC on November 16, 2020. During 2021, sales of EXPAREL accounted for 94% of our total revenue, and we expect EXPAREL sales will remain of primary importance for the foreseeable future. We added ZILRETTA to our product portfolio upon completing the Flexion Acquisition in November 2021 and it accounted for 2% of our total revenue in 2021, all of which was recognized during the six weeks after the acquisition. Our success primarily depends on our ability to continue to effectively commercialize EXPAREL and ZILRETTA. Our ability to effectively generate revenues from EXPAREL and ZILRETTA will depend on our ability to, among other things:

- create market demand for EXPAREL and ZILRETTA through our marketing and sales activities and other arrangements established for their promotion;
- train, deploy and support a qualified sales force;
- secure formulary approvals for EXPAREL at a substantial number of targeted hospitals and ASCs;
- manufacture EXPAREL and ZILRETTA in sufficient quantities in compliance with requirements of regulatory agencies and at acceptable quality and pricing levels in order to meet commercial demand;
- implement and maintain agreements with wholesalers and distributors on commercially reasonable terms;
- receive adequate levels of coverage and reimbursement for EXPAREL and ZILRETTA from commercial health plans and governmental health programs;
- maintain compliance with regulatory requirements;
- obtain regulatory approvals for additional indications and geographic expansion for the use of EXPAREL and ZILRETTA;
- ensure that our entire supply chain efficiently and consistently delivers EXPAREL and ZILRETTA to our customers; and
- maintain and defend our patent protection and regulatory exclusivity for EXPAREL and ZILRETTA.

Any disruption in our ability to generate revenues from the sale of EXPAREL and ZILRETTA will have a material and adverse impact on our results of operations.

Our efforts to successfully commercialize EXPAREL and ZILRETTA are subject to many internal and external challenges and if we cannot overcome these challenges in a timely manner, our future revenues and profits could be materially and adversely impacted.

EXPAREL has been a commercialized drug since 2012. We continue to expend significant time and resources to train our sales force to be credible and persuasive in convincing physicians, hospitals and ASCs to use EXPAREL. In addition, we also must train our sales force to ensure that a consistent and appropriate message about EXPAREL is delivered to our potential customers. If we are unable to effectively train our sales force and equip them with effective materials, including medical and sales literature to help them inform and educate potential customers about the benefits and risks of EXPAREL and its proper administration, our efforts to successfully commercialize EXPAREL could be put in jeopardy, which could have a material adverse effect on our future revenues and profits.

In addition to our extensive internal efforts, the successful commercialization of EXPAREL will require many third parties, over whom we have no control, to choose to utilize EXPAREL. These third parties include physicians and hospital pharmacy and therapeutics committees (“P&T committees”). Generally, before we can attempt to sell EXPAREL in a hospital, EXPAREL must be approved for addition to that hospital’s list of approved drugs, or formulary list, by the hospital’s P&T committee. A hospital’s P&T committee typically governs all matters pertaining to the use of medications within the institution, including the review of medication formulary data and recommendations for the appropriate use of drugs within the institution

to the medical staff. The frequency of P&T committee meetings at hospitals varies considerably, and P&T committees often require additional information to aid in their decision-making process. Therefore, we may experience substantial delays in obtaining formulary approvals. Additionally, hospital pharmacists may be concerned that the cost of acquiring EXPAREL for use in their institutions will adversely impact their overall pharmacy budgets, which could cause pharmacists to resist efforts to add EXPAREL to the formulary, or to implement restrictions on the usage of EXPAREL or to encourage use of a lower cost dose than a surgeon or anesthesiologist would otherwise choose in order to control costs. We cannot guarantee that we will be successful in obtaining the approvals we need from enough P&T committees quickly enough to optimize hospital sales of EXPAREL. Even if we obtain hospital formulary approval for EXPAREL, physicians must still prescribe EXPAREL for its commercialization to be successful.

If EXPAREL does not achieve broader market acceptance, the revenues that we generate from its sales will be limited. The degree of market acceptance of EXPAREL also depends on a number of other factors, including:

- changes in the standard of care for the targeted indications for EXPAREL, which could reduce the marketing impact of any claims that we can make;
- the relative efficacy, convenience and ease of administration of EXPAREL;
- the prevalence and severity of adverse events associated with EXPAREL;
- the cost of treatment versus economic and clinical benefit, both in absolute terms and in relation to alternative treatments;
- the availability of adequate coverage or reimbursement by third parties, such as insurance companies and other healthcare payers, and by government healthcare programs, including Medicare and Medicaid;
- the extent and strength of our marketing and distribution of EXPAREL;
- the safety, efficacy and other potential advantages over, and availability of, alternative treatments, including, in the case of EXPAREL, a number of products already used to treat pain in the hospital setting; and
- distribution and use restrictions imposed by regulatory agencies or to which we agree as part of a mandatory risk evaluation and mitigation strategy or voluntary risk management plan.

Our ability to effectively promote and sell EXPAREL and any product candidates that we may develop, license or acquire in the hospital or ASC marketplace will also depend on pricing and cost effectiveness, including our ability to produce a product at a competitive price and therefore achieve acceptance of the product onto hospital formularies, and our ability to obtain sufficient third-party coverage or reimbursement. We will also need to demonstrate acceptable evidence of safety and efficacy, as well as relative convenience and ease of administration. Market acceptance could be further limited depending on the prevalence and severity of any expected or unexpected adverse side effects associated with our product candidates.

In addition, our approved labels for EXPAREL do not contain claims that EXPAREL is safer or more effective than competitive products and do not permit us to promote EXPAREL as being superior to competing products. Further, the availability of inexpensive generic forms of postsurgical pain management products may also limit acceptance of EXPAREL among physicians, patients and third-party payers. If EXPAREL does not achieve a broader level of acceptance among physicians, patients and third-party payers, we may not generate meaningful revenues from EXPAREL, and we may not remain profitable.

ZILRETTA is only approved for the management of OA pain of the knee for patients in the U.S. Successful commercialization of ZILRETTA is subject to many risks. Market acceptance of ZILRETTA will depend on a number of factors, including:

- the efficacy and safety as demonstrated in clinical trials;
- the ability to demonstrate the impact of real-world evidence;
- the timing and market introduction of competitive products;
- the product label and clinical indications for which the product is approved;
- acceptance by physicians, the medical community and patients of the product as a safe and effective treatment;
- the ability to distinguish safety and efficacy from existing, less expensive generic alternative therapies;
- the convenience of prescribing, administrating and initiating patients on the product;
- the potential and perceived advantages or value of the product over alternative treatments;
- the cost of treatment in relation to alternative treatments, including any similar generic treatments;
- the economics of a buy-and-bill product and discounts and rebates we offer;

- the availability of coverage and adequate reimbursement by third-party payers and government authorities to support pricing;
- the prevalence and severity of adverse side effects; and
- the effectiveness of sales and marketing efforts.

If ZILRETTA does not achieve a broader level of acceptance among physicians, patients and third-party payers, we may not generate meaningful revenues from ZILRETTA, and our business, financial condition and results of operations may suffer.

If we are unable to achieve and maintain adequate levels of third-party payer coverage and reimbursement for any product we may offer, on reasonable pricing terms, that product's commercial success may be severely hindered.

ZILRETTA is a physician-administered product, and therefore physicians are required to purchase and manage the inventory of ZILRETTA, prior to administering the product to patients. Physicians obtain reimbursement for ZILRETTA from the applicable third-party payer, such as Medicare or a health insurance company, only after it has been administered to patients. This is called a "buy and bill" process. Because physicians are at financial risk for the cost of a "buy and bill" product until they have been reimbursed, concerns about reimbursement can impact a physician's decision to use the product. The future growth of ZILRETTA depends on the availability of coverage and adequate reimbursement from third-party payers, including commercial payers, governmental healthcare programs, such as Medicare and Medicaid and managed care organizations, among others. Patients who are prescribed medicine for the treatment of their conditions generally rely on third-party payers to reimburse all or part of the costs associated with their prescription drugs. Coverage and adequate reimbursement from third-party payers are critical to product acceptance. Coverage decisions may depend upon clinical and economic standards that disfavor drug products when more established or lower cost therapeutic alternatives are already available or subsequently become available. The resulting reimbursement payment rates for ZILRETTA might not be adequate or may require co-payments that patients find unacceptably high. If coverage and reimbursement for ZILRETTA are not available or only available at limited levels, we may not be able to successfully commercialize ZILRETTA, which could have a material adverse effect on our business, results of operations and financial condition.

We face significant competition from other pharmaceutical, medical device and biotechnology companies. Our operating results will suffer if we fail to compete effectively.

The pharmaceutical, medical device and biotechnology industries are intensely competitive and subject to rapid and significant technological change. Our major competitors include organizations such as major multinational pharmaceutical and medical device companies, established biotechnology companies and specialty pharmaceutical and generic drug companies. Many of our competitors have greater financial and other resources than we have, such as larger research and development staff, more extensive marketing, distribution, sales and manufacturing organizations and experience, more extensive clinical trial and regulatory experience, expertise in prosecution of intellectual property rights and access to development resources like personnel and technology. As a result, these companies may obtain regulatory approval more rapidly than we are able to and may be more effective in selling and marketing their products. Smaller or early stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large, established companies. Our competitors may succeed in developing, acquiring or licensing on an exclusive basis technologies, drug products and medical devices that are more effective or less costly than EXPAREL, ZILRETTA, iovera° or any product candidate that we are currently developing or that we may develop, license or acquire, which could render our products obsolete and noncompetitive or significantly harm the commercial opportunity for EXPAREL, ZILRETTA, iovera° or our product candidates.

As a result of these factors, our competitors may obtain patent protection or other intellectual property rights that may limit our ability to develop other indications for, or commercialize, EXPAREL, ZILRETTA, iovera° or our product candidates. Our competitors may also develop drugs or medical devices that are safer, more effective, useful or less costly than ours and may be more successful than us in manufacturing and marketing their products.

EXPAREL competes with well-established products with similar indications. Competing products available for postsurgical pain management include opioids such as morphine, fentanyl, meperidine and hydromorphone, each of which is available generically from several manufacturers, and several of which are available as proprietary products using novel delivery systems. Ketorolac, an NSAID is also available generically in the U.S. from several manufacturers, and Caldolor (ibuprofen for injection), an NSAID, has been approved by the FDA for pain management and fever in adults. EXPAREL also competes with currently marketed non-opioid products such as bupivacaine, marcaine, ropivacaine and other anesthetics/analgesics, all of which are also used in the treatment of postsurgical pain and are available as either oral tablets, injectable dosage forms or administered using novel delivery systems. Additional products may be developed for the treatment of acute pain, including new injectable NSAIDs, novel opioids, new formulations of currently available opioids and NSAIDs, long-acting local anesthetics and new chemical entities as well as alternative delivery forms of various opioids and NSAIDs. EXPAREL also competes with elastomeric bags/catheter devices intended to provide bupivacaine over several days.

ZILRETTA competes with immediate-release steroids and hyaluronic acid-containing products, as well as stem cell and PRP injections. Immediate-release TA and other injectable immediate-release steroids, which are the current IA standard of care for OA pain, are available in generic form and are therefore relatively inexpensive compared to the pricing for ZILRETTA. These generic steroids also have well-established market positions and familiarity with physicians, healthcare payers, and patients. Although we believe the proven and extended pain relief evidenced in clinical trials demonstrate that ZILRETTA represents a clinically meaningful and highly efficacious option, it is possible that we will receive data from additional clinical trials or in a post-marketing setting from physician and patient experiences with the commercial product that does not continue to support such interpretations.

The iovera° system competes with cryotherapy devices as well as other devices such as cooled radio-frequency ablation devices that block or degenerate peripheral nerves involved in conducting pain signals.

Regulatory approval for any approved product is limited to those specific indications and conditions for which clinical safety and efficacy have been demonstrated, and allegations of our failure to comply with such approved indications could limit our sales efforts and have a material adverse effect on our business.

The marketing, labeling, advertising and promotion of prescription drugs and medical devices is strictly regulated. These regulations include standards and restrictions for direct-to-consumer advertising, industry-sponsored scientific and educational activities, promotional activities involving the internet and off-label promotion. Any regulatory approval granted is limited to those specific diseases and indications for which a product is deemed to be safe and effective by an appropriate regulatory agency. For example, the FDA-approved label for EXPAREL does not include an indication in obstetrical paracervical block anesthesia. In addition to the FDA approval required for new formulations, any new indication for an approved product also requires FDA approval. If we are not able to obtain regulatory approval for any desired future indications for our products and product candidates, our ability to effectively market and sell our products may be reduced and our business may be adversely affected.

As an example, in the U.S. and Europe, while physicians may choose, and are generally permitted to prescribe drugs, medical devices or treatments for uses that are not described in the product's labeling and for uses that differ from those tested in clinical trials and approved by the regulatory authorities, our ability to promote the products is narrowly limited to those indications that are specifically approved by the FDA, EMA or MHRA. These "off-label" uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. Regulatory authorities generally do not regulate the behavior of physicians in their choice of treatments. Regulatory authorities do, however, restrict communications by pharmaceutical and medical device companies on the subject of off-label use. In the U.S., although recent court decisions suggest that certain off-label promotional activities may be protected under the First Amendment of the U.S. Constitution, the scope of any such protection is unclear. If our promotional activities fail to comply with the FDA's regulations or guidelines, we may be subject to warnings from, or enforcement action by, these authorities. In addition, our failure to follow FDA rules and guidelines relating to promotion and advertising may cause the FDA to issue warning letters or untitled letters, bring an enforcement action against us, suspend or withdraw an approved product from the market, require a recall or institute fines or civil fines, or could result in disgorgement of money, operating restrictions, injunctions or criminal prosecution, any of which could harm our reputation and our business.

If we are unable to establish and maintain effective marketing and sales capabilities or enter into agreements with third parties to market and sell our products, we may be unable to generate additional product revenues.

We are continuing to build our commercial infrastructure for the marketing, sale and distribution of pharmaceutical products. In order to continue commercializing our products effectively, we must continue to build our marketing, sales and distribution capabilities. The establishment, development and training of our sales force and related compliance plans to market our products is expensive and time consuming. In the event we are not successful in further developing our marketing and sales infrastructure, we may not be able to continue to successfully commercialize our products, including outside the U.S., which would limit our ability to generate additional product revenues.

In addition to our internal marketing and sales efforts, we have entered into agreements with third-party distributors to promote and sell EXPAREL in certain territories. For example, we previously had a co-promotion agreement with DePuy Synthes to market and promote the use of EXPAREL for orthopedic procedures in the U.S. market which we terminated effective January 2021. Additionally, in March 2020, Flexion entered into an exclusive license agreement with HK Tainuo and Jiangsu Tainuo for the development and commercialization (other than manufacturing) of ZILRETTA in Greater China. There can be no assurance that such distributors and promoters will be successful in marketing and promoting our products.

We may seek additional distribution arrangements in the future, including arrangements with third-party distributors to commercialize and sell our products in certain foreign countries. The use of distributors involves certain risks, including risks that such distributors will:

- not effectively distribute or support our products;

- not provide us with accurate or timely information regarding their inventories, the number of accounts using our products or complaints about our products;
- fail to comply with their obligations to us;
- fail to comply with laws and regulations to which they are subject, whether in the U.S. or in foreign jurisdictions;
- reduce or discontinue their efforts to sell or promote our products; or
- cease operations.

Any such failure may result in decreased sales, which would have an adverse effect on our business.

We rely on third parties to perform many essential services for EXPAREL, ZILRETTA and iovera° and will rely on third parties for any other products that we commercialize. If these third parties fail to perform as expected or to comply with legal and regulatory requirements, our ability to commercialize EXPAREL, ZILRETTA and iovera° will be significantly impacted and we may be subject to regulatory sanctions.

We have entered into agreements with third-party service providers to perform a variety of functions related to the sale and distribution of EXPAREL, ZILRETTA and iovera°, key aspects of which are out of our direct control. These service providers provide key services related to customer service support, warehousing and inventory program services, distribution services, contract administration and chargeback processing services, accounts receivable management and cash application services, financial management and information technology services. In addition, our inventory is stored at two warehouses maintained by two service providers. We substantially rely on these providers as well as other third-party providers that perform services for us, including entrusting our inventories of products to their care and handling. If these third-party service providers fail to comply with applicable laws and regulations, fail to meet expected deadlines or otherwise do not carry out their contractual duties to us, or encounter physical or natural damage at their facilities, our ability to deliver product to meet commercial demand would be significantly impaired. In addition, we may engage third parties to perform various other services for us relating to adverse event reporting, safety database management, fulfillment of requests for medical information regarding our product candidates and related services. If the quality or accuracy of the data maintained by these service providers is insufficient, we could be subject to regulatory sanctions.

Distribution of our pMVL-based products, including EXPAREL, requires cold-chain distribution provided by third parties, whereby the product must be maintained between specified temperatures. If a problem occurs in our cold-chain distribution processes, whether through our failure to maintain our products or product candidates between specified temperatures or because of a failure of one of our distributors or partners to maintain the temperature of the products or product candidates, the product or product candidate could be adulterated and rendered unusable. We have obtained limited inventory and cargo insurance coverage for our products. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. This could have a material adverse effect on our business, financial condition, results of operations and reputation.

We may need to increase the size of our organization and effectively manage our sales force, and we may experience difficulties in managing growth.

As of December 31, 2021, we had 697 employees. We may need to expand our personnel resources in order to manage our operations and sales of EXPAREL, ZILRETTA and iovera°. Our management, personnel, systems and facilities currently in place may not be adequate to support this future growth. In addition, we may not be able to recruit and retain qualified personnel in the future, particularly in marketing positions, due to competition for personnel among pharmaceutical and medical device businesses, and the failure to do so could have a significant negative impact on our future product revenues and business results. Our need to effectively manage our operations, growth and various projects requires that we:

- continue the hiring and training of an effective commercial organization for the commercialization of EXPAREL, ZILRETTA and iovera°, and establish appropriate systems, policies and infrastructure to support that organization;
- continue to establish and maintain effective relationships with distributors and commercial partners for the promotion and sale of our products;
- ensure that our distributors, partners, suppliers, consultants and other service providers successfully carry out their contractual obligations, provide high quality results and meet expected deadlines;
- manage our development efforts and clinical trials effectively;
- expand our manufacturing capabilities and effectively manage our co-production arrangements with Thermo Fisher and Providien;
- continue to carry out our own contractual obligations to our licensors and other third parties; and

- continue to improve our operational, financial and management controls, reporting systems and procedures.

We may be unable to successfully implement these tasks on a larger scale and, accordingly, may not achieve our development and commercialization goals. Additionally, these tasks may impose a strain on our administrative and operational infrastructure. If we are unable to effectively manage our growth, our product sales and resulting revenues will be negatively impacted.

We may not be able to manage our business effectively if we are unable to attract and retain key personnel.

We may not be able to attract or retain qualified management and commercial, scientific and clinical personnel due to the intense competition for qualified personnel among biotechnology, pharmaceutical, medical device and other businesses, as well as universities, non-profit research organizations and government entities, particularly in Tampa, Florida; San Diego, California and northern New Jersey. If we are not able to attract and retain necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our development objectives, our ability to raise additional capital and our ability to implement our business strategy.

Our industry has experienced a high rate of turnover of management personnel in recent years. We are highly dependent on the development and manufacturing expertise for our products and pMVL drug delivery technology and the commercialization expertise of certain members of our senior management. In particular, we are highly dependent on the skills and leadership of our senior management team. If we lose one or more of these key employees, our ability to successfully implement our business strategy could be seriously harmed. Replacing key employees may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to develop, gain regulatory approval of and commercialize products successfully. Competition to hire from this limited talent pool is intense, and we may be unable to hire, train, retain or motivate additional key personnel.

We face potential product liability exposure, and if successful claims are brought against us, we may incur substantial liability for EXPAREL, ZILRETTA, iovera° or product candidates that we may develop and may have to limit their commercialization.

The use of EXPAREL, ZILRETTA, iovera° and any product candidates that we may develop, license or acquire in clinical trials and the sale of any products for which we obtain regulatory approval expose us to the risk of product liability claims. Product liability claims might be brought against us by consumers, health care providers or others using, administering or selling our products. We have been a party of these suits in the past and may be again in the future. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- loss of revenue from decreased demand for our products and/or product candidates;
- impairment of our business reputation or financial stability;
- costs of related litigation;
- substantial monetary awards to patients or other claimants;
- diversion of management attention;
- loss of revenues;
- withdrawal of clinical trial participants and potential termination of clinical trial sites or entire clinical programs; and
- the inability to commercialize our products and/or product candidates.

We have obtained limited product liability insurance coverage for our products and our clinical trials with a $10.0 million annual aggregate coverage limit. However, our insurance coverage may not reimburse us, or may not be sufficient to reimburse us, for any expenses or losses we may suffer, including our indemnification obligations to other parties. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage on acceptable terms, at a reasonable cost or in sufficient amounts to protect us against losses due to liability. We intend to expand our insurance coverage to include the sale of additional commercial products upon regulatory approval for our product candidates in development, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing, or at all. On occasion, large judgments have been awarded in class action lawsuits based on drugs or medical devices that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause the price of our common stock to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

If we fail to manufacture our products in sufficient quantities and at acceptable quality and pricing levels, or to fully comply with CGMP regulations, we may face delays in the commercialization of these products or be unable to meet market demand, and may lose potential revenues.

The manufacture of EXPAREL and ZILRETTA requires significant expertise and capital investment, including the development of advanced manufacturing techniques, process controls and the use of specialized processing equipment. We must comply with federal, state and foreign regulations, including the FDA's regulations governing CGMP, enforced by the FDA through its facilities inspection program and by similar regulatory authorities in other jurisdictions where we do business. These requirements include, among other things, quality control, quality assurance and the maintenance of records and documentation. The FDA or similar foreign regulatory authorities at any time may implement new standards or change their interpretation and enforcement of existing standards for manufacture, packaging or testing of our products. Any failure by us or our manufacturing partner to comply with applicable regulations may result in fines and civil penalties, suspension of production, product seizure or recall, operating restrictions, imposition of a consent decree, modification or withdrawal of product approval or criminal prosecution and would limit the availability of our product. Any manufacturing defect or error discovered after products have been produced and distributed also could result in significant consequences, including costly recall procedures, re-stocking costs, damage to our reputation and potential for product liability claims.

The FDA requires manufacturers of medical devices to adhere to certain regulations, including the FDA's QSRs, which requires periodic audits, design controls, quality control testing and documentation procedures, as well as complaint evaluations and investigations. Regulations regarding the development, manufacture and sale of medical products are evolving and are subject to change in the future.

If we are unable to produce the required commercial quantities of our products to meet market demand those products on a timely basis or at all, or if we fail to comply with applicable laws for the manufacturing of our products, we will suffer damage to our reputation and commercial prospects, we will lose potential revenues and we may be required to expend significant resources to resolve any such issues.

We may need to expand our manufacturing operations or outsource such operations to third parties.

To successfully meet future customer demand for EXPAREL, ZILRETTA and iovera°, we may need to expand our existing commercial manufacturing facilities or establish large-scale commercial manufacturing capabilities. In addition, as our drug development pipeline increases and matures, we will have a greater need for clinical trial and commercial manufacturing capacity. As a result, we must continue to improve our manufacturing processes to allow us to reduce our production costs. We may not be able to manufacture our drugs and/or medical devices at a cost or in quantities necessary to be commercially successful.

The build-up or other expansion of our internal manufacturing capabilities for EXPAREL production in San Diego, California and co-production capabilities for EXPAREL and ZILRETTA at Thermo Fisher's Swindon, England site, exposes us to significant up-front fixed costs. If market demand for our products does not align with our expanded manufacturing capacity, we may be unable to offset these costs and to achieve economies of scale, and our operating results may be adversely affected as a result of high operating expenses. Alternatively, if we experience demand for our products in excess of our estimates, our facilities may be insufficient to support higher production volumes, which could harm our customer relationships and overall reputation. Our ability to meet such excess demand could also depend on our ability to raise additional capital and effectively scale our manufacturing operations.

In addition, the procurement time for the equipment that we use to manufacture EXPAREL and ZILRETTA requires long lead times. Therefore, we may experience delays, additional or unexpected costs and other adverse events in connection with our capacity expansion projects, including those associated with potential delays in the procurement of manufacturing equipment required to manufacture EXPAREL or ZILRETTA.

In addition to expanding our internal manufacturing facilities, we may enter into arrangements with third parties to supply, manufacture, package, test and/or store EXPAREL, ZILRETTA, iovera° or our other products, such as our manufacturing arrangements with Thermo Fisher and Providien. Entering into such arrangements requires testing and compliance inspections, regulatory agency approvals and development of the processes and facilities necessary for the production of our products. Such arrangements also involve additional risks, many of which would be outside of our control. Such risks include disruptions or delays in production, manufactured products that do not meet our required specifications, the failure of such third-party manufacturers to comply with CGMP regulations or other regulatory requirements, protection of our intellectual property and manufacturing process, loss of control of our complex manufacturing process, inabilities to fulfill our commercial needs and financial risks in connection with our investment in setting up a third-party manufacturing process, such as the substantial capital outlays that were required by us to assist in setting up our manufacturing process at Thermo Fisher's facility.

If we are unable to timely achieve and maintain satisfactory production yields and quality, whether through our internal manufacturing capabilities or arrangements with contract manufacturers, our relationships with potential customers and overall reputation may be harmed and our revenues could decrease.

Our inability to continue manufacturing adequate supplies of our products could result in a disruption in the supply to our customers and partners, which could have a material adverse impact on our business and results of operations.

EXPAREL is currently manufactured at our facilities in San Diego, California; both EXPAREL and ZILRETTA are currently manufactured at the Thermo Fisher facility in Swindon, England and iovera° is currently manufactured at our facilities in San Diego, California; Fremont, California and at the Providien facility in Tijuana, Mexico. These facilities are the only currently approved sites for manufacturing EXPAREL, ZILRETTA and iovera° in the world. We may experience temporary or prolonged suspensions in production of our products due to issues in our manufacturing process that must be remediated or in response to inspections conducted by the FDA or similar foreign regulatory authorities, which could have a material adverse effect on our business, financial position and results of operations.

Our San Diego and Fremont facilities in California, the Thermo Fisher facility in Swindon, England and the Providien facility in Tijuana, Mexico are also subject to the risks of a natural or man-made disaster, including earthquakes, floods and fires, or other business disruptions. In addition, we have obtained limited property and business interruption insurance coverage for our manufacturing sites in San Diego, Fremont, England and Mexico. However, our insurance coverage may not reimburse us, or may not be sufficient to reimburse us, for any expenses or losses we may suffer. There can be no assurance that we would be able to meet our requirements for EXPAREL, ZILRETTA or iovera° if there were a catastrophic event or failure of our current manufacturing systems. If we are required to change or add a new manufacturer or supplier, the process would likely require prior FDA and/or equivalent foreign regulatory authority approval and would be very time consuming. An inability to continue manufacturing adequate supplies of EXPAREL, ZILRETTA or iovera° at our facilities could result in a disruption in the supply of these products to our customers and partners and a breach of our contractual obligations to such counterparties.

Our co-production and other agreements with Thermo Fisher may involve unanticipated expenses and delays.

We and Thermo Fisher have entered into a Co-Production Agreement, Technical Transfer and Service Agreement and Manufacturing and Supply Agreement. Under these agreements, Thermo Fisher undertook certain technical transfer activities and construction services to prepare Thermo Fisher's Swindon, England facility for the manufacture of EXPAREL in two dedicated manufacturing suites, of which the first suite received FDA approval in May 2018 and began commercial production in February 2019. In August 2021, the second EXPAREL suite received FDA approval and began commercial production. We agreed with Thermo Fisher, among other things, to provide them with the process equipment necessary to manufacture EXPAREL in these suites.

Prior to the Flexion Acquisition, Flexion and Thermo Fisher entered into the ZILRETTA Manufacturing and Supply Agreement and the ZILRETTA Technical Transfer and Service Agreement related to the manufacture of ZILRETTA at the same Thermo Fisher site in Swindon, England where our EXPAREL suites are located. Thermo Fisher agreed to undertake certain transfer activities and construction services needed to prepare its facility for the commercial manufacture of ZILRETTA in dedicated manufacturing suites. Flexion provided Thermo Fisher with certain equipment and materials necessary to manufacture ZILRETTA.

The Thermo Fisher facilities require regulatory approval prior to any production and manufacturing of EXPAREL and ZILRETTA. While we have anticipated and budgeted for additional capital expenditures associated with the Thermo Fisher suites for both EXPAREL and ZILRETTA, if the Thermo Fisher suites do not maintain their regulatory approvals (or fail to receive any additional regulatory approvals that may be needed in the future), this could have a material adverse effect on our business, financial position and results of operations.

Further, the production under these agreements involve additional risks, many of which would be outside of our control, such as disruptions or delays in production, manufactured products that do not meet our required specifications, the failure of Thermo Fisher to comply with CGMP regulations or other regulatory requirements, protection of our intellectual property and manufacturing processes, loss of control of our complex manufacturing processes and inabilities to fulfill our commercial needs.

We rely on third parties for the timely supply of specified raw materials and equipment for the manufacture of EXPAREL, ZILRETTA and iovera°. Although we actively manage these third-party relationships to provide continuity and quality, some events which are beyond our control could result in the complete or partial failure of these goods and services. Any such failure could have a material adverse effect on our financial condition and operations.

We purchase certain raw materials and equipment from various suppliers in order to manufacture our products. The acquisition of certain of these materials may require considerable lead times, and our ability to source such materials is also dependent on logistics providers. If we are unable to source the required raw materials and equipment from our suppliers on a timely basis and in accordance with our specifications, we may experience delays in manufacturing and may not be able to meet our customers' or partners' demands for our products. Additionally, we have some sole sources of supply for certain materials

and equipment used in our manufacturing processes. Should the need arise to qualify additional suppliers or change suppliers, we could bear substantial costs and could fail to maintain adequate production levels to meet demand for our products. In addition, we and our third-party suppliers must comply with federal, state and foreign regulations, including CGMP regulations, and any failure to comply with applicable regulations, or failure of government agencies to provide necessary authorizations, may harm our ability to manufacture and commercialize our products on a timely and competitive basis, which could result in decreased product sales and lower revenues.

As the global impact of COVID-19 continues, we may experience additional disruptions that could severely impact our supply chain, which would disrupt our clinical trials and commercialization efforts. To the extent that our vendors are unable to comply with their obligations under our agreements or cannot deliver goods or services timely, our ability to continue meeting commercial demand for our products or advancing development of our product candidates may become impaired.

Additionally, we could incur higher costs for certain goods or services due to inflation or increased freight costs. While global industry-wide logistics challenges did not negatively impact us during the year ended December 31, 2021, we may experience such challenges in 2022. We also rely on international shipping to transport our products to their various geographic markets. During the year ended December 31, 2021, international shipping to the U.S. was disrupted and delayed due to congestion in west coast ports. Continued or additional delays in shipping may cause us to have to use more costly methods to ship our products. In addition, global inflation may contribute to higher incremental freight costs and such inflation may result in higher freight costs. Failure to adequately produce and timely ship our products to customers could lead to lost potential revenue, failure to meet customer demand, strained relationships with customers, including wholesales, and diminished brand loyalty. Despite our actions to mitigate these impacts, we may still be impacted by global logistics challenges in 2022.

Our future growth depends on our ability to identify, develop, acquire or in-license products and if we do not successfully identify, develop, acquire or in-license related product candidates or integrate them into our operations, we may have limited growth opportunities.

An important part of our business strategy is to continue to develop a pipeline of product candidates by developing, acquiring or in-licensing products, businesses or technologies that we believe are a strategic fit with our focus on the hospital marketplace. However, these business activities may entail numerous operational and financial risks, including:

- significant capital expenditures;
- difficulty or inability to secure financing to fund development activities for such development, acquisition or in-licensed products or technologies;
- incurrence of substantial debt or dilutive issuances of securities to pay for development, acquisition or in-licensing of new products;
- the successful integration of acquired products, businesses or technologies into our operations, and achieving the expected benefits and synergies from such acquisitions;
- disruption of our business and diversion of our management’s time and attention;
- higher than expected development, acquisition or in-license and integration costs;
- exposure to unknown liabilities;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- inability to retain key employees of any acquired businesses;
- difficulty entering markets in which we have limited or no direct experience;
- difficulty in managing multiple product development programs; and
- inability to successfully develop new products or clinical failure.

We have limited resources to identify and execute the development, acquisition or in-licensing of products, businesses and technologies and integrate them into our current infrastructure. We may compete with larger pharmaceutical and medical device companies and other competitors, including public and private research organizations, academic institutions and government agencies, in our efforts to establish new collaborations and in-licensing opportunities. These competitors may have access to greater financial resources, research and development staffs and facilities than us and may have greater expertise in identifying and evaluating new opportunities. We may not be successful in locating and acquiring or in-licensing additional desirable product candidates on acceptable terms or at all. We may also not be successful in developing or commercializing our current product candidates. Such efforts may require the dedication of significant financial and personnel resources, and any diversion of resources may also disrupt our management from expanding on EXPAREL, ZILRETTA or iovera° sales. Moreover, we may

devote resources to potential development, acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts.

We make substantial investments in research and development and unsuccessful investments could materially adversely affect our business, financial condition and results of operations.

The industry in which we compete is characterized by rapid technological change, changes in customer requirements, frequent new product introductions and enhancements and evolving industry standards, and new delivery methods. In order to remain competitive, we have made, and expect to continue to make, significant investments in research and development. If we fail to develop new and enhanced products and technologies, if we focus on products and technologies that do not become widely adopted, or if new competitive products and technologies that we do not support become widely accepted, demand for our products may be reduced. Increased investments in research and development or unsuccessful research and development efforts could cause our cost structure to fall out of alignment with demand for our products, which would have a negative impact on our financial results.

Our business involves the use of hazardous materials and we must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our manufacturing activities involve the controlled storage, use and disposal of hazardous materials, including the components of our products, product candidates and other hazardous compounds. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling, release and disposal of, and exposure to, these hazardous materials. Violation of these laws and regulations could lead to substantial fines and penalties. Although we believe that our safety procedures for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials or unintended failure to comply with these laws and regulations. In the event of an accident or failure to comply with these laws and regulations, state or federal authorities may curtail our use of these materials and interrupt our business operations. In addition, we could become subject to potentially material liabilities relating to the investigation and cleanup of any contamination, whether currently unknown or caused by future releases.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems are vulnerable to damage from computer viruses, human error, unauthorized access, natural disasters, intentional acts of vandalism, terrorism, war and network, telecommunication and electrical failures. Any system failure, accident or security breach that causes interruptions in our operations could result in a material disruption of our product development programs. For example, the loss of clinical trial data from completed clinical trials for our products could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we may incur liability, reputation damage and harm to our business operations.

Any collaboration arrangements that we may enter into in the future may not be successful, which could adversely affect our ability to develop and commercialize our product candidates.

Our business model is to commercialize our products in the U.S. and abroad, occasionally seeking collaboration arrangements with pharmaceutical or biotechnology companies for the development or commercialization of our products in other countries. Accordingly, we may enter into collaboration arrangements in the future on a selective basis. Any future collaboration arrangements that we enter into may not be successful. The success of our collaboration arrangements will depend heavily on the efforts and activities of our collaborators. Collaborators generally have significant discretion in determining the efforts and resources that they will apply to these collaboration arrangements.

Disagreements between parties to a collaboration arrangement regarding clinical development and commercialization matters can lead to delays in the development process or commercializing the applicable product candidate and, in some cases, termination of the collaboration arrangement. These disagreements can be difficult to resolve if neither of the parties has final decision-making authority.

Collaborations with pharmaceutical and/or medical device companies and other third parties often are terminated or allowed to expire by the other party. Any such termination or expiration would adversely affect us financially and could harm our business reputation.

Clinical trials are expensive, lengthy and have uncertain outcomes, and results of earlier studies and trials may not be predictive of future trial results. Clinical trials may fail to demonstrate the safety and efficacy of our drug products or medical devices, which could prevent or significantly delay obtaining regulatory approval.

Prior to receiving approval to commercialize any of our drug products or medical devices, we must demonstrate with scientifically appropriate and statistically sound evidence from well-controlled clinical trials, and to the satisfaction of the FDA and other regulatory authorities, that each of the products are both safe and effective. For each drug product, we will need to demonstrate its efficacy and monitor its safety throughout the process. Clinical trials are expensive and can take many years to complete, and their outcomes are inherently uncertain. If such development is unsuccessful, our business and reputation would be harmed and our stock price would be adversely affected.

All of our drug and medical device products are prone to the risks of failure inherent in development. Clinical trials of new drug and medical device products sufficient to obtain regulatory approval are expensive and take years to complete. We may not be able to successfully complete clinical testing within the time frame we have planned, or at all. We may experience numerous unforeseen events during, or as a result of, the clinical trial process which could delay or prevent us from receiving regulatory approval or commercializing our products. In addition, the results of pre-clinical studies and early stage clinical trials of our products do not necessarily predict the results of later-stage clinical trials. Later-stage clinical trials may fail to demonstrate that a product is safe and effective despite having progressed through initial clinical testing. Even if we believe the data collected from clinical trials of our products is promising, such data may not be sufficient to support approval by regulatory agencies. Pre-clinical and clinical data can be interpreted in different ways, and results generated in our completed clinical trials do not ensure that any future clinical trials will be successful or consistent with the results generated in previous trials.

Accordingly, regulatory authorities could interpret such data in different ways than we or our partners do, which could delay, limit or prevent regulatory approval. Regulatory authorities, our institutional review boards, our contract research organizations or we ourselves may suspend or terminate our clinical trials for our drug products and medical devices. Any failure or significant delay in completing clinical trials for our drug products or medical devices, or in receiving regulatory approval for the sale of any drugs or medical devices resulting from our products, may severely harm our business and reputation. Even if we receive regulatory approvals, our drug and medical device products may later exhibit adverse effects that may limit or prevent their widespread use, may cause the regulatory authority to revoke, suspend or limit their approval, or may force us to withdraw products derived from those drug or medical device products from the market.

Our dependence on contract research organizations could result in delays in and additional costs for our drug development efforts.

We may rely on contract research organizations, or CROs, to perform preclinical testing and clinical trials for drug candidates that we choose to develop without a collaborator. If the CROs that we hire to perform our preclinical testing and clinical trials or our collaborators or licensees do not meet deadlines, do not follow proper procedures or a conflict arises between us and our CROs, our preclinical testing and clinical trials may take longer than expected, may be delayed or may be terminated. If we were forced to find a replacement CRO to perform any of our preclinical testing or clinical trials, we may not be able to find a suitable replacement on favorable terms, if at all. Even if we were able to find another CRO to perform a preclinical test or clinical trial, any material delay in a test or clinical trial may result in significant additional expenditures that could adversely affect our operating results. Events such as these may also delay regulatory approval for our drug candidates or our ability to commercialize our products.

We depend on clinical investigators and clinical sites to enroll patients in our clinical trials and sometimes other third parties to manage the trials and to perform related data collection and analysis, and, as a result, we may face costs and delays outside of our control.

We rely on clinical investigators and clinical sites to enroll patients and sometimes third parties to manage our trials and to perform related data collection and analysis. However, we may be unable to control the amount and timing of resources that the clinical sites which conduct the clinical testing may devote to our clinical trials.

Our clinical trials may be delayed or terminated due to the inability of our clinical investigators to enroll enough patients. Patient enrollment depends on many factors, including the size of the patient population, the nature of the trial protocol, the proximity of patients to clinical sites and the eligibility criteria for the trial. If our clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials or fail to enroll them on our planned schedule, we may face increased costs, delays or termination of the trials, which could delay or prevent us from obtaining regulatory approvals for our product candidates.

Our agreements with clinical investigators and clinical sites for clinical testing and for trial management services place substantial responsibilities on these parties, which could result in delays in, or termination of, our clinical trials if these parties fail to perform as expected. For example, if any of our clinical trial sites fail to comply with FDA-approved GCPs, we may be unable to use the data gathered at those sites. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols or for other reasons, our clinical trials may be extended, delayed or terminated, and we may be unable to obtain regulatory approval for, or successfully commercialize, our product candidates.

We are subject to periodic litigation, which could result in losses or unexpected expense of time and resources.

From time to time, we are called upon to defend ourselves against lawsuits relating to our business. Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of any such proceedings. See Note 21, *Commitments and Contingencies*, to our consolidated financial statements included herein for information about our legal proceedings. An unfavorable outcome in these or other proceedings could have an adverse impact on our business, financial condition and results of operations. In addition, any significant litigation in the future, regardless of its merits, could divert management's attention from our operations and result in substantial legal fees. In addition, if our stock price is volatile, we may become involved in additional securities class action lawsuits in the future. Any litigation could result in substantial costs and a diversion of management's attention and resources that are needed to successfully run our business.

Guidelines and recommendations published by various organizations could reduce the demand for or use of our products.

Government agencies promulgate regulations and guidelines directly applicable to us and to our products and product candidates. In addition, professional societies, practice management groups, private health and science foundations and other organizations from time to time may publish papers, guidelines or recommendations to the healthcare and patient communities with respect to specific products or classes of products. Recommendations of government agencies or these other groups or organizations may relate to such matters as usage, dosage, route of administration and use of concomitant therapies. Recommendations or guidelines that do not recognize a product, suggest limitations or inadequacies of a product or suggest the use of competitive or alternative products as the standard of care to be followed by patients and healthcare providers could result in decreased use or adoption of any of our products which could have an adverse impact on our business, financial condition and results of operations.

Regulatory Risks

Our business could be materially adversely affected if a regulatory or enforcement agency determines that we are promoting or have in the past promoted the "off-label" use of our products.

The marketing, labeling, advertising and promotion of prescription drugs and medical devices is strictly regulated. These regulations include standards and restrictions for direct-to-consumer advertising, industry-sponsored scientific and educational activities, promotional activities involving the internet and off-label promotion. According to these regulations, companies may not promote drugs or medical devices for "off-label" uses—that is, uses that are not consistent with the product's labeling and that differ from those that were approved by the FDA, EMA, MHRA or other regulatory agency. For example, the FDA-approved label for EXPAREL does not include an indication in obstetrical paracervical block anesthesia. In addition to the FDA approval required for new formulations or device enhancements, any new indication for an approved product also requires FDA approval. If we are not able to obtain regulatory approval for any desired future indications for our products and product candidates, our ability to effectively market and sell our products may be reduced and our business may be adversely affected.

As an example, while physicians may choose, and are generally permitted to prescribe drugs and/or medical devices for uses that are not described in the product's labeling and for uses that differ from those tested in clinical trials and approved by a regulatory authority, our ability to promote the products is narrowly limited to those indications that are approved by the FDA or other regulatory agency. "Off-label" uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. Regulatory authorities generally do not regulate the behavior of physicians in their choice of treatments. Regulatory authorities do, however, restrict communications by pharmaceutical and medical device companies on the subject of off-label use. Although recent court decisions suggest that certain off-label promotional activities may be protected under the First Amendment of the U.S. Constitution, the scope of such protection is unclear. Moreover, while we promote our products consistent with what we believe to be the approved indication for our drugs and medical devices, regulators may disagree. If a regulatory agency determines that our promotional activities fail to comply with their regulations or guidelines, we may be subject to warnings from, or enforcement action by, these authorities. In addition, our failure to follow rules and guidelines relating to promotion and advertising may cause a regulatory body to issue warning letters or untitled letters, bring an enforcement action against us, suspend or withdraw an approved product from the market, require a recall or

institute fines or civil fines, or could result in disgorgement of money, operating restrictions, injunctions or criminal prosecution, any of which could harm our reputation and our business.

In September 2014, we received a warning letter from the FDA's Office of Prescription Drug Promotion (OPDP) pertaining to certain promotional aspects of EXPAREL. We took actions to immediately address the FDA's concerns and minimize further disruption to our business. Ultimately, however, in September 2015, we, along with two independent physicians, filed a lawsuit in federal court against the FDA and other governmental defendants seeking to exercise our lawful rights to communicate truthful and non-misleading information about EXPAREL. The complaint outlined our belief that the FDA's warning letter received in September 2014 and regulations restricting our truthful and non-misleading speech about EXPAREL violated the Administrative Procedure Act and the First and Fifth Amendments of the U.S. Constitution. The lawsuit sought a declaration and injunctive relief to permit us to promote EXPAREL consistent with its approved indication and pivotal trials that supported FDA approval. On December 15, 2015, we announced that the FDA had formally withdrawn the September 2014 Warning Letter via a "Rescission Letter," and that the FDA and Pacira had reached an amicable resolution of the lawsuit. As part of the resolution of this matter, the FDA confirmed that EXPAREL was broadly approved for "administration into the surgical site to produce postsurgical analgesia" in a variety of surgeries not limited to those studied in its pivotal trials. The FDA also approved a labeling supplement for EXPAREL that further clarified that EXPAREL was not limited to any specific surgery type or site, that the proper dosage and administration of EXPAREL is based on various patient and procedure-specific factors, that there was a significant treatment effect for EXPAREL compared to placebo over the first 72 hours in the pivotal hemorrhoidectomy trial and that EXPAREL may be admixed with bupivacaine, provided certain medication ratios are observed. The Warning Letter and labeling supplement only applied to the infiltration indication that was approved at that time, and does not apply to the interscalene brachial plexus nerve block indication subsequently approved in April 2018. We and the FDA agreed that, in future interactions, the parties will deal with each other in an open, forthright and fair manner.

In April 2015, we received a subpoena from the U.S. Department of Justice, U.S. Attorney's Office for the District of New Jersey, requiring the production of a broad range of documents pertaining to marketing and promotional practices related to EXPAREL. In July 2020, we formally entered into settlement agreements that resolved all outstanding investigations and claims by the U.S. Department of Justice, the U.S. of Health and Human Services, various States Attorneys' General and a private plaintiff (the "Plaintiffs"). This agreement concluded a five-year investigation related to the sale and marketing of EXPAREL. Under the various settlement agreements, we paid a global settlement of $3.5 million. As part of the settlement, we admitted to no wrongdoing and explicitly denied the Plaintiffs' allegations. We have been given assurances that this concluded the investigation that originated from the U.S. Department of Justice subpoena in April 2015.

We are unable to predict whether any future regulatory actions will have an effect on our product sales, and even if such actions are ultimately resolved favorably, our sales may suffer due to reputational or other concerns. We can make no assurances that we will not receive warning letters in the future from the FDA or other regulatory authority or be subject to other regulatory action. As noted above, any regulatory violation or allegations of a violation may have a material adverse effect on our reputation and business.

We may not receive regulatory approval for any of our product candidates, or the approval may be delayed for various reasons, including successful challenges to the FDA's interpretation of Section 505(b)(2), which would have a material adverse effect on our business and financial condition.

We may experience delays in our efforts to obtain regulatory approval from the FDA for any of our product candidates, and there can be no assurance that such approval will not be delayed, or that the FDA will ultimately approve these product candidates. Although the FDA's longstanding position has been that the agency may rely upon prior findings of safety or effectiveness to support approval of a 505(b)(2) application, this policy has been controversial and subject to challenge in the past. If the FDA's policy is successfully challenged administratively or in court, we may be required to seek approval of our products via full NDAs that contain a complete data package demonstrating the safety and effectiveness of our product candidates, which would be time-consuming, expensive and would have a material adverse effect on our business and financial condition.

The FDA, as a condition of the EXPAREL NDA approval on October 28, 2011, has required us to study EXPAREL in pediatric patients as a post-marketing requirement. We have agreed to a trial timeline where we will study successive pediatric patient subpopulations. In December 2019, we announced positive results for our extended pharmacokinetic and safety study for local analgesia in children aged 6 to 17 undergoing cardiovascular or spine surgeries. Those positive results provided the foundation for an sNDA submission which was approved by the FDA in March 2021. Additionally, we are in negotiations with the FDA and EMA for clarity on other pediatric study obligations for children aged zero to less than six years old. These trials will be expensive and time consuming and we are required to meet the timelines for submission of protocols and data and for completion as agreed with the FDA and EMA, and we may be delayed in meeting such timelines. We are required to conduct

these trials even if we believe that the costs and potential benefits of conducting the trials are not warranted from a scientific or financial perspective. The failure to conduct these pediatric trials or to meet applicable deadlines could result in the imposition of sanctions, including, among other things, issuance of warnings letters or imposition of seizures or injunctions.

For iovera° and any other potential medical device, we must obtain clearance or approval from the FDA or other regulatory authorities prior to introducing a new product or a modification to an existing product. The regulatory clearance process may result in substantial delays, unexpected or additional costs and other unforeseen factors and limitations on the types and uses of products we would be able to commercialize, any of which could have a material adverse effect on our business and financial condition.

In the U.S., before we are able to market a new medical device, or a new use, claim for or significant modification to an existing medical device, we generally must first receive clearance or approval from the FDA and certain other regulatory authorities. Many foreign jurisdictions outside the U.S. also require clearance, approval or compliance with certain standards before a medical device or other product can be marketed. The process of obtaining regulatory clearances and approvals to market a medical device can be costly, time consuming, involve rigorous pre-clinical and clinical testing, require changes in products or result in limitations on the indicated uses of products. There can be no assurance that these clearances and approvals will be granted on a timely basis, if at all. In addition, once a medical device has been cleared or approved, a new clearance or approval may be required before the medical device may be modified, its labeling changed or marketed for a different use. Medical devices are cleared or approved for one or more specific intended uses and promoting a device for an off-label use could result in government enforcement action. Furthermore, a product approval or clearance can be withdrawn or limited due to unforeseen problems with the medical device or issues relating to its application. The regulatory clearance and approval process may result in, among other things, delayed, if at all, realization of product net sales, substantial additional costs and limitations on the types of products we may bring to market or their indicated uses, any one of which could have a material adverse effect on our business, results of operations, financial condition and cash flows.

A regulatory authority may determine that our products or any of our product candidates have undesirable side effects.

If concerns are raised regarding the safety of a new product candidate as a result of undesirable side effects identified during clinical testing, a regulatory authority may decline to approve the drug or medical device or issue a letter requesting additional data or information prior to making a final decision regarding whether or not to approve the product. Undesirable side effects caused by our products or any product candidate could also result in the inclusion of unfavorable information in our product labeling, imposition of distribution or use restrictions, a requirement to conduct post-market studies or to implement a risk evaluation and mitigation strategy, denial, suspension or withdrawal of regulatory approval by the FDA or other regulatory authorities for any or all targeted indications, and in turn prevent us from commercializing and generating revenues from the sale of EXPAREL, ZILRETTA, iovera° or any product candidate.

For example, the side effects observed in the EXPAREL clinical trials completed to date include nausea and vomiting. In addition, the class of drugs that EXPAREL belongs to has been associated with nervous system and cardiovascular toxicities at high doses. We cannot be certain that these side effects and others will not be observed in the future, or that regulatory authorities will not require additional trials or impose more severe labeling restrictions due to these side effects or other concerns. The active component of EXPAREL is bupivacaine and bupivacaine infusions have been associated with the destruction of articular cartilage, or chondrolysis. Chondrolysis has not been observed in clinical trials of EXPAREL, but we cannot be certain that this side effect will not be observed in the future.

Following approval of EXPAREL, ZILRETTA, iovera° or any of our product candidates, if we or others later identify previously unknown undesirable side effects caused by such products, if known side effects are more frequent or severe than in the past, or if we or others detect unexpected safety signals for such products or any products perceived to be similar to such products:

- regulatory authorities may require the addition of unfavorable labeling statements, specific warnings or contraindications (including boxed warnings);
- regulatory authorities may suspend or withdraw their approval of the product, or require it to be removed from the market;
- regulatory authorities may impose restrictions on the distribution or use of the product;
- we may be required to change the way the product is administered, conduct additional clinical trials, reformulate the product, change the labeling of the product or change or obtain re-approvals of manufacturing facilities;
- sales of the product may be significantly decreased from projected sales;
- we may be subject to government investigations, product liability claims and litigation; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of our products or any of our product candidates and could substantially increase our commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues from its sale.

If we do not comply with federal, state and foreign laws and regulations relating to the health care business, we could face substantial penalties.

We and our customers are subject to extensive regulation by the federal government, and the governments of the states and foreign countries in which we may conduct our business. In the U.S., the laws that directly or indirectly affect our ability to operate our business include the following:

- the Federal Anti-Kickback Law, which prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual or furnishing or arranging for a good or service for which payment may be made under federal health care programs such as Medicare and Medicaid;
- other Medicare laws and regulations that prescribe the requirements for coverage and payment for services performed by our customers, including the amount of such payment;
- the Federal False Claims Act, which imposes civil and criminal liability on individuals and entities who submit, or cause to be submitted, false or fraudulent claims for payment to the government;
- the Federal False Statements Act, which prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false statement in connection with delivery of or payment for health care benefits, items or services; and
- various state laws that impose similar requirements and liability with respect to state healthcare reimbursement and other programs.

If our operations are found to be in violation of any of the laws and regulations described above or any other law or governmental regulation to which we or our customers are or will be subject, we may be subject to civil and criminal penalties, damages, fines, exclusion from the Medicare and Medicaid programs and the curtailment or restructuring of our operations. Similarly, if our customers are found to be non-compliant with applicable laws, they may be subject to sanctions, which could also have a negative impact on us. Any penalties, damages, fines, curtailment or restructuring of our operations would adversely affect our ability to operate our business and our financial results. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business and damage our reputation.

The design, development, manufacture, supply and distribution of our products are highly regulated and technically complex.

The design, development, manufacture, supply and distribution of our products are all highly regulated. We, along with our third-party providers, must comply with all applicable regulatory requirements of the FDA and foreign regulatory authorities. In addition, the facilities used to manufacture, store and distribute our products are subject to inspection by regulatory authorities at any time to determine compliance with applicable regulations.

The manufacturing techniques and facilities used for the manufacture and supply of our products must be operated in conformity with CGMP and other FDA, EMA and MHRA regulations, including potentially prior regulatory approval. In addition, any expansion of our existing manufacturing facilities or the introduction of any new manufacturing facilities, including the manufacturing suites at the Thermo Fisher and Providien facilities, also require conformity with CGMP and other FDA, EMA and MHRA regulations. In complying with these requirements, we, along with our co-production partners and suppliers, must continually expend time, money and effort in production, record keeping and quality assurance and control to ensure that our products meet applicable specifications and other requirements for safety, efficacy and quality. In addition, we, along with our co-production partners and suppliers, are subject to unannounced inspections by the FDA, EMA, MHRA and other regulatory authorities.

Any failure to comply with regulatory and other legal requirements applicable to the manufacture, supply and distribution of our products could lead to remedial action (such as recalls), civil and criminal penalties and delays in manufacture, supply and distribution of our products.

The design, development, manufacture, supply and distribution of our products are all highly complex. If we are unable to manufacture our products in compliance with our highly complex specifications in the future, we may be subject to product exchanges, significant costs and charges, supply constraints or other corrective measures.

If we fail to comply with the extensive regulatory requirements to which we and our products are subject, such products could be subject to restrictions or withdrawal from the market and we could be subject to penalties.

The testing, manufacturing, quality control, labeling, safety, effectiveness, advertising, promotion, storage, sales, distribution, import, export and marketing, among other things, of EXPAREL, ZILRETTA, iovera° and our product candidates are subject to extensive regulation by governmental authorities in the U.S. and elsewhere throughout the world. Quality control and manufacturing procedures regarding our products and product candidates must conform to CGMP. Regulatory authorities, including but not limited to the FDA, EMA and MHRA, periodically inspect manufacturing facilities to assess compliance with CGMP. Our failure, or the failure of any contract manufacturers with whom we may work in the future, to comply with the laws administered by the FDA, EMA, the MHRA or other governmental authorities could result in, among other things, any of the following:

- product recall or seizure;
- suspension or withdrawal of an approved product from the market;
- interruption of production;
- reputational concerns of our customers or the medical community;
- operating restrictions;
- warning letters;
- injunctions;
- refusal to permit import or export of an approved product;
- refusal to approve pending applications or supplements to approved applications that we submit;
- denial of permission to file an application or supplement in a jurisdiction;
- consent decrees;
- suspension or termination of ongoing clinical trials;
- fines and other monetary penalties;
- criminal prosecutions; and
- unanticipated expenditures.

If the government or third-party payers fail to provide adequate coverage and payment rates for EXPAREL, ZILRETTA, iovera° or any future products, or if hospitals or ASCs choose to use therapies that are less expensive, our revenue and prospects for profitability will be limited.

In both domestic and foreign markets, sales of our existing products and any future products will depend in part upon the availability of coverage and reimbursement from third-party payers. Such third-party payers include government health programs such as Medicare and Medicaid, managed care providers, private health insurers and other organizations. Coverage decisions may depend upon clinical and economic standards that disfavor new drug products when more established or lower cost therapeutic alternatives are already available or subsequently become available. Assuming coverage is approved, the resulting reimbursement payment rates might not be adequate. In particular, many U.S. hospitals and ASCs receive a fixed reimbursement amount per procedure for certain surgeries and other treatment therapies they perform. Because this amount may not be based on the actual expenses the hospital or ASC incurs, these sites may choose to use therapies which are less expensive when compared to our product candidates. Although hospitals and ASCs may receive separate reimbursement for EXPAREL, ZILRETTA, iovera° or any product candidates that we may develop, in-license or acquire, if approved, will face competition from other therapies and drugs for these limited hospital and ASC financial resources. We may need to conduct post-marketing studies in order to demonstrate the cost-effectiveness of any future products to the satisfaction of hospitals, ASCs, other target customers and their third-party payers. Such studies might require us to commit a significant amount of management time, financial and other resources. Our future products might not ultimately be considered cost-effective. Adequate third-party coverage and reimbursement might not be available to enable us to maintain price levels sufficient to realize an appropriate return on investment in product development.

Third-party payers, whether foreign or domestic, or governmental or commercial, are developing increasingly sophisticated methods of controlling healthcare costs. For example, third-party payers may limit the indications for which our products will be reimbursed to a smaller set of indications than we believe is appropriate or limit the circumstances under which our products will be reimbursed to a smaller set of circumstances than we believe is appropriate. In addition, in the U.S., no uniform policy of coverage and reimbursement for drug or medical device products exists among third-party payers. Therefore, coverage and reimbursement for drug products can differ significantly from payer to payer.

Further, we believe that future coverage and reimbursement will likely be subject to increased restrictions both in the U.S. and in international markets, as federal, state and foreign governments continue to propose and pass new legislation designed to reduce or contain the cost of healthcare. Third-party coverage and reimbursement for our products or product candidates for which we receive regulatory approval may not be available or adequate in either the U.S. or international markets, which could have a negative effect on our business, results of operations, financial condition and prospects.

Public concern regarding the safety of drug products such as EXPAREL and ZILRETTA and medical device products such as iovera° could result in the inclusion of unfavorable information in our labeling, or require us to undertake other activities that may entail additional costs.

In light of widely publicized events concerning the safety risk of certain drug products, the FDA, members of Congress, the Government Accountability Office, medical professionals and the general public have raised concerns about potential drug and medical device safety issues. These events have resulted in the withdrawal of drug and medical device products, revisions to labeling that further limits use of the drug and medical device products and the establishment of risk management programs that may, for example, restrict distribution of drug or medical device products after approval. The Food and Drug Administration Amendments Act of 2007, or FDAAA, grants significant expanded authority to the FDA, much of which is aimed at improving the safety of drug and medical device products before and after approval. In particular, the FDAAA authorizes the FDA to, among other things, require post-approval studies and clinical trials, mandate changes to product labeling to reflect new safety information and require risk evaluation and mitigation strategies for certain drugs and medical devices, including certain currently approved drugs and medical devices. The FDAAA also significantly expands the federal government's clinical trial registry and results databank, which we expect will result in significantly increased government oversight of clinical trials. Under the FDAAA, companies that violate these and other provisions of the new law are subject to substantial civil monetary penalties, among other regulatory, civil and criminal penalties. The increased attention to drug safety issues may result in a more cautious approach by the FDA in its review of data from our clinical trials. Data from clinical trials may receive greater scrutiny, particularly with respect to safety, which may make the FDA or other regulatory authorities more likely to require additional preclinical studies or clinical trials. If the FDA or any other regulatory agency requires us to provide additional clinical or preclinical data for EXPAREL, ZILRETTA or iovera°, the indications for which these products were approved may be limited or there may be specific warnings or limitations on dosing, and our efforts to commercialize EXPAREL, ZILRETTA or iovera° may be otherwise adversely impacted.

Risks Related to Intellectual Property

The patents and the patent applications that we have covering our pMVL products are limited to specific injectable formulations, processes and uses of drugs encapsulated in our pMVL drug delivery technology and our market opportunity for our product candidates may be limited by the lack of patent protection for the active ingredient itself and other formulations and delivery technology and systems that may be developed by competitors.

The active ingredient in EXPAREL is bupivacaine. Patent protection for the bupivacaine molecules themselves has expired and generic immediate-release products are available. As a result, competitors who obtain the requisite regulatory approval can offer products with the same active ingredient as EXPAREL so long as the competitors do not infringe any process, use or formulation patents that we have developed for drugs encapsulated in our pMVL drug delivery technology.

For example, we are aware of at least one FDA-approved long-acting instillable bupivacaine product on the market which utilizes an alternative delivery system to EXPAREL. Such a product is similar to EXPAREL in that it also extends the duration of effect of bupivacaine, but achieves this clinical outcome using a completely different drug delivery system as compared to our pMVL drug delivery technology.

The number of patents and patent applications covering products in the same field as EXPAREL indicates that competitors have sought to develop and may seek to market competing formulations that may not be covered by our patents and patent applications. The commercial opportunity for EXPAREL could be significantly harmed if competitors are able to develop and commercialize alternative formulations of bupivacaine that are long-acting but outside the scope of our patents.

For instance, because EXPAREL has been approved by the FDA, one or more third parties may challenge the patents covering this product, which could result in the invalidation or unenforceability of some or all of the relevant patent claims. For example, if a third-party files an ANDA for a generic drug product containing bupivacaine and relies in whole or in part on studies conducted by or for us, the third-party will be required to certify to the FDA that either: (i) there is no patent information listed in the FDA's Orange Book with respect to our NDA for EXPAREL; (ii) the patents listed in the Orange Book have expired; (iii) the listed patents have not expired, but will expire on a particular date and approval is sought after patent expiration or (iv) the listed patents are invalid or will not be infringed by the manufacture, use or sale of the third-party's generic drug product. A certification that the new product will not infringe the Orange Book-listed patents for EXPAREL, or that such patents are invalid, is called a paragraph IV certification. If the third-party submits a paragraph IV certification to the FDA, a notice of the paragraph IV certification must also be sent to us once the third-party's ANDA is accepted for filing by the FDA. We may then initiate a lawsuit to defend the patents identified in the notice. The filing of a patent infringement lawsuit

within 45 days of receipt of the notice automatically prevents the FDA from approving the third-party's ANDA until the earliest of 30 months or the date on which the patent expires, the lawsuit is settled or the court reaches a decision in the infringement lawsuit in favor of the third-party. If we do not file a patent infringement lawsuit within the required 45-day period, the third-party's ANDA will not be subject to the 30-month stay. Litigation or other proceedings to enforce or defend intellectual property rights are often very complex in nature, may be very expensive and time-consuming, may divert our management's attention from our core business and may result in unfavorable results that could adversely impact our ability to prevent third parties from competing with our products.

In October 2021, we received a Notice Letter advising that eVenus Pharmaceutical Laboratories, Inc., or eVenus, of Princeton, New Jersey, submitted to the FDA an ANDA with a Paragraph IV certification seeking authorization for the manufacturing and marketing of a generic version of EXPAREL (266 mg/20 mL) in the U.S. prior to the expiration of U.S. Patent No. 11,033,495 (the '495 patent).

In November 2021, we filed a patent infringement suit against eVenus and its parent company in the U.S. District Court for the District of New Jersey (21-cv-19829) asserting infringement of the '495 patent. This triggered an automatic 30-month stay of final approval of the eVenus ANDA. On January 6, 2022, eVenus filed an Answer with counterclaims to the Complaint, alleging the '495 patent is invalid and/or not infringed through the manufacture, sale, or offer for sale of the product described in product described in eVenus's ANDA submission.

In December 2021, we received a second Notice Letter advising that eVenus submitted to the FDA an amendment to its ANDA with a Paragraph IV Certification seeking authorization for the manufacturing and marketing of a generic version of EXPAREL (133 mg/10 mL) in the U.S. prior to the expiration of the '495 patent. In the Notice Letter, eVenus also advised that it submitted a Paragraph IV Certification to the FDA seeking authorization for the manufacturing and marketing of a generic version of EXPAREL (266 mg/20 mL and 133 mg/10 mL) in the U.S. prior to the expiration of U.S. Patent No. 11,179,336 (the '336 patent). eVenus further alleges in the Notice Letter that both the '495 patent and the '366 patent are invalid and/or not infringed.

In February 2022, we filed a second patent infringement suit against eVenus and its parent company in the U.S. District Court for the District of New Jersey (22-cv-00718) asserting that the 133 mg/10 mL ANDA product will infringe the '495 and '336 patents and that the 266 mg/20 mL ANDA product will infringe the '336 patent. This filing triggered a second automatic 30-month stay of final approval for the 133 mg/10 mL ANDA product.

These litigations are in their infancy, and we are unable to predict the outcome of this action at this time.

The patents and the patent applications that we have covering our iovera° products are primarily limited to specific handheld cryogenic needle devices that are cooled by a cryogen and methods for applying cryotherapy to nerve tissue using the cryogenic devices. Our market opportunity for our product candidates may be limited by gaps in patent coverage for the cryogenic devices, methods of use and other cryotherapy technology and systems that may be developed by competitors.

The iovera° cryogenic device is a compact, self-contained handheld device with a replaceable cryogen cartridge that delivers a cryogen through internal supply tubes to needle lumens of a replaceable needle probe, so as to cool the needle probe and thereby cool a surrounding target nerve tissue. We also have secured patents covering particular cryotherapy methods and pain treatments that provide what we deem to be optimal treatment using the iovera° cryogenic device.

Although we have patents that are broad enough to cover various alternative designs and methods, much of our patent coverage is tailored to cover the iovera° device and methods of use. It is thus possible that competitors may attempt to design around many of our patents. For example, we are aware of competitors developing cryogenic systems that are not self-contained handheld devices, or cryogenic systems that deliver cryotherapy through different mechanisms. It is also possible that competitors may attempt to develop and market cryotherapy devices and methods not covered by our patents, for example, basic cryotherapy treatment systems that are off-patent or cryoanalgesia for other nerve entrapment treatments.

The commercial opportunity for iovera° could be significantly harmed if competitors are able to develop and commercialize alternative designs and methods outside the scope of our patents.

Furthermore, our earliest patent family is scheduled to expire in 2025, thereby opening the door for competitors to copy some of our early technology. This early patent family is primarily focused on treating cosmetic defects that are no longer the focus of iovera°, but the underlying technology is nonetheless relevant enough for there to be appreciable overlap.

Finally, one or more third parties may challenge the patents covering the iovera° product, which could result in the invalidation or unenforceability of some or all of the relevant patent claims. Litigation or other proceedings to defend or enforce intellectual property rights are often very complex in nature, may be very expensive and time-consuming, may divert our

management's attention from our core business and may result in unfavorable results that could adversely impact our ability to prevent third parties from competing with our products.

Because it is difficult and costly to protect our proprietary rights, we may not be able to ensure their protection and all patents will eventually expire.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection for EXPAREL, ZILRETTA, iovera°, our pMVL drug delivery technology and for any product candidates that we may develop, license or acquire and the methods we use to manufacture them, as well as successfully defending these patents and trade secrets against third-party challenges. We will only be able to protect our technologies from unauthorized use by third parties to the extent that valid and enforceable patents or trade secrets cover them.

The patent positions of pharmaceutical, medical device and biotechnology companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in pharmaceutical, medical device or biotechnology patents has emerged to date in the U.S. Patent positions and policies outside the U.S. are even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the U.S. and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents or in third-party patents.

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

- we may not have been the first to make the inventions covered by each of our pending patent applications and issued patents;
- we may not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate any of our product candidates or technologies;
- it is possible that none of the pending patent applications will result in issued patents;
- the issued patents covering our product candidates may not provide a basis for commercially viable active products, may not provide us with any competitive advantages, may not have sufficient scope or strength to protect the technologies they were intended to protect or may be challenged by third parties;
- others may design around our patent claims to produce competitive products that fall outside the scope of our patents;
- we may not develop or in-license additional proprietary technologies that are patentable;
- patents of others may have an adverse effect on our business; or
- competitors may infringe our patents and we may not have adequate resources to enforce our patents.

Patent applications in the U.S. are maintained in confidence for at least 18 months after their earliest effective filing date. Consequently, we cannot be certain we were the first to invent or the first to file patent applications on EXPAREL, ZILRETTA, iovera°, our pMVL drug delivery technology or any product candidates that we may develop, license or acquire. In the event that a third-party has also filed a U.S. patent application relating to our product candidates or a similar invention, we may have to participate in interference proceedings declared by the United States Patent and Trademark Office, or USPTO, to determine priority of invention in the U.S. The costs of these proceedings could be substantial and it is possible that our efforts would be unsuccessful, resulting in a material adverse effect on our U.S. patent position. Furthermore, we may not have identified all U.S. and foreign patents or published applications that affect our business either by blocking our ability to commercialize our drugs or medical devices or by covering similar technologies that affect our drug or medical device markets.

In addition, some countries, including many in Europe, do not grant patent claims directed to methods of treating humans, and in these countries patent protection may not be available at all to protect our product candidates. Even if patents are issued, we cannot guarantee that the claims of those patents will be valid and enforceable or provide us with any significant protection against competitive products, or otherwise be commercially valuable to us. Furthermore, while we generally apply for patents in those countries where we intend to make, have made, use or sell patented products, we may not accurately predict all of the countries where patent protection will ultimately be desirable. If we fail to timely file a patent application in any such country, we may be precluded from doing so at a later date. We also cannot assure you that the patents issuing as a result of our foreign patent applications will have the same scope of coverage as our U.S. patents.

Some of our older patents have already expired. In the case of EXPAREL, the European and U.S. patents protecting the formulation of EXPAREL expired in 2018. An existing formulation patent for EXPAREL expired in November 2013. An existing formulation patent for EXPAREL expired in the U.S. in 2013 and its equivalents in Canada, Germany, France, Spain,

Italy and the U.K. expired in 2014. In Europe, manufacturers qualify for 8 years of data exclusivity upon marketing authorization approval and an additional two years of market exclusivity, for a total of 10 years of regulatory exclusivity. Our earliest patent family for iovera° is scheduled to expire in 2025. Once our patents covering EXPAREL, ZILRETTA and iovera° have expired, we will be more reliant on trade secrets to protect against generic competition.

We also rely on trade secrets to protect our technology, particularly where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. While we use reasonable efforts to protect our trade secrets through confidentiality and non-disclosure agreements, our licensors, employees, consultants, contractors, outside scientific collaborators and other advisors may unintentionally or willfully disclose our information to competitors. Policing unauthorized use of our trade secrets or enforcing a claim that a third-party illegally obtained and is using our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, trade secret laws in other countries may not be as protective as they are in the U.S. Thus, courts outside the U.S. are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

In order to protect the goodwill associated with our company and product names, we rely on trademark protection for our marks. We have registered the “Pacira”, “EXPAREL”, "ZILRETTA" and “iovera°” marks with the USPTO. A third-party may assert a claim that one of our marks is confusingly similar to its mark, and such claims or the failure to timely register a mark or objections by the FDA or other regulatory agency could force us to select a new name for one of our product candidates, which could cause us to incur additional expense or delay the commercialization of such product.

If we fail to obtain or maintain patent, trade secret and/or trademark protection for EXPAREL, ZILRETTA, iovera°, our pMVL drug delivery technology or any product candidate that we may develop, license or acquire, third parties could use our proprietary information, which could impair our ability to compete in the market and adversely affect our ability to generate revenues and achieve profitability.

If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in any litigation would harm our business.

Our ability to develop, manufacture, market and sell EXPAREL, ZILRETTA, iovera°, our pMVL drug delivery technology or any product candidates that we may develop, license or acquire depends upon our ability to avoid infringing the proprietary rights of third parties. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the general fields of pain management and cancer treatment and cover the use of numerous compounds, formulations and medical devices in our targeted markets. Because of the uncertainty inherent in any patent or other litigation involving proprietary rights, we and our licensors may not be successful in defending intellectual property claims by third parties, which could have a material adverse effect on our results of operations. Regardless of the outcome of any litigation, defending the litigation may be expensive, time-consuming and distracting to management. In addition, because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that EXPAREL, ZILRETTA or iovera° may infringe. There could also be existing patents of which we are not aware that EXPAREL, ZILRETTA or iovera° may inadvertently infringe.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology, biopharmaceutical and medical device industries in general. If a third-party claims that we infringe on their products or technology, we could face a number of issues, including:

- infringement and other intellectual property claims which, with or without merit, can be expensive and time consuming to litigate and can divert management’s attention from our core business;
- substantial damages for past infringement which we may have to pay if a court decides that our product infringes on a competitor’s patent;
- a court prohibiting us from selling or licensing our product unless the patent holder licenses the patent to us, which it would not be required to do;
- if a license is available from a patent holder, we may have to pay substantial royalties or grant cross licenses to our patents; and
- redesigning our processes so they do not infringe, which may not be possible or could require substantial funds and time.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

As is common in the biotechnology, pharmaceutical and medical device industries, we employ individuals who were previously employed at other biotechnology, pharmaceutical and medical device companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers.

Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Risks Related to our Indebtedness and our Common Stock

Servicing our indebtedness requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial indebtedness.

Our ability to make payments of the principal of, to pay interest on or to refinance our indebtedness, including the Term Loan (as defined below), the 2.375% convertible senior notes due 2022, or 2022 Notes, issued in our private offering completed on March 13, 2017, the 0.750% convertible senior notes due 2025, or 2025 Notes, issued in our private offering completed on July 10, 2020, and Flexion's 3.375% Convertible Senior Notes due 2024, or Flexion 2024 Notes and, together with the 2022 Notes and the 2025 Notes, the Notes, each as described below, or to make cash payments in connection with any conversion of the 2022 Notes, 2025 Notes or Flexion 2024 Notes (if applicable) depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our indebtedness and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring indebtedness or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

On December 7, 2021, we entered into a credit agreement (the "Credit Agreement") with JP Morgan Chase Bank, N.A., as administrative agent and the initial lender. The Credit Agreement provides for a single-advance term loan B facility in the principal amount of $375.0 million (the "Term Loan"), which is secured by substantially all of our and any subsidiary guarantor's assets and is scheduled to mature on December 7, 2026, subject to certain exceptions set forth in the Credit Agreement.

On July 10, 2020, we completed a private placement of $402.5 million in aggregate principal amount of 2025 Notes, and entered into an indenture, or 2025 Indenture, with respect to the 2025 Notes. The 2025 Notes accrue interest at a fixed rate of 0.750% per year, payable semiannually in arrears on February 1 and August 1 of each year. The 2025 Notes mature on August 1, 2025.

On March 13, 2017, we completed a private placement of $345.0 million in aggregate principal amount of our 2022 Notes, and entered into an indenture, or 2022 Indenture, with respect to the 2022 Notes. The 2022 Notes accrue interest at a fixed rate of 2.375% per year, payable semiannually in arrears on April 1 and October 1 of each year. We used a portion of the net proceeds from the 2025 Notes to repurchase $185.0 million in aggregate principal amount of the 2022 Notes. The 2022 Notes mature on April 1, 2022.

On May 2, 2017, Flexion issued an aggregate of $201.3 million principal amount of Flexion 2024 Notes, and entered into an indenture, or Flexion 2024 Notes Indenture, as supplemented to date, or Flexion 2024 Notes Indenture and, together with the 2025 Indenture and the 2022 Indenture, the Indentures, with respect to the 2024 Flexion Notes. The Flexion 2024 Notes accrue interest at a fixed rate of 3.375% per year, payable semiannually in arrears on May 1 and November 1 of each year. As a result of the Flexion Acquisition, holders of the Flexion 2024 Notes became entitled to certain Flexion Acquisition-related conversion and repurchase rights, as discussed in Note 11, *Debt*, to our consolidated financial statements included herein. Following the expiration of the offer to purchase, there were $8.6 million aggregate principal amount of Flexion 2024 Notes outstanding. In addition, as a result of the Flexion Acquisition and as discussed in more detail below, any future conversion rights are subject to the occurrence of any future events giving rise to such conversion rights under the Flexion 2024 Notes Indenture. The Flexion 2024 Notes mature on May 1, 2024.

As of December 31, 2021, our total consolidated gross indebtedness was $1.1 billion, which consisted of $402.5 million of principal outstanding on the 2025 Notes, $160.0 million of principal outstanding on the 2022 Notes, $375.0 million of principal outstanding on the Term Loan and $201.5 million of principal outstanding on the Flexion 2024 Notes. As of February 28, 2022, our total consolidated gross indebtedness was $946.1 million, which reflects the January 2022 repurchase of $192.6 million aggregate principal amount of the Flexion 2024 Notes, as discussed in more detail in Note 11, *Debt*, to our consolidated financial statements included herein. Additionally, our subsidiaries had no indebtedness (excluding trade payables, intercompany liabilities and income tax-related liabilities).

Our Credit Agreement and the Indentures each impose significant operating and financial restrictions on us and certain of our subsidiaries, which may prevent us from capitalizing on business opportunities. A breach of any of those restrictive covenants may cause us to be in default under the Credit Agreement and/or the Indentures, and our lenders could foreclose on our assets.

Our Credit Agreement requires us to maintain certain financial covenants. A decline in our operating performance could negatively impact our ability to meet these financial covenants. If we breach any of these restrictive covenants, the lenders could either refuse to lend funds to us or accelerate the repayment of any outstanding borrowings under the Credit Agreement. We may not have sufficient funds to repay such indebtedness upon a default or be unable to receive a waiver of the default from the lenders. If we are unable to repay the indebtedness, the lenders could initiate a bankruptcy proceeding or collection proceedings with respect to our assets, all of which secure our indebtedness under the Credit Agreement.

The Credit Agreement and the Indentures also contain certain restrictive covenants that limit, and in some circumstances prohibit, our ability to, among other things: incur additional debt or issue preferred stock; sell, lease or transfer our assets; pay dividends on, and make other distributions on, or redeem or repurchase, our common stock; make certain capital expenditures and investments; guarantee debt or obligations; create certain liens; enter into transactions with our affiliates; and enter into certain merger, consolidation or other reorganization transactions. These restrictions could limit our ability to obtain future financing, incur or guarantee additional debt, incur certain liens, enter into transactions with affiliates, transfer or sell certain assets, make acquisitions or needed capital expenditures, withstand potential downturns in our business, or the economy in general, conduct operations or otherwise take advantage of business opportunities that may arise, any of which could place us at a competitive disadvantage relative to our competitors. The terms of any future indebtedness we may incur could include more restrictive covenants. We cannot assure you that we will be able to maintain compliance with these covenants in the future and, if we fail to do so, that we will be able to obtain waivers from the lenders and/or amend the covenants. Our failure to comply with the restrictive covenants described above as well as other terms of our indebtedness could result in an event of default, which, if not cured or waived, could result in our being required to repay these borrowings before their due date. If we are forced to refinance these borrowings on less favorable terms or cannot refinance these borrowings, our results of operations and financial condition could be adversely affected.

We may not have the ability to raise the funds necessary to settle conversions of the Notes in cash to the extent elected or to repurchase the Notes upon a fundamental change, and our future indebtedness may contain limitations on our ability to pay cash upon conversion of the Notes or limitations on our ability to repurchase the Notes.

Holders of the Notes will have the right to require us to repurchase their Notes upon the occurrence of a fundamental change at a repurchase price equal to 100% of their principal amount, plus accrued and unpaid interest, if any. We have the option to pay the principal in cash, shares of our common stock, or any combination thereof. While it is our intention to pay the principal in cash, upon conversion of the Notes we will be required to make cash payments for each $1,000 in principal amount of Notes converted of at least the lesser of $1,000 and the sum of the daily conversion values. However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Notes surrendered therefor or Notes being converted. The Credit Agreement limits, and any credit facility or other agreement that we may enter into may limit, our ability to make cash payments at the time of a fundamental change or upon conversion of the Notes. Further, our ability to repurchase the Notes or to pay cash upon conversions of the Notes may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase Notes at a time when the repurchase is required by the applicable indenture or to pay any cash payable on future conversions of the Notes as required by the Indenture would constitute a default under the applicable indenture. A default under the applicable indenture or the fundamental change itself could also lead to a default under agreements governing our Credit Agreement or future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the Notes or make cash payments upon conversions thereof.

Our indebtedness could adversely affect our business, financial condition, and results of operations, as well as the ability to meet payment obligations under our Credit Agreement and the Notes.

As of December 31, 2021, our total consolidated gross indebtedness was $1.1 billion, which consisted of $402.5 million of principal outstanding on the 2025 Notes, $160.0 million of principal outstanding on the 2022 Notes, $375.0 million of principal outstanding on the Term Loan, and $201.5 million of principal outstanding on the Flexion 2024 Notes. As of February 28, 2022, our total consolidated gross indebtedness was $946.1 million, which reflects the January 2022 repurchase of $192.6 million aggregate principal amount of the Flexion 2024 Notes, as discussed in more detail in Note 11, *Debt*, to our consolidated financial statements included herein. Subject to the limits contained in the Credit Agreement and the Indentures, we may be able to incur substantial additional debt from time to time. If we do so, the risks related to our level of debt could increase. Specifically, our level of debt could have important consequences, including the following:

- making it more difficult for us to meet our obligations with respect to our debt;

- reducing the availability of cash flow to fund future working capital, capital expenditures, acquisitions or other general corporate purposes;
- limiting our ability to obtain additional financing to fund future working capital, capital expenditures, acquisitions or other general corporate purposes;
- requiring a substantial portion of our cash flows to be dedicated to debt service payments instead of other purposes, thereby reducing the amount of cash flows available for working capital, capital expenditures, acquisitions or other general corporate purposes;
- increasing our vulnerability to general adverse economic and industry conditions;
- exposing us to the risk of increased interest rates as certain of our borrowings are at variable rates of interest;
- placing us at a disadvantage compared to other, less leveraged competitors;
- increasing our cost of borrowing; and
- limiting our flexibility in planning for changes in our business and reacting to changes in the industry in which we compete.

Furthermore, if we are unable to meet our debt service obligations or should we fail to comply with our financial and other negative covenants contained in the agreements governing our indebtedness, we may be required to refinance all or part of our debt, sell important strategic assets at unfavorable prices, incur additional indebtedness or issue common stock or other equity securities. We may not be able to, at any given time, refinance our debt, sell assets, incur additional indebtedness or issue equity securities on terms acceptable to us, in amounts sufficient to meet our needs. If we are able to raise additional funds through the issuance of equity securities, such issuance would also result in dilution to our stockholders. Our inability to service our obligations or refinance our debt could have a material and adverse effect on our business, financial condition or operating results. In addition, our debt obligations may limit our ability to make required investments in capacity, technology, or other areas of our business, which could have a material adverse effect on our business, financial condition, or operating results.

Any of these factors could have an adverse effect on our business, financial condition and results of operations and our ability to meet our debt payment obligations.

Despite our current level of indebtedness, we may be able to incur substantially more debt, which could increase the risks to our financial condition described above.

We may be able to incur substantial additional indebtedness in the future. Although certain of the agreements governing our existing indebtedness contain restrictions on the incurrence of additional indebtedness and entering into certain types of other transactions, these restrictions are subject to a number of qualifications and exceptions, including compliance with various financial conditions. Additional indebtedness incurred in compliance with our existing debt instruments could be substantial. To the extent new debt is added to our current debt levels, the substantial leverage risks described in the immediately preceding risk factor would increase.

As of December 31, 2021, our total consolidated gross indebtedness was $1.1 billion, which consisted of $402.5 million of principal outstanding on the 2025 Notes, $160.0 million of principal outstanding on the 2022 Notes, $375.0 million of principal outstanding on the Term Loan, and $201.5 million of principal outstanding on the Flexion 2024 Notes. As of February 28, 2022, our total consolidated gross indebtedness was $946.1 million, which reflects the January 2022 repurchase of $192.6 million aggregate principal amount of the Flexion 2024 Notes, as discussed in more detail in Note 11, *Debt*, to our consolidated financial statements included herein.

Some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our restated certificate of incorporation and our bylaws, as well as provisions of the Delaware General Corporation Law, or DGCL, could make it more difficult for a third-party to acquire us or increase the cost of acquiring us, even if doing so would benefit our stockholders, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions include:

- authorizing the issuance of “blank check” preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval;
- prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- eliminating the ability of stockholders to call a special meeting of stockholders; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, we are subject to Section 203 of the DGCL, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with an interested stockholder for a period of three years following the date on which the stockholder became an interested stockholder, unless such transactions are approved by our board of directors. This provision could have the effect of delaying or preventing a change of control, whether or not it is desired by or beneficial to our stockholders.

Our common stock price may be subject to significant fluctuations and volatility.

Our stock price is volatile, and from February 3, 2011, the first day of trading of our common stock, to February 28, 2022, the trading prices of our stock have ranged from $6.16 to $121.95 per share.

Our stock could be subject to wide fluctuations in price in response to various factors, including the following:

- the commercial success of EXPAREL, ZILRETTA and iovera°;
- results of clinical trials of our products, product candidates or those of our competitors;
- changes or developments in laws or regulations applicable to our products or product candidates;
- introduction of competitive products or technologies;
- failure to meet or exceed financial projections we provide to the public;
- actual or anticipated variations in quarterly operating results;
- failure to meet or exceed the estimates and projections of the investment community;
- the perception of the pharmaceutical and medical device industry by the public, legislatures, regulators and the investment community;
- regulatory concerns or government actions;
- general economic and market conditions and overall fluctuations in U.S. equity markets;
- developments concerning our sources of manufacturing supply;
- disputes or other developments relating to patents or other proprietary rights;
- additions or departures of key scientific or management personnel;
- the extent to which we acquire or invest in products, businesses and technologies;
- issuances of debt, equity or convertible securities;
- changes in the market valuations of similar companies; and
- the other factors described in this “Risk Factors” section.

In addition, the stock market in general, and the market for pharmaceutical and biotechnology companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. Fluctuations in our stock price could, among other things, adversely impact the trading price of our shares.

We do not intend to pay dividends on our common stock for the foreseeable future.

We have never declared or paid any dividends on our common stock. We currently intend to retain our future earnings to finance the future development and expansion of our business, and as such we do not expect to pay any cash dividends on our common stock in the foreseeable future. The payment of future dividends, if any, will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in future financing instruments, provisions of applicable law and any other factors our board of directors deems relevant.

Future sales in the public market or issuances of our common stock could lower the market price for our common stock.

In the future, we may sell additional shares of our common stock to raise capital. Except under limited circumstances, we are not restricted from issuing additional common stock, including securities that are convertible into or exchangeable for, or that represent the right to receive, common stock. The issuance of additional shares of our common stock or convertible securities, including upon exercise of our outstanding options, vesting of our restricted stock units or otherwise, will dilute the ownership interest of our common stockholders. In addition, our greater than 5% stockholders may sell a substantial number of their shares in the public market, which could also affect the market price for our common stock. We cannot predict the size of

future sales or issuances of our common stock or the effect, if any, that they may have on the market price for our common stock. The issuance and/or sale of substantial amounts of common stock, or the perception that such issuances and/or sales may occur, could adversely affect the market price of our common stock and impair our ability to raise capital through the sale of additional equity or debt securities.

Raising additional funds by issuing securities would cause dilution to existing stockholders and raising funds through lending and licensing arrangements may restrict our operations or require us to relinquish proprietary rights.

To the extent that we raise additional capital by issuing equity securities, our existing stockholders' ownership would be diluted. If we raise additional funds through licensing arrangements, it may be necessary to relinquish potentially valuable rights to our potential products or proprietary technologies, or grant licenses on terms that are not favorable to us. Any debt financing we enter into may involve covenants that restrict our operations. These restrictive covenants may include limitations on additional borrowing and specific restrictions on the use of our assets as well as prohibitions on our ability to create liens, pay dividends, redeem our stock or make investments.

General Risk Factors

A pandemic, epidemic or outbreak of a contagious disease (such as the novel coronavirus (COVID-19) pandemic), or fear of such an event, could have a material adverse effect on our business, operating results and financial condition.

A pandemic, epidemic or outbreak of an infectious disease, including the current COVID-19 pandemic, or other public health crisis, could have a material adverse effect on our business, financial condition and operations, including but not limited to our revenue and cash flows, including potential decreases in sales, manufacturing issues, supply issues and delays in payments by our customers. For example, during 2020, our net product sales were negatively impacted by the COVID-19 pandemic due to the significant postponement or suspension in the scheduling of elective surgical procedures resulting from public health guidance and government directives. Elective surgery restrictions began to lift on a state-by-state basis in April 2020, allowing our net product sales to return to year-over-year growth in June 2020. However, while many restrictions have since eased with COVID-19 vaccines now widely available, the elective surgery market faced additional pandemic-related challenges in August and September 2021 due to regional surges in COVID-19 Delta variant cases, staffing shortages and fatigue from care teams addressing significant procedure backlogs, and in December 2021, the COVID-19 Omicron variant prompted some government restrictions on elective procedures and surgical staffing challenges which began to ease in January 2022. While these challenges have recently began to subside, it is unknown how long it will take the elective surgery market to normalize, or if restrictions on elective procedures will recur due to COVID-19 variant strains or otherwise. We do not know if, and how, future restrictions may affect the surgical communities' return to, or redefining of, normal operations, whether due to governmental restrictions, institutional, patient or clinical decisions or general economic conditions. New or prolonged suspensions of elective surgeries by governmental restrictions or action would cause net sales of our products to decrease. In addition, due to health concerns from the COVID-19 pandemic or negative economic conditions, patients and clinicians could cancel or defer elective procedures or otherwise avoid medical treatment, which would result in reduced patient volumes and revenues, which could potentially continue over an extended period of time.

Business disruptions could include disruptions or restrictions to our workforce, including the ability of our sales teams to interact with our customers and healthcare professionals to educate them on the benefits of our products and perform typical sales activities. For example, the ongoing COVID-19 pandemic had significantly impacted the ability of our sales representatives to access customers and healthcare professionals through personal interactions within the healthcare setting, including hospitals and ASCs. With the reopening of many states, the ability of our sales representatives to renew their in-person engagement efforts, in conjunction with remote efforts, has occurred across all sites of care, with more focus on physician offices and ASCs. In addition, any temporary closures of our manufacturing facilities or the facilities of our suppliers and contract manufacturers (and the resulting impact on production or our products) or the workforce at such facilities, could cause delays in the shipment or production of our products. If our customers experience disruptions to their businesses and cash flows, we could experience delays or difficulties with the collection of our accounts receivable. Any sustained impacts and business disruptions to our facilities or workforce, our customers, our suppliers, or our contract manufacturers would likely adversely impact our cash flows, sales and operating results.

The significant increase in the number of our employees who are working remotely as a result of the pandemic, and an extended period of remote work arrangements and subsequent reintroduction into the workplace could introduce operational risk, strain our business continuity plans, negatively impact productivity and/or collaboration, and give rise to claims by employees or otherwise adversely affect our business. Additionally, the COVID-19 pandemic could require new or modified processes, procedures and controls to respond to changes in our business environment. We may take further actions as may be required by government authorities or that we determine are in the best interests of our employees, customers and business partners. There is no certainty that such measures will be sufficient to mitigate the risks posed by COVID-19.

Ultimately, the extent to which COVID-19 or other public health crises could continue to impact our business is difficult to predict and will depend on many factors beyond our control, including the speed of contagion, the development and implementation of effective preventative measures and possible treatments, the scope of governmental and other restrictions on elective surgeries, travel and other activity through quarantines/social distancing and other measures, the timing of effective vaccines becoming widely available and accepted by the public, public reactions to these factors and more.

The extent to which COVID-19 impacts our business, revenues and results of operations will depend on future developments, which are highly uncertain, constantly changing and cannot be predicted. This includes new information that may emerge concerning the severity of COVID-19, the spread and proliferation of COVID-19 around the world, the duration of the outbreak and the actions taken to contain COVID-19 or treat its impact, among others.

If we do not maintain the privacy and security of personal and business information, we could damage our reputation with customers and employees, incur substantial additional costs and become subject to litigation.

We receive, retain and transmit personal information about our customers and employees and entrust that information to third-party suppliers, including cloud service-providers that perform activities for us. Our business depends upon the secure transmission of encrypted confidential information over public networks, including information permitting payments. A compromise of our security systems or defects within our hardware or software, or those of our suppliers, that results in our customers' or employees' information being obtained by unauthorized persons, could adversely affect our reputation with our customers and others, as well as our operations, results of operations, financial condition and liquidity, and could result in litigation, government actions, or the imposition of penalties. In addition, a breach could require that we expend significant additional resources related to the security of information systems and could disrupt our operations.

The use of data by our business is regulated at the national and state or local level in all of our operating countries. Privacy and information-security laws and regulations change, and compliance with them may result in cost increases due to, among other things, systems changes and the development of new processes. If we or those with whom we share information fail to comply with these laws and regulations, our reputation could be damaged, possibly resulting in lost future business, and we could be subjected to additional legal risk as a result of non-compliance.

We have security measures and controls to protect personal and business information and continue to make investments to secure access to our information technology network. These measures may be undermined, however, due to the actions of outside parties, employee error, internal or external malfeasance, or otherwise, and, as a result, an unauthorized party may obtain access to our data systems and misappropriate business and personal information. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and may not immediately produce signs of intrusion, we may be unable to anticipate these techniques, timely discover or counter them, or implement adequate preventative measures. Any such breach or unauthorized access could result in significant legal and financial exposure, damage to our reputation, and potentially have an adverse effect on our business and results of operations.

Environmental, social and corporate governance, or ESG, issues may have an adverse effect on our business, financial condition and results of operations and damage our reputation.

There is an increasing focus from certain investors, customers, consumers, employees and other stakeholders concerning ESG matters. Additionally, public interest and legislative pressure related to public companies' ESG practices continue to grow. If our ESG practices fail to meet regulatory requirements or investor, customer, consumer, employee or other stakeholders' evolving expectations and standards for responsible corporate citizenship in areas including environmental stewardship, support for local communities, Board of Director and employee diversity, human capital management, employee health and safety practices, product quality, supply chain management, corporate governance and transparency, our reputation, brand and employee retention may be negatively impacted, and our customers and suppliers may be unwilling to continue to do business with us.

If we do not adapt to or comply with new regulations, or fail to meet evolving investor, industry or stakeholder expectations and concerns regarding ESG issues, investors may reconsider their decision to invest in our Company, and customers and consumers may choose to stop purchasing our products, which could have a material adverse effect on our reputation, business or financial condition.

Cumulatively, we have incurred significant losses since our inception and may incur additional losses in the future.

To date, we have focused primarily on developing and commercializing EXPAREL. We recorded net income of $42.0 million and $145.5 million for the years ended December 31, 2021 and 2020, respectively, and a net loss of $11.0 million for the year ended December 31, 2019. As of December 31, 2021, we had an accumulated deficit of $211.9 million. Losses, among other things, have had an adverse effect on stockholders' equity and working capital. We incurred significant pre-commercialization expenses as we prepared for the commercial launch of EXPAREL, and we incur significant sales, marketing

and manufacturing expenses, as well as continued development expenses related to the commercialization of EXPAREL, ZILRETTA and iovera°. As a result, we had not been profitable prior to 2015 and were not again until 2020. Because of the numerous risks and uncertainties associated with developing pharmaceutical products and medical devices, we are unable to predict the extent of future losses, if any.

We may need additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or commercialization efforts.

Developing and commercializing products for use in the hospital or ASC settings, conducting clinical trials, establishing outsourced manufacturing relationships and successfully manufacturing and marketing drugs and medical devices that we may develop is expensive. We may need to raise additional capital to:

- continue to fund our operations;
- continue our efforts to hire additional personnel and build a commercial infrastructure to commercialize EXPAREL, ZILRETTA and iovera°;
- qualify, outsource or build additional commercial-scale manufacturing of our products under CGMP;
- in-license and develop additional product candidates; and
- refinance our Notes and Term Loan.

We may not have sufficient financial resources to continue our operations or meet all of our objectives, which could require us to postpone, scale back or eliminate some, or all, of these objectives. Our future funding requirements will depend on many factors, including, but not limited to:

- the costs of maintaining a commercial organization to sell, market and distribute EXPAREL, ZILRETTA and iovera°;
- the success of the commercialization of EXPAREL, ZILRETTA and iovera°;
- the cost and timing of manufacturing sufficient supplies of EXPAREL, ZILRETTA and iovera° to meet customer demand, including the cost of expanding our manufacturing facilities to produce EXPAREL, ZILRETTA and iovera°;
- the rate of progress and costs of our efforts to prepare for the submission of an NDA, sNDA or 510(k) pre-market notification for any product candidates that we may in-license or acquire in the future, and the potential that we may need to conduct additional clinical trials to support applications for regulatory approval;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights associated with our product candidates, including any such costs we may be required to expend if our licensors are unwilling or unable to do so;
- the effect of competing technological and market developments;
- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish; and
- the potential that we may be required to file a lawsuit to defend our patent rights or regulatory exclusivities from challenges by companies seeking to market generic versions of extended-release liposome injections of bupivacaine or a cryoanalgesic device that infringes on the various patents covering iovera°.

Future capital requirements will also depend on the extent to which we acquire or invest in additional complementary businesses, products and technologies.

Until we can generate sufficiently more product revenue, if ever, we expect to finance or supplement future cash needs through public or private equity offerings, debt financings, stock option exercises, royalties, collaboration and licensing arrangements, as well as through interest income earned on cash and investment balances. We cannot be certain that additional funding will be available on acceptable terms, or at all. If adequate funds are not available, we may be required to delay, reduce the scope of, or eliminate one or more of our development programs or our commercialization efforts.

Our quarterly operating results may fluctuate significantly.

We expect our operating results to be subject to quarterly fluctuations. Our operating results will be affected by numerous factors, including:

- the level of underlying hospital and ASC demand for EXPAREL, ZILRETTA and iovera° and end-user buying patterns;

- maintaining our existing manufacturing facilities for EXPAREL, ZILRETTA and iovera° and expanding their manufacturing capacities;
- our execution of other collaborative, licensing, distribution, manufacturing or similar arrangements and the timing of payments we may make or receive under these arrangements;
- variations in the level of expenses related to our future development programs;
- any product liability or intellectual property infringement lawsuit in which we may become involved; and
- regulatory developments, lawsuits and investigations affecting EXPAREL, ZILRETTA, iovera° or the product candidates of our competitors.

If our quarterly or annual operating results fall below the expectations of our investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any quarterly or annual fluctuations in our operating results may, in turn, cause the price of our stock to fluctuate substantially. We believe that quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

We may be unable to successfully integrate the businesses and personnel of acquired companies and businesses, and may not realize the anticipated synergies and benefits of such acquisitions.

From time to time, we may complete acquisitions of companies and certain businesses of companies, and we may not realize the expected benefits from such acquisitions because of integration difficulties or other challenges. For example, in April 2019, we completed the MyoScience Acquisition and in November 2021, we completed the Flexion Acquisition.

The success of any acquisitions will depend, in part, on our ability to realize all or some of the anticipated synergies and other benefits from integrating the acquired businesses with our existing businesses. The integration process may be complex, costly and time-consuming. The potential difficulties we may face in integrating the operations of our acquisitions include, among others:

- failure to implement our business plans for the combined businesses and consolidation or expansion of production capacity as planned and where applicable;
- unexpected losses of key employees, customers or suppliers of our acquired companies and businesses;
- unanticipated issues in conforming our acquired companies' and businesses' standards, processes, procedures and internal controls with our operations;
- coordinating new product and process development;
- increasing the scope, geographic diversity and complexity of our operations;
- diversion of management's attention from other business concerns;
- adverse effects on our or our acquired companies' and businesses' existing business relationships;
- unanticipated changes in applicable laws and regulations;
- risks inherent in our acquired companies' and businesses' industry and operations;
- unanticipated expenses and liabilities;
- potential unfamiliarity with our acquired companies and businesses technology, products and markets, which may place us at a competitive disadvantage; and
- other difficulties in the assimilation of our acquired companies and businesses operations, technologies, products and systems.

If MyoScience, Flexion, or any other acquired companies and businesses have unanticipated or larger than anticipated liabilities for patent and trademark infringement claims, violations of laws, commercial disputes, taxes and other known and unknown types of liabilities, there may be liabilities that we underestimated or did not discover in the course of performing our due diligence investigation of our acquired companies and businesses. We may have no recourse or limited recourse under the applicable acquisition-related agreement to recover damages relating to the liabilities of our acquired companies and businesses.

We may not be able to maintain or increase the levels of revenue, earnings or operating efficiency that each of the acquired companies and businesses and us had historically achieved or might achieve separately. In addition, we may not accomplish the integration of any acquired companies and businesses smoothly, successfully or within the anticipated costs or timeframe. If we experience difficulties with the integration process or if the business of any acquired companies or businesses deteriorates, the anticipated cost savings, growth opportunities and other synergies of any acquired companies and businesses may not be realized fully or at all, or may take longer to realize than expected. If any of the above risks occur, our business,

financial condition, results of operations and cash flows may be materially and adversely impacted, we may fail to meet the expectations of investors or analysts, and our stock price may decline as a result.

Our ability to realize the benefits from the Flexion Acquisition is substantially dependent on the commercial success of ZILRETTA and the cost savings resulting from the timely and effective integration of the operations of Pacira and Flexion.

Our ability to realize the benefits from the Flexion Acquisition is substantially dependent on our ability to successfully commercialize ZILRETTA. Combining with Pacira may not accelerate the growth and success of ZILRETTA. If we are unsuccessful at convincing health care providers to increase their rate of adoption of ZILRETTA, our sales could be adversely affected, and our business could suffer.

Further, our ability to realize the benefits from the Flexion Acquisition is substantially dependent on the cost savings resulting from the timely and effective integration of the operations Pacira and Flexion. The process of integrating the operations of Pacira and Flexion could encounter unexpected costs and delays, which include but are not limited to: the loss of key personnel; the loss of key customers; the loss of key suppliers; integrating the products, services and related assets, as well as internal controls into our business operations; and unanticipated issues in integrating sales, marketing and administrative functions. If we are unable to timely and effectively integrate the operations of Pacira and Flexion, our results of operations could be adversely affected, and our business could suffer. Further, even if the integration is timely and effective, we may never realize the cost savings expected from the integration of the operations of the two companies.

The use of our net operating loss carryforwards and research and development tax credits will be limited.

We have significant federal and state net operating loss, or NOL, carryforwards and federal and state research and development tax credit carryforwards. Our NOL carryforwards and research and development tax credits may expire and not be used. Our Federal and state NOL carryforwards will begin expiring in 2032 and 2028, respectively, if we have not used them prior to that time. For any federal NOLs generated after December 31, 2017, the NOLs will have an indefinite life and utilization will be subject to a limitation of 80% of taxable income. The non-U.S. NOLs do not expire. Additionally, our ability to use certain NOLs and credit carryforwards to offset taxable income or tax, respectively, in the future will be limited under Internal Revenue Code Sections 382 and 383 because we experienced cumulative changes in ownership of more than 50% within a three-year period. Such ownership changes were triggered by the cumulative ownership changes arising as a result of the initial acquisition of the Company’s stock in 2007 and the completion of our initial public offering and our other financing transactions. Additionally, on November 19, 2021, we completed the Flexion Acquisition which also triggered an ownership change. Because of these ownership changes, we will be limited regarding the amount of NOL carryforwards and research tax credits that we can utilize annually in the future to offset taxable income or tax, respectively. Such an annual limitation may significantly reduce the utilization of the NOLs and research tax credits before they expire. Accordingly, we have not recognized a benefit in our consolidated financial statements for the NOLs and tax credits which may expire unused.

Changes in data privacy and protection laws and regulations, particularly in Europe and the State of California, or any failure to comply with such laws and regulations, could adversely affect our business and financial results.

We are subject to a variety of continuously evolving and developing laws and regulations globally regarding privacy, data protection and data security, including those related to the collection, storage, handling, use, disclosure, transfer and security of personal data. Significant uncertainty exists as privacy and data protection laws may be interpreted and applied differently from country to country and may create inconsistent or conflicting requirements. These laws apply to transfers of information among our affiliates, as well as to transactions we enter into with third-party vendors.

For example, the E.U. adopted a comprehensive General Data Privacy Regulation, or GDPR, in May 2016 that replaced the then-current E.U. Data Protection Directive and related country-specific legislation in May 2018. GDPR requires companies to satisfy new requirements regarding the handling of personal and sensitive data, including its use, protection and the ability of persons whose data is stored to correct or delete such data about themselves. Failure to comply with GDPR requirements could result in penalties of up to 4% of total worldwide revenue.

Additionally, the California Consumer Privacy Act, or CCPA, became effective in January 2020 and imposed new responsibilities on us for the handling, disclosure and deletion of personal information for our employees and consumers who reside in California. The CCPA permits California to assess potentially significant fines for violating CCPA and creates a right for individuals to bring class action suits seeking damages for violations. In addition, we will be required to implement more stringent privacy regulations by January 1, 2023 as the California Privacy Rights Act passed in November 2020.

Furthermore, legislators and regulators in the U.S. are proposing new and more robust cybersecurity rules in light of the recent broad-based cyberattacks at a number of companies. Our efforts to comply with GDPR, the CCPA and other privacy and data protection laws may impose significant costs and challenges that are likely to increase over time and may require us to revise certain of our business practices. These and similar initiatives around the world could increase the cost of developing, implementing or securing our servers and require us to allocate more resources to improved technologies, adding to our

information technology and compliance costs. In addition, enforcement actions and investigations by regulatory authorities related to data security incidents and privacy violations continue to increase. The enactment of more restrictive laws, rules, regulations, or future enforcement actions or investigations could impact us through increased costs or restrictions on our business, and noncompliance could result in substantial regulatory penalties and significant legal liability or litigation related to violation of existing or future data privacy laws and regulations.

We face risks related to cybersecurity threats and incidents.

We regularly face attempts by others to gain unauthorized access through the internet, or to introduce malicious software, to our Information Technology, or IT, systems. Individuals or organizations, including malicious hackers and insider threats including employees and third-party service providers, or intruders into our physical facilities, at times attempt to gain unauthorized access to our software and services. We could also be a target of malicious attackers who attempt to gain access to our network or data centers; steal proprietary information related to our business, products, employees, suppliers and customers; interrupt our systems and services or those of our suppliers, customers, or others; or demand ransom to return control of such systems and services. Such attempts, including but not limited to "phishing" attempts, are increasing in number and in technical sophistication, and if successful, expose us and any affected parties to risk of loss or misuse of proprietary or confidential information or disruptions of our business operations, including our manufacturing operations. Our IT infrastructure also includes services provided by third parties, and these service providers can experience breaches of their systems and products that impact the security of our systems and our proprietary or confidential information. A substantial breach of our or one of our service providers' systems could damage our reputation and result in the loss of revenues or the misuse of confidential data, and we may incur significant expenses to resolve such issues.

Significant changes in the global climate, extreme weather conditions and water availability could adversely affect our business or operations.

We could experience adverse impacts to our business if climate change, other extreme weather conditions and/or water availability challenges adversely affect our operations or the operations of our suppliers, distributors and customers. There is mounting scientific evidence, as well as concern from the general public, that emissions of greenhouse gases and contributing human activities have caused and will continue to cause significant changes in global temperatures and weather patterns and increase the frequency or severity of weather events, extreme heat, wildfires and flooding. While such conditions cannot be predicted, if such conditions were to impact our manufacturing sites or otherwise alter production schedules, including those of our third-party suppliers of raw materials, our manufacturing equipment, or our distributors, we could experience a disruption in the supply of EXPAREL, ZILRETTA or iovera° to our customers and partners, or we could see an unfavorable impact on the cost or availability of our raw or packaging materials. Disruptions to the operations of our customers could also adversely impact the demand for our products. Regulations in response to climate change could result in increased manufacturing costs associated with increased compliance and water and energy costs.

Our international operations expose us to numerous and sometimes conflicting legal and regulatory requirements, the compliance of which could be costly and time consuming and violation of these regulations could adversely affect our business or operations.

We are subject to numerous, and sometimes conflicting, legal requirements on matters as diverse as pharmaceutical and medical device marketing, product liability, anti-corruption, data protection and privacy, compliance, taxation, accounting and financial reporting, employment laws, wage-and-hour standards, labor relations and human rights. The global nature of our operations may increase the difficulty and cost of compliance with various regulations and laws, as compliance with diverse legal requirements is costly, time-consuming and requires significant resources. Violations of one or more of these regulations in the conduct of our business could result in significant fines, enforcement actions or criminal sanctions against us and/or our employees, prohibitions on doing business and damage to our reputation.

In addition to these legal and regulatory requirements, there are risks inherent in doing business internationally, including but not limited to:

- different or more restrictive privacy, data protection, data localization, and other laws that could require us to make changes to our products, services and operations, such as mandating that certain types of data collected in a particular country be stored and/or processed within that country;
- difficulties in developing, staffing, and simultaneously managing our foreign operations as a result of distance, language, and cultural differences;
- stringent local labor laws and regulations;
- profit repatriation restrictions, and foreign currency exchange restrictions;
- geopolitical events, including natural disasters, acts of war and terrorism, and public health emergencies, including divergent governmental responses thereto across the jurisdictions in which we operate;

- import or export regulations;
- compliance with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and laws and regulations of other jurisdictions prohibiting corrupt payments to government officials and other third parties;
- antitrust and competition regulations;
- potentially adverse tax developments;
- trade barriers and changes in trade regulations;
- political or social unrest, economic instability, repression, or human rights issues; and
- risks related to other government regulation or required compliance with local laws.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

We occupy three facilities totaling approximately 195,000 square feet at our Science Center Campus in San Diego, California. We use these facilities for research and development, manufacturing, general and administrative purposes and the storage of inventory and raw materials. Our EXPAREL and iovera° handpieces manufacturing facility and mixed-use research and development property leases both expire in June 2030 and our warehouse lease expires in August 2030. Our iovera° facility in Fremont, California, consists of approximately 20,000 square feet of mixed-use manufacturing, research and development and office space, and its lease currently expires in June 2022 with operations moving to both the Science Center Campus and Providien facility. The *Pacira Innovation and Training center at Tampa* (known as the "PITT") in Tampa, Florida, is an approximately 13,000 square-foot facility that supports a full range of educational events to advance clinician understanding of the latest local, regional and field block approaches for managing pain and reducing or eliminating exposure to opioids. Our corporate headquarters are also located at the PITT, and our lease expires in December 2026. In addition, we have an administrative, commercial and business development office in Parsippany, New Jersey, where we occupy approximately 53,000 square feet under a lease expiring in March 2028. As part of the Flexion Acquisition, we assumed leases for approximately 42,000 square feet of office space in Burlington, Massachusetts under a lease that expires in April 2025 and approximately 5,300 square feet of laboratory space in Woburn, Massachusetts under a lease that expires in February 2024.

We believe that our research and development and manufacturing facilities at our Science Center Campus, Thermo Fisher, Fremont and Providien sites (as discussed in *Item 1—Business* above) will be sufficient for our commercial and pipeline development needs. We also may add new facilities or expand existing facilities as we add employees, expand our geographic markets and if demand for EXPAREL, ZILRETTA and iovera° increases and we believe that suitable additional or substitute space will be available as needed to accommodate any such expansion of our operations.

Item 3. Legal Proceedings

For information related to Item 3. Legal Proceedings, refer to Note 21, *Commitments and Contingencies*, to our consolidated financial statements included herein.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

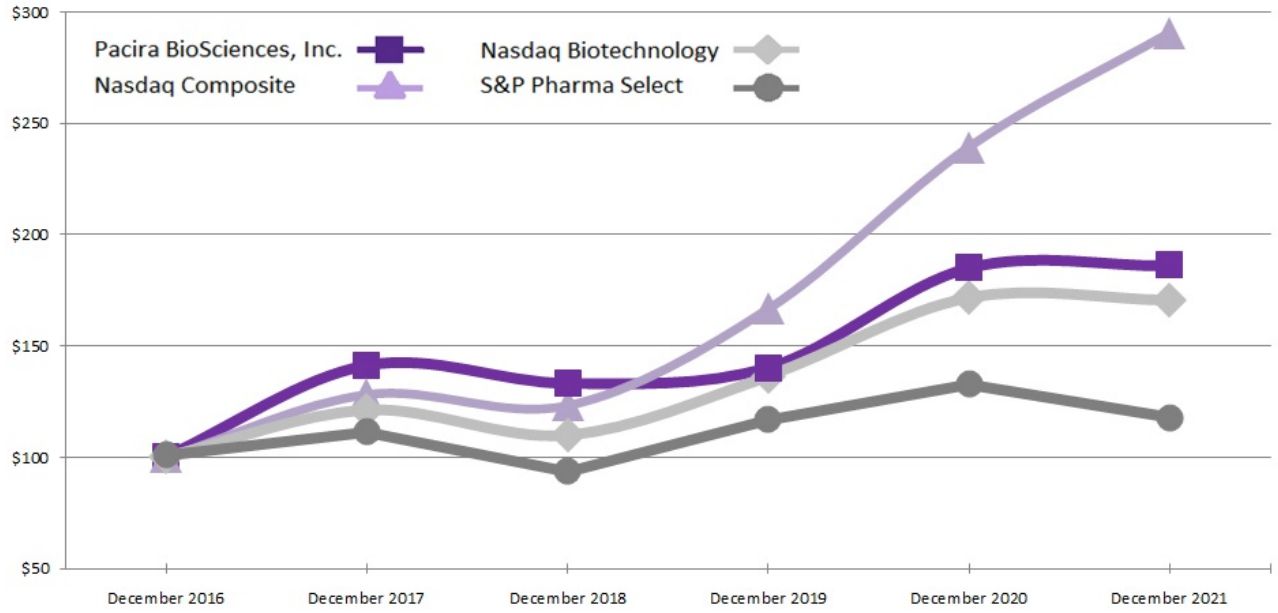
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock is listed and traded under the ticker symbol "PCRX" on the Nasdaq Global Select Market. As of February 27, 2022, we had eleven holders of record of our common stock. The number of record holders is based on the actual number of holders registered on the books of our transfer agent and does not reflect a substantially greater amount of holders of shares in "street name", whose shares are held of record by banks, brokers and other financial institutions.

Performance Graph

The following graph shows the value of an investment of $100.00 made on December 31, 2016, in each of Pacira BioSciences, Inc. (PCRX), the Nasdaq Composite Index (^IXIC), the Nasdaq Biotechnology Index (^NBI) and the S&P Pharmaceuticals Select Index (^SPSIPH). The three indices included are for comparative purposes only and do not necessarily reflect management's opinion that such indices are an appropriate measure of the relative performance of our common stock. All results assume the reinvestment of dividends, if any, and are calculated as of December 31st of each year. The historical stock price performance of our common stock and the indices shown in this performance graph is not necessarily indicative of future stock price performance.

Comparison of Five-Year Cumulative Total Returns
Among Pacira BioSciences, Inc., the Nasdaq Composite Index,
the Nasdaq Biotechnology Index and the S&P Pharmaceuticals Select Index



	Cumulative Total Return as of December 31,					
	2016	2017	2018	2019	2020	2021
Pacira BioSciences, Inc. (PCRX)	$ 100.00	$ 141.33	$ 133.19	$ 140.25	$ 185.26	$ 186.28
Nasdaq Composite Index (^IXIC)	$ 100.00	$ 128.24	$ 123.26	$ 166.68	$ 239.42	$ 290.63
Nasdaq Biotechnology Index (^NBI)	$ 100.00	$ 121.06	$ 109.77	$ 136.56	$ 171.64	$ 170.55
S&P Pharmaceuticals Select Index (^SPSIPH)	$ 100.00	$ 111.30	$ 93.82	$ 117.04	$ 132.95	$ 118.00

Dividend Policy

We have never declared or paid any dividends on our common stock. We currently intend to retain our future earnings to finance the future development and expansion of our business, and as such we do not expect to pay any cash dividends on our common stock in the foreseeable future. The payment of future dividends, if any, will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in the agreements governing our indebtedness, provisions of applicable law and any other factors our board of directors deems relevant.

Item 6. Reserved

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's Discussion and Analysis of Financial Condition and Results of Operations is based upon our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States of America, or GAAP, and in accordance with the rules and regulations of the United States Securities and Exchange Commission, or SEC. We operate and report our financial information in one segment. The following discussion of our financial condition and results of operations should be read in conjunction with the other sections of this Annual Report, including our consolidated financial statements and the notes to those consolidated financial statements appearing in Part IV, Item 15, of this Annual Report. This discussion contains forward-looking statements that involve significant risks and uncertainties. As a result of many factors, such as those set forth under "Risk Factors" in Part I, Item 1A. of this Annual Report, our actual results may differ materially from those anticipated in these forward-looking statements. Certain defined terms have been brought forward from Part I of this Annual Report.

This section of this Annual Report discusses year-to-year comparisons between 2021 and 2020, as well as other discussions of 2021 and 2020 items. We have omitted discussion of the year ended December 31, 2019 (the earliest of the three years covered by our consolidated financial statements presented in this Annual Report) as permitted by SEC regulations. The complete Management's Discussion and Analysis of Financial Condition and Results of Operations for year-to-year comparisons between 2020 and 2019 and other discussions of 2019 items can be found within Part II, Item 7, to our Annual Report for the year ended December 31, 2020, filed with the SEC on March 1, 2021, which is available free of charge on the SEC's website at www.sec.gov and our corporate website at www.pacira.com.

Overview

Pacira is the industry leader in our commitment to non-opioid pain management and providing a non-opioid option to as many patients as possible to redefine the role of opioids as rescue therapy only. Our long-acting, local analgesic EXPAREL® (bupivacaine liposome injectable suspension) was commercially launched in April 2012. EXPAREL utilizes our unique pMVL drug delivery technology that encapsulates drugs without altering their molecular structure and releases them over a desired period of time. In the U.S., EXPAREL is the only opioid-free, long-acting local and regional analgesic approved for infiltration, field blocks and interscalene brachial plexus nerve block to produce local or regional postsurgical analgesia. EXPAREL is also approved for infiltration in pediatric patients aged six years and older in the U.S. In Europe, EXPAREL is approved as a brachial plexus block or femoral nerve block for treatment of post-operative pain in adults, and as a field block for treatment of somatic post-operative pain from small- to medium-sized surgical wounds in adults. Since its initial approval in 2011, more than ten million patients have been treated with EXPAREL. We drop-ship EXPAREL directly to the end-user based on orders placed to wholesalers or directly to us, and there is no product held by wholesalers. With the MyoScience Acquisition in April 2019, we acquired iovera°®, a handheld cryoanalgesia device used to deliver a precise, controlled application of cold temperature only to targeted nerves, which we sell directly to end users. The iovera° system is highly complementary to EXPAREL as a non-opioid therapy that alleviates pain by disrupting pain signals being transmitted to the brain from the site of injury or surgery. With the Flexion Acquisition in November 2021, we acquired ZILRETTA® (triamcinolone acetonide extended-release injectable suspension), the first and only extended-release, intra-articular therapy that can provide major relief for OA knee pain for three months and has the potential to become an alternative to hyaluronic acid, or HA, and platelet rich plasma, or PRP, injections or other early intervention treatments. We believe ZILRETTA is highly complementary to iovera°.

We expect to continue to pursue the expanded use of EXPAREL, ZILRETTA and iovera° in additional procedures; progress our earlier-stage product candidate pipeline; advance regulatory activities for EXPAREL, ZILRETTA, iovera° and other product candidates; invest in sales and marketing resources for EXPAREL, ZILRETTA and iovera°; expand and enhance our manufacturing capacity for EXPAREL, ZILRETTA and iovera°; invest in products, businesses and technologies; and support legal matters.

Flexion Acquisition

On November 19, 2021, we completed the Flexion Acquisition pursuant to the Merger Agreement, under which Flexion became our wholly owned subsidiary and added ZILRETTA, a non-opioid corticosteroid that employs a proprietary microsphere technology to provide extended pain relief, to our commercial offering. The addition of ZILRETTA to our innovative non-opioid product portfolio directly aligns with our mission to provide an opioid alternative to as many patients as possible and address medical needs along the neural pain pathway.

The total consideration of $578.8 million included an initial payment of $428.3 million which represented $8.50 in cash per share of Flexion common stock, $20.2 million paid to settle restricted stock units and in-the-money stock options, an

$85.1 million cash payment of Flexion debt not to be assumed by us and $45.2 million in contingent consideration representing the fair value of contingent value rights, or CVRs, that were issued in conjunction with the Flexion acquisition. The Merger Agreement provided for one non-tradeable CVR per share of Flexion common stock as well as one CVR per share for certain Flexion equity awards. Each CVR entitles Flexion shareholders to contingent milestone payments of up to an aggregate of $8.00 in cash per share of Flexion common stock if certain milestones are met on or prior to December 31, 2030. We estimate that up to an additional $380.2 million in the aggregate may be payable to holders of the CVRs if each of the applicable milestones are achieved. For more information, see Note 5, *Acquisitions*, to our consolidated financial statements included herein.

Recent Highlights

- In December 2021, we closed on the $375.0 million Term Loan. Proceeds of the Term Loan were used to replenish a portion of our funds that were used to pay the purchase price and transaction costs of the Flexion Acquisition and related transactions. For more information, see Note 11, *Debt*, to our consolidated financial statements included herein.

- We recently received four Notices of Allowance from the USPTO for four EXPAREL patents that have been examined and will issue. Two patents claim chemical composition of EXPAREL and two claim product-by-process. After issuance, Pacira will submit these patents for listing in the FDA Approved Drug Products with Therapeutic Equivalence Evaluations (the “Orange Book”). After listing, the Orange Book would have a total of six EXPAREL patents each with an expiration date of January 22, 2041.

Coronavirus (COVID-19) Pandemic

Since early 2020, our revenues have been impacted by COVID-19 and pandemic-related challenges that included the significant postponement or suspension in the scheduling of elective surgical procedures due to public health guidance and government directives. While the degree of impact has diminished during the course of the pandemic due to the introduction of vaccines and the lessening of elective surgery restrictions, certain pandemic-related operational challenges persist. It remains unclear how long it will take the elective surgery market to normalize or if restrictions on elective procedures will recur due to future COVID-19 variants or otherwise. For instance, while many restrictions have since eased with COVID-19 vaccines now widely available, the elective surgery market faced additional pandemic-related challenges in August and September 2021 due to regional surges in COVID-19 Delta variant cases, staffing shortages and fatigue from care teams addressing significant procedure backlogs, and in December 2021, the COVID-19 Omicron variant prompted some government restrictions on elective procedures and surgical staffing challenges which began to ease in January 2022.

We will continue to actively monitor the situation and implement measures recommended by federal, state or local authorities, or that we determine are in the best interests of our patients, employees, partners, suppliers, shareholders and stakeholders. For a description of risks facing the Company that relate to the COVID-19 pandemic or any other future pandemic, epidemic or outbreak of contagious disease, see Item 1A. “Risk Factors” in this Annual Report.

Results of Operations

Comparison of the Years Ended December 31, 2021 and 2020

Revenues

Net product sales consist of (i) EXPAREL in the U.S., E.U. and U.K.; (ii) ZILRETTA in the U.S.; (iii) iovera° in the U.S. and Canada; and (iv) sales of, and royalties on, our bupivacaine liposome injectable suspension, primarily to Aratana for veterinary use.

The following table provides information regarding our revenues during the periods indicated, including percent changes (dollar amounts in thousands):

	Year Ended December 31,		% Increase / (Decrease)
	2021	2020	
Net product sales:			
EXPAREL	$ 506,515	$ 413,338	23%
ZILRETTA [(1)]	12,683	—	N/A
iovera°	16,162	8,817	83%
Bupivacaine liposome injectable suspension	3,606	4,459	(19)%
Total net product sales	538,966	426,614	26%
Royalty revenue	2,442	3,033	(19)%
Collaborative licensing and milestone revenue	125	—	N/A
Total revenues	$ 541,533	$ 429,647	26%

(1) ZILRETTA net product sales are attributable to the period beginning November 19, 2021, the date of the Flexion Acquisition.

EXPAREL net product sales grew 23% in 2021 compared to 2020, primarily due to increases of 21% in gross vial volume and increases of 4% in gross selling price per unit, partially offset by the sales mix of EXPAREL vial sizes. Although the demand for EXPAREL has continued to increase primarily as a result of ASCs and anesthesiologists broadening the use of long-acting EXPAREL regional approaches as a foundation of multimodal opioid-minimization strategies that enable shifting inpatient procedures to 23-hour sites of care, the elective surgery market faced additional pandemic-related challenges from August through December 2021 due to regional surges in COVID-19 Delta and Omicron variant cases, staffing shortages and fatigue from care teams addressing significant procedure backlogs. In 2020, we were also impacted by the suspension of elective surgeries due to the COVID-19 pandemic. EXPAREL utilization remains above the overall sharp decline in elective surgical procedures relative to pre-pandemic baseline levels due to increased utilization in outpatient settings and emergent procedures.

Bupivacaine liposome injectable suspension revenue and the related royalty revenue both decreased 19% in 2021 versus 2020 due to the timing of orders placed by Aratana for veterinary use.

As a result of the Flexion Acquisition, we acquired ZILRETTA in November 2021, which is an extended-release corticosteroid treatment for OA knee pain. We recognized net product sales of $12.7 million for the year ended December 31, 2021, which are attributable to the period beginning on November 19, 2021, the closing date of the Flexion Acquisition.

Net product sales of iovera° increased 83% in 2021 versus 2020 primarily due to an increased iovera° sales force, new customers and the impact that the COVID-19 pandemic had in 2020. We have seen the greatest iovera° demand as a pain relief for patients in advance of TKA procedures and in chronic pain management, particularly for people with mild to severe OA of the knee.

The collaborative licensing and milestone revenue recognized in 2021 was the result of a portion of an upfront payment recognized under our distribution agreement with Eurofarma for the development and commercialization of EXPAREL in Latin America. For more information, see Note 19, *Commercial Partners*, to our consolidated financial statements included herein.

Any renewed government suspension of, or reluctance of patients to have, elective procedures would impact our future sales of EXPAREL, ZILRETTA and iovera° during the ongoing COVID-19 pandemic.

Cost of Goods Sold

Cost of goods sold primarily relates to the costs to produce, package and deliver our products to customers. These expenses include labor, raw materials, manufacturing overhead and occupancy costs, depreciation of facilities, royalty payments, quality control and engineering.

The following table provides information regarding cost of goods sold and gross margin during the periods indicated, including percent changes (dollar amounts in thousands):

	Year Ended December 31,		% Increase / (Decrease)
	2021	2020	
Cost of goods sold	$ 140,255	$ 117,328	20%
Gross margin	74%	73%	

Gross margin increased one percentage point in 2021 versus 2020 primarily due to downtime that occurred in 2020, including planned time to prepare our manufacturing suite for a new EXPAREL capacity expansion project at our Science Center Campus in San Diego, California and to a lesser extent an EXPAREL price increase.

Research and Development Expenses

Research and development expenses primarily consist of costs related to clinical trials and related outside services, product development and other research and development costs, including trials that we are conducting to generate new data for EXPAREL, ZILRETTA and iovera° and stock-based compensation expense. Clinical and preclinical development expenses include costs for clinical personnel, clinical trials performed by third-parties, toxicology studies, materials and supplies, database management and other third-party fees. Product development and manufacturing capacity expansion expenses include development costs for our products, which include personnel, equipment, materials and contractor costs for process development and product candidates, development costs related to significant scale-ups of our manufacturing capacity and facility costs for our research space. Regulatory and other expenses include regulatory activities related to unapproved products and indications, medical information expenses and related personnel. Stock-based compensation expense relates to the costs of stock option grants, awards of restricted stock units, or RSUs, and our employee stock purchase plan, or ESPP.

The following table provides a breakout of our research and development expenses during the periods indicated, including percent changes (dollar amounts in thousands):

	Year Ended December 31,		% Increase / (Decrease)
	2021	2020	
Clinical and preclinical development	$ 24,139	$ 23,126	4%
Product development and manufacturing capacity expansion	19,352	23,516	(18)%
Regulatory and other	6,590	7,568	(13)%
Stock-based compensation	5,464	5,211	5%
Total research and development expense	$ 55,545	$ 59,421	(7)%
% of total revenue	10%	14%	

Total research and development expense decreased 7% in 2021 versus 2020.

Clinical and preclinical development expense increased 4% due to increased activities in our iovera° and EXPAREL TKA (“PREPARE”) trial, activities related to two EXPAREL lower extremity nerve block trials in bunionectomy and TKA and ongoing trials for products acquired from the Flexion Acquisition in November 2021.

Product development and manufacturing capacity expansion expense decreased 18% in 2021 versus 2020 mainly attributable to the completion of the significant scale-up of our manufacturing capacity at the Thermo Fisher site in Swindon, England.

Regulatory and other expenses decreased 13% in 2021 versus 2020. Regulatory expenses decreased due to the completion of our regulatory review and approval of our MAA in the E.U. Other research and development expenses decreased with lower spend for EXPAREL and iovera° publications.

Stock-based compensation increased 5% in 2021 versus 2020 primarily due to an increase in the number of equity awards granted to research and development personnel.

We expect that research and development will increase in 2022 due to the addition of ZILRETTA, PCRX-201 and PCRX-301 to our product portfolio and pipeline. We believe ZILRETTA's extended-release profile may provide effective treatment for OA pain of the shoulder, and we intend to initiate a Phase 3 trial investigating ZILRETTA in shoulder OA in 2022. In addition, we are planning a comparative safety study of ZILRETTA in patients with Type 2 diabetes and are evaluating a repeat dosing study.

Selling, General and Administrative Expenses

Sales and marketing expenses primarily consist of compensation and benefits for our sales force and personnel that support our sales, marketing, medical and scientific affairs operations, payments to our marketing partners for the promotion and sale of our products, expenses related to communicating the health outcome benefits of our products, investments in provider-level market access and patient reimbursement support and educational programs for our customers. General and administrative expenses consist of compensation and benefits for legal, finance, regulatory activities related to approved products and indications, compliance, information technology, human resources, business development, executive management and other supporting personnel. It also includes professional fees for legal, audit, tax and consulting services. Stock-based compensation expense relates to the costs of stock option grants, RSU awards and our ESPP.

The following table provides information regarding selling, general and administrative expenses during the periods indicated, including percent changes (dollar amounts in thousands):

	Year Ended December 31,		% Increase / (Decrease)
	2021	2020	
Sales and marketing	$ 111,022	$ 118,682	(6)%
General and administrative	57,433	45,714	26%
Stock-based compensation	30,890	29,120	6%
Total selling, general and administrative expenses	$ 199,345	$ 193,516	3%
% of total revenue	37%	45%	

Total selling, general and administrative expenses increased 3% in 2021 versus 2020.

Sales and marketing decreased 6% in 2021 versus 2020 driven by the termination of our co-promotion agreement with DePuy Synthes Sales, Inc. effective January 2021. This was partially offset by compensation expenses due to an expanded sales force for EXPAREL and iovera°, the addition of a sales force to support ZILRETTA and set-up costs for our new contracted sales force in Europe. We are continuing our marketing investment in EXPAREL and iovera°, which includes educational initiatives and programs related to the impact of opioids and postsurgical pain management and our national advocacy campaign designed to educate patients about non-opioid treatment options. Additionally, we continue our investment in clinician training in the use of EXPAREL and iovera° at our PITT training facility in Tampa, Florida. We also incurred launch expenses for EXPAREL in connection with our label expansion for use in pediatric populations as young as age six. We expect that the addition of ZILRETTA to our commercial portfolio will increase our sales and marketing spend in 2022 as we increase the size of our ZILRETTA and iovera° sales force which is providing clinicians with two unique OA treatment options to individualize patient care and patient reimbursement support for ZILRETTA.

General and administrative expenses increased 26% in 2021 versus 2020 due to increased legal costs, which includes an insurance recovery of $2.1 million in 2020 for legal expenditures related to a since-resolved Department of Justice inquiry and additional administrative and integration costs related to the Flexion Acquisition.

Stock-based compensation increased 6% in 2021 versus 2020, primarily due to an increase in the number of grants outstanding to selling, general and administrative personnel.

Amortization of Acquired Intangible Assets

The following table provides a summary of the amortization of acquired intangible assets during the periods indicated, including percent changes (dollar amounts in thousands):

	Year Ended December 31,		% Increase / (Decrease)
	2021	2020	
Amortization of acquired intangible assets	$ 13,553	$ 7,866	72%

Amortization of acquired intangible assets increased 72% in 2021 versus 2020 due to the acquisition of Flexion in November 2021. As part of the acquisition, we acquired a developed technology intangible asset for ZILRETTA for OA knee pain, which is being amortized over a useful life of approximately ten years. For more information, see Note 5, *Acquisitions*, to our consolidated financial statements included herein.

Acquisition-Related Charges, Product Discontinuation and Other

The following table provides a summary of the costs related to the Flexion Acquisition, MyoScience Acquisition, our DepoCyt(e) discontinuation and other activities during the periods indicated, including percent changes (dollar amounts in thousands):

	Year Ended December 31,		% Increase / (Decrease)
	2021	2020	
Acquisition-related charges	$ 39,911	$ 5,354	100% +
Product discontinuation	—	(188)	N/A
Other	3,000	—	N/A
Total acquisition-related charges, product discontinuation and other	$ 42,911	$ 5,166	100% +

In 2021, we recognized acquisition-related charges of $39.9 million. These charges are primarily driven by severance and other employee related costs, investment banking, legal and other professional fees, third-party services and other one-time charges associated with the Flexion Acquisition and were partially offset by a gain from changes in fair value associated with the contingent consideration related to the MyoScience Acquisition. In 2020, we recognized charges related to the MyoScience Acquisition primarily due to changes in the fair value of contingent consideration. For more information, see Note 18, *Acquisition-Related Charges, Product Discontinuation and Other*, to our consolidated financial statements included herein.

In 2021, we agreed to a mutual termination of our agreement with Nuance to advance the development and commercialization of EXPAREL in China due to the lack of a viable regulatory pathway that adequately safeguards our intellectual property against the risk of a generic product. Dissolution costs of $3.0 million were included in other operating expenses in the consolidated statements of operations for the year ended December 31, 2021.

In 2020, we recorded a product discontinuation gain of $0.2 million related to the final settlement of the lease agreement for the site of the former DepoCyt(e) manufacturing activities. The foregoing references to DepoCyt(e) mean DepoCyt® when discussed in the context of the U.S. and Canada and DepoCyte® when discussed in the context of the E.U.

Other Expense, Net

The following table provides information regarding other expense, net during the periods indicated, including percent changes (dollar amounts in thousands):

	Year Ended December 31,		% Increase / (Decrease)
	2021	2020	
Interest income	$ 896	$ 4,629	(81)%
Interest expense	(31,750)	(25,671)	24%
Loss on early extinguishment of debt	—	(8,071)	N/A
Other, net	(2,666)	2,852	N/A
Total other expense, net	$ (33,520)	$ (26,261)	28%

Total other expense, net increased 28% in 2021 versus 2020.

The 24% increase in interest expense was due to the increase in outstanding debt from the entry into the $375.0 million Term Loan in December 2021, the issuance of $402.5 million aggregate principal amount of our 2025 Notes in July 2020 and the assumed $201.3 million principal amount of the Flexion 2024 Notes in connection with the Flexion Acquisition. This increase was partially offset by a decrease of interest expense associated with our 2022 Notes as a result of the $185.0 million repurchase of principal in July 2020.

In conjunction with the issuance of the 2025 Notes, in July 2020, we incurred an $8.1 million loss on early extinguishment of debt recognized due to the retirement of $185.0 million aggregate principal of our existing 2022 Notes.

Interest income decreased 81% in 2021 versus 2020 primarily due to lower interest rates and to a lesser extent the sale of available-for-sale investments in 2021 used to fund the cash portion of the purchase price consideration associated with the Flexion Acquisition.

Other, net expense for 2021 included a realized loss on the sale of our equity investment in TELA Bio, Inc., or TELA Bio, in the amount of $2.6 million. In 2020, Other, net income included $1.1 million of U.K. research and development tax credits and a $1.6 million unrealized gain on our equity investment in TELA Bio.

Income Tax Expense (Benefit)

The following table provides information regarding our income tax expense (benefit) during the periods indicated, including percent changes (dollar amounts in thousands):

	Year Ended December 31,		% Increase / (Decrease)
	2021	2020	
Income tax expense (benefit)	$ 14,424	$ (125,434)	N/A
Effective tax rate	26%	(100)% +	

We recorded income tax expense of $14.4 million for the year ended December 31, 2021 and an income tax benefit of $125.4 million for the year ended December 31, 2020. The effective tax rate of 26% for the year ended December 31, 2021 differed from the U.S. statutory tax rate of 21% due to non-deductible expenses and valuation allowances recorded against capital loss carryforwards, partially offset by stock-based compensation deductions and tax credits.

The income tax benefit for the year ended December 31, 2020 represented the full release of a $126.6 million valuation allowance on net domestic deferred assets as we determined that there was sufficient positive evidence to conclude that it was more likely than not that domestic deferred taxes were realizable.

Liquidity and Capital Resources

Since our inception in 2006, we have devoted most of our cash resources to manufacturing, research and development and selling, general and administrative activities related to the development and commercialization of EXPAREL. In addition, we acquired ZILRETTA as part of the Flexion Acquisition in November 2021 and iovera° as part of the MyoScience Acquisition in April 2019. We are primarily dependent on the commercial success of EXPAREL and ZILRETTA. We have financed our operations primarily with the proceeds from the sale of convertible senior notes and other debt, common stock, product sales and collaborative licensing and milestone revenue. As of December 31, 2021, we had an accumulated deficit of $211.9 million, cash and cash equivalents and short-term available-for-sale investments of $656.4 million and working capital of $344.9 million. The net cash proceeds from the Term Loan was $359.2 million after deducting fees and financing costs. For more information, see Note 11, *Debt*, to our consolidated financial statements included herein.

The COVID-19 pandemic could continue to result in a reduction of certain commercial and clinical expenditures which could offset a portion of the potential revenue declines caused by the COVID-19 pandemic. We currently expect that our cash, short-term and long-term investments on hand will be adequate to cover any potential short-term liquidity needs, and that we would be able to access other sources of financing should the need arise.

In March 2020, the Coronavirus Aid, Relief and Economic Security (CARES) Act was signed into law in response to the COVID-19 pandemic. The CARES Act, among other things, allows for certain measures to increase liquidity for businesses such as the deferral of employer payroll taxes, a tax credit for retaining employees and other provisions. We benefited from the provision to defer the payment of certain employer payroll taxes in the amount of $2.8 million for the year ended December 31, 2020 and remitted $1.4 million in December 2021. The remaining $1.4 million is due by December 31, 2022.

Summary of Cash Flows

The following table summarizes our cash flows from operating, investing and financing activities for the years ended December 31, 2021 and 2020 (in thousands):

	Year Ended December 31,	
Consolidated Statements of Cash Flows Data:	**2021**	**2020**
Net cash provided by (used in):		
Operating activities	$ 125,717	$ 77,032
Investing activities	(20,790)	(277,607)
Financing activities	380,694	222,304
Net increase in cash and cash equivalents	$ 485,621	$ 21,729

Operating Activities

In 2021, net cash provided by operating activities was $125.7 million compared to $77.0 million in 2020. The increase of $48.7 million was primarily attributable to a 26% increase in total revenues, which was partially offset by expenditures related to the Flexion Acquisition including severance, legal fees and third-party services. For more information, see Note 18, *Acquisition-Related Charges, Product Discontinuation and Other,* to our consolidated financial statements. In addition, in 2021 there were contingent consideration payments to MyoScience securityholders of $12.0 million, of which $6.8 million has been classified as an operating cash outflow and $5.2 million as a financing cash outflow.

Investing Activities

In 2021, net cash used in investing activities was $20.8 million, which was primarily driven by the $420.0 million cash portion of the purchase price consideration, net of cash received, associated with the Flexion Acquisition and $45.9 million of capital expenditures, largely for equipment for our new 200-liter EXPAREL capacity expansion project at our Science Center Campus in San Diego, California. These uses of cash were partially offset by the net sale of available-for-sale investments of $457.2 million to fund the cash portion of the purchase price consideration associated with the Flexion Acquisition.

In 2020, net cash used in investing activities was $277.6 million, which reflected $238.6 million of short-term and long-term investment purchases (net of maturities) and purchases of fixed assets of $37.8 million. Major fixed asset purchases included equipment for the new 200-liter EXPAREL capacity expansion project at our Science Center Campus and expenditures for expanding our EXPAREL manufacturing capacity in Swindon, England. In addition, we made a $1.2 million equity investment.

Financing Activities

In 2021, net cash provided by financing activities was $380.7 million, which consisted of net proceeds from the Term Loan of $359.2 million, the exercise of stock options of $23.8 million and $2.8 million from the issuance of shares through our ESPP. We also made contingent consideration payments to MyoScience securityholders, of which $5.2 million was classified as financing activities based on the recognition at the time of the MyoScience Acquisition.

In 2020, net cash provided by financing activities was $222.3 million, which consisted of gross proceeds from the issuance of the 2025 Notes of $402.5 million, the exercise of stock options of $45.2 million and $2.5 million from the issuance of shares through our ESPP. In conjunction with the issuance of the 2025 Notes, we paid $211.1 million of cash (including $1.2 million of accrued interest classified as an operating outflow) to retire $185.0 million of our 2022 Notes in privately negotiated transactions and $12.5 million in financing costs. We also made contingent consideration payments to MyoScience securityholders, of which $5.6 million was classified as financing activities based on their recognition at the time of the MyoScience Acquisition.

Equity Financings

From our inception through December 31, 2021, we have raised $344.5 million of net proceeds from the sale of common stock and other equity securities via public offerings.

Debt

2026 Term Loan B Facility

In December 2021, we entered into the $375.0 million Term Loan which is secured by substantially all of the Company's and any subsidiary guarantor's assets and is scheduled to mature on December 7, 2026, subject to certain exceptions set forth in the Credit Agreement. The Company may elect to borrow either alternate base rate borrowings or term benchmark borrowings. Each term loan borrowing which is an alternate base rate borrowing bears interest at a variable rate per annum equal to the Alternate Base Rate (as defined in the Credit Agreement) subject to a 1.75% floor, plus 6.00%. Each term loan borrowing which is a term benchmark borrowing bears interest at a variable rate per annum equal to (i) the Adjusted Term SOFR Rate (as defined in the Credit Agreement) subject to a 0.75% floor plus (ii) 7.00%.

The Credit Agreement requires us to, among other things, maintain (i) a first lien net leverage ratio, determined as of the last day of any fiscal quarter, of no greater than 1.75 to 1.00 and (ii) liquidity, at any time, of at least $150.0 million. The Credit Agreement also contains customary affirmative and negative covenants, financial covenants, representations and warranties, events of default and other provisions. As of December 31, 2021, the Company was in compliance with all financial covenants under the Credit Agreement.

At December 31, 2021, we had $375.0 million in outstanding borrowings under the Term Loan. As a result of our entry into the Term Loan, we expect our interest to increase in 2022. See Note 11, *Debt*, to our consolidated financial statements included herein for further discussion of the Term Loan.

2025 Convertible Senior Notes

In July 2020, we completed a private placement of $402.5 million in aggregate principal amount of our 2025 Notes and entered into an indenture with respect to the 2025 Notes. The 2025 Notes accrue interest at a fixed rate of 0.750% per annum, payable semiannually in arrears on February 1 and August 1 of each year. The 2025 Notes mature on August 1, 2025. At December 31, 2021, the outstanding principal on the 2025 Notes was $402.5 million. See Note 11, *Debt*, to our consolidated financial statements included herein for further discussion of the 2025 Notes, including information on convertibility factors, redemption, timeframes and balance sheet classification.

2024 Convertible Senior Notes

In November 2021, as part of the Flexion Acquisition, we assumed $201.3 million in aggregate principal amount of the Flexion 2024 Notes. The Flexion 2024 Notes have a maturity date of May 1, 2024, are unsecured, and accrue interest at a rate of 3.375% per annum, payable semi-annually on May 1 and November 1 of each year. At December 31, 2021, the outstanding principal on the Flexion 2024 Notes was $201.3 million. In January 2022, we repurchased $192.6 million aggregate principal amount of the Flexion 2024 Notes. See Note 11, *Debt*, to our consolidated financial statements included herein for further discussion of the Flexion 2024 Notes.

2022 Convertible Senior Notes

In March 2017, we completed a private placement of $345.0 million in aggregate principal amount of our 2022 Notes and entered into an indenture with respect to the 2022 Notes. The 2022 Notes accrue interest at a fixed rate of 2.375% per annum, payable semiannually in arrears on April 1 and October 1 of each year. The 2022 Notes mature on April 1, 2022, and since October 1, 2020, holders may convert their 2022 Notes at any time. In July 2020, we used part of the net proceeds from the issuance of the 2025 Notes discussed above to repurchase $185.0 million aggregate principal of the 2022 Notes in privately negotiated transactions for an aggregate of approximately $211.1 million in cash, including accrued interest. At December 31, 2021, the outstanding principal on the 2022 Notes was $160.0 million and we intend to repay the principal with cash on hand upon maturity on April 1, 2022. See Note 11, *Debt*, to our consolidated financial statements included herein for further discussion of the 2022 Notes, including information on convertibility factors, redemption, timeframes and balance sheet classification.

Future Capital Requirements

We believe that our existing cash and cash equivalents, available-for-sale investments and cash received from product sales will be sufficient to enable us to fund our operating expenses, capital expenditure requirements and payment of the interest and principal on our Term Loan and our Notes, and any conversions of our Notes through the next 12 months. Our future use of operating cash and capital requirements will depend on many forward-looking factors, including, but not limited to, the following:

- the costs of successfully integrating Flexion into our existing business and expanding the commercialization of ZILRETTA;
- the cost and timing of the potential Flexion milestone payments under the CVR Agreement, which could be up to an aggregate of $425.5 million if certain regulatory and commercial milestones are met (See Note 5, *Acquisitions*, to our consolidated financial statements included herein for more information);
- the impact of the COVID-19 pandemic, including the amounts and delays of suspended elective surgical procedures, clinical trials and general economic conditions;
- the timing of and extent to which the holders of our Notes elect to convert their Notes and the timing of principal and interest payments on our Term Loan;
- the costs and our ability to successfully continue to expand the commercialization of EXPAREL, ZILRETTA and iovera°, including outside of the U.S.;
- the cost and timing of expanding and maintaining our manufacturing facilities, including the current EXPAREL capacity expansion project at our Science Center Campus in San Diego, California;
- the cost and timing of potential remaining milestone payments to MyoScience security holders, which could be up to an aggregate of $43.0 million if certain regulatory and commercial milestones are met (See Note 5, *Acquisitions*, to our condensed consolidated financial statements included herein for more information);
- the cost and timing of additional strategic investments, including additional investments under existing agreements;
- costs related to legal and regulatory issues;
- the costs of performing additional clinical trials for our products, including the additional pediatric trials required by the FDA and EMA as a condition of approval of EXPAREL;
- the costs for the development and commercialization of other product candidates;
- the costs and timing of future payments under our employee benefit plans, including but not limited to our cash long-term incentive plan and non-qualified deferred compensation plan; and
- the extent to which we acquire or invest in products, businesses and technologies.

We may require additional debt or equity financing to meet our future operating and capital requirements. We have no committed external sources of funds, and additional equity or debt financing may not be available on acceptable terms, if at all. Capital market disruptions or negative economic conditions, especially in light of the COVID-19 pandemic, may hinder our access to capital.

Contractual Obligations

We had three convertible senior notes outstanding as of December 31, 2021. $160.0 million in aggregate principal amount is due on our 2022 Notes in April 2022, $8.7 million in aggregate principal amount is due on the Flexion 2024 Notes in May 2024, and $402.5 million in aggregate principal amount is due on our 2025 Notes in August 2025. There was $201.5 million in aggregate principal amount of Flexion 2024 Notes outstanding as of December 31, 2021 of which $192.6 million in aggregate principal amount was repurchased on January 7, 2022 following an offer to purchase the Flexion 2024 Notes. The remaining interest payments on our Notes is $17.9 million, of which an estimated $5.3 million is due in 2022. We also have a $375.0 million Term Loan with contractually obligated principal payments of $28.1 million in 2022, $37.5 million in each of 2023 and 2024, $42.2 million in 2025 and $229.7 million in 2026. The remaining interest payments on the our Term Loan is approximately $115.9 million, based on the current interest rate.

In the normal course of business, we enter into various lease agreements for manufacturing, research and development and corporate activities, which are typically classified as operating leases under the provisions of Financial Accounting Standards Board Accounting Standards Codification Topic 842, *Leases*. As of December 31, 2021, we had net minimum commitments of $104.2 million, of which $13.2 million is due in 2022.

In addition, we have approximately $50.3 million of minimum, non-cancelable contractual commitments for contract manufacturing services as of December 31, 2021, of which $18.5 million is due within one year, and the remaining $31.8 million is due within one to three years. We have approximately $9.2 million of minimum, non-cancelable contractual commitments for the purchase of certain raw materials as of December 31, 2021, of which $4.7 million is due within one year, and the remaining $4.5 million is due within one to three years.

As part of the MyoScience Acquisition, upon the achievement of certain regulatory and commercial milestones, there are up to $43.0 million in potential milestone payments available as of December 31, 2021. As part of the Flexion Acquisition there are up to $425.5 million in potential payments if all the regulatory and commercial milestones are met. For more information, see Note 5, *Acquisitions*, to our consolidated financial statements included herein.

Critical Accounting Policies and Use of Estimates

We have based our management's discussion and analysis of our financial condition and results of operations on our financial statements that have been prepared in accordance with GAAP in the U.S. The preparation of these financial statements requires us to make estimates that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported revenues and expenses during the reporting periods. On an ongoing basis, we evaluate our estimates and judgments, including those related to revenue recognition, contingent consideration, purchase price adjustments, inventory costs, liabilities and accruals, clinical trial expenses, stock-based compensation and the valuation of deferred tax assets. We base our estimates on historical experience, contract terms and on other factors we believe to be appropriate under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

Our significant accounting policies are more fully discussed in Note 2, *Summary of Significant Accounting Policies*, to our consolidated financial statements included herein. The following accounting policies, which may include significant judgments and estimates, were used in the preparation of our consolidated financial statements.

Revenue Recognition

Revenues from sales of products are recorded net of returns allowances, prompt payment discounts, service fees, government rebates, volume rebates and chargebacks. These reserves are based on estimates of the amounts earned or to be claimed on the related sales. These amounts are treated as variable consideration, estimated and recognized as a reduction of the transaction price at the time of the sale, using the most likely amount method, except for returns, which is based on the expected value method. The Company includes these estimated amounts in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized for such transaction will not occur, or when the uncertainty associated with the variable consideration is resolved. The calculation of some of these items requires management to make estimates based on sales data, historical return data, contracts, statutory requirements and other related information that may become known in the future. The adequacy of these provisions is reviewed on a quarterly basis. If our assessments, experiences or judgments are not accurate estimates of future results, our results could be affected. The sensitivity of our estimates varies by program. Estimates associated with chargebacks and government programs have the greatest risk of being subject to adjustment because of the time delay between recording the accrual and the final settlement. Historically, adjustments to these estimates to reflect actual results or updated expectations have not been material.

The summary of activity with respect to our sales related allowances and accruals for the years ended December 31, 2021, 2020 and 2019 appears in Note 4, *Revenue*, to our consolidated financial statements included herein.

Contingent Consideration

Subsequent to an acquisition, we measure contingent consideration arrangements at fair value for each period with changes in fair value recognized in the consolidated statements of operations as acquisition-related charges. Changes in contingent consideration can result from changes in the assumed achievement and timing of estimated sales, costs of goods sold and regulatory approvals. In the absence of new information, changes in fair value reflect the impact of the passage of time towards the potential achievement of the milestones.

The following table includes the key assumptions used in the valuation of our contingent consideration milestones:

Assumption	Flexion Ranges Utilized as of December 31, 2021	MyoScience Ranges Utilized as of December 31, 2021
Discount rates	11.39% to 12.92%	11.42% to 12.13%
Probability of achieving regulatory milestones	10.00% to 15.00%	1.00%
Projected year of achieving regulatory milestones	2026 to 2028	2023

The maximum remaining potential payments related to contingent consideration from the Flexion Acquisition and MyoScience Acquisition are $425.5 million and $43.0 million, respectively, as of December 31, 2021. Small changes to these assumptions may result in a material impact to the calculated amounts. Additionally, the forecasted revenue annual growth rates are key assumptions in the contingent consideration valuations associated with our commercial milestones. The impact of a hypothetical 10 percent increase in the forecasted annual growth rates would have increased the value of our contingent consideration liability as of December 31, 2021 by $10.1 million.

Purchase Price Accounting

Upon an acquisition, we determine the fair value of the assets acquired and liabilities assumed on the date of acquisition, which may include a significant amount of intangible assets, as well as goodwill. When determining the fair values of the acquired intangible assets, we consider, among other factors, analyses of historical financial performance and an estimate of the future performance of the acquired business. The fair values of the acquired intangible assets are primarily calculated using an income approach that relies on discounted cash flows. This method is computed utilizing a forecast of the expected future net cash flows for the asset adjusted to present value by applying a discount rate that reflects the risk factors associated with the net cash flows. We consider this approach to be the most appropriate valuation technique because the inherent value of an acquired intangible asset is its ability to generate future income. In a typical acquisition, we engage a third-party valuation expert to assist us with the fair value analyses for acquired intangible assets.

Determining the fair values of acquired intangible assets requires us to exercise significant judgment. We select reasonable estimates and assumptions based on evaluating a number of factors, including, but not limited to, marketplace participants, consumer awareness and brand history. Additionally, there are significant judgments inherent in discounted cash flows such as estimating the amount and timing of projected future cash flows and the discount rates. Regarding the Flexion Acquisition, the following assumptions were utilized to determine the fair value of our ZILRETTA product:

Assumption	Flexion Acquisition Ranges Utilized as of December 31, 2021
Range of discount rates	17.5% - 18.0%
Forecasted annual sales growth rate	0.0% - 50.0%

Small changes to these assumptions may result in a material impact to the calculated amounts.

Recent Accounting Pronouncements

See Note 3, *Recent Accounting Pronouncements*, to our consolidated financial statements for further discussion of recent accounting pronouncements.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

The primary objective of our cash equivalents and investment activities is to preserve principal while at the same time maximizing the income that we receive from our investments without significantly increasing risk. We invest in corporate bonds, commercial paper, asset-backed securities and U.S. Treasury and other government agency notes, which are reported at fair value. These securities are subject to interest rate risk and credit risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the interest rate later rises, we expect that the fair value of our investment will decline. A hypothetical 100 basis point increase in interest rates would have reduced the fair value of our available-for-sale securities at December 31, 2021 by approximately $0.6 million.

The fair values of our 2022 Notes and 2025 Notes are impacted by both the fair value of our common stock and interest rate fluctuations. As of December 31, 2021, the estimated fair value of the 2025 Notes was $1,113 per $1,000 principal amount and the estimated fair value of the 2022 Notes was $1,039 per $1,000 principal amount. See Note 11, *Debt*, to our consolidated financial statements included herein for further discussion of our 2022 Notes and 2025 Notes, which bear interest at fixed rates. At December 31, 2021, all $402.5 million of principal remains outstanding on the 2025 Notes, and $160.0 million of principal remains outstanding on the 2022 Notes.

The Term Loan provided for a single-advance term loan in the principal amount of $375.0 million and is scheduled to mature on December 7, 2026. Each term loan borrowing which is an alternate base rate borrowing bears interest at a variable rate per annum equal to the Alternate Base Rate (as defined in the Credit Agreement) subject to a 1.75% floor, plus 6.00%. Each term loan borrowing which is a term benchmark borrowing bears interest at a variable rate per annum equal to (i) the Adjusted Term SOFR rate (as defined in the Credit Agreement) subject to a 0.75% floor plus (ii) 7.00%. At December 31, 2021, we had $375.0 million in outstanding borrowings under the Term Loan. A hypothetical 100 basis point increase in interest rates would have increased interest expense during the year ended December 31, 2021 by approximately $0.3 million, which considers that the Term Loan was outstanding for less than one month during 2021. The impact of a hypothetical 100 basis point increase in interest rates would increase interest expense by $3.0 million in 2022.

As a result of the Flexion Acquisition and as discussed in more detail in Note 11, *Debt*, to our consolidated financial statements included herein, any future conversion rights for the Flexion 2024 Notes are subject to the occurrence of any future events giving rise to such conversion rights under the indenture governing the Flexion 2024 Notes.

We have agreements with certain vendors and partners that operate in foreign jurisdictions. The more significant transactions are primarily denominated in the U.S. Dollar, subject to an annual adjustment based on changes in currency exchange rates.

Additionally, our accounts receivable are primarily concentrated with four large wholesalers of pharmaceutical products. In the event of non-performance or non-payment, there may be a material adverse impact on our financial condition, results of operations or net cash flow.

Item 8. Financial Statements and Supplementary Data

Our consolidated financial statements required by this item, together with the report of our independent registered public accounting firm, begin on page F-1 of this Annual Report.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, which are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chairman and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

On November 19, 2021, we acquired Flexion (now Pacira Therapeutics, Inc., or Pacira Therapeutics). As such, the scope of our assessment of the effectiveness of our disclosure controls and procedures did not include the internal controls over

financial reporting of Pacira Therapeutics. These exclusions are consistent with the SEC Staff's guidance that an assessment of a recently acquired business may be omitted from the scope of our assessment of the effectiveness of disclosure controls and procedures that are also part of internal controls over financial reporting in the 12 months following the acquisition. Pacira Therapeutics (excluding goodwill and intangible assets, which are included within the scope of the assessment) accounted for 13% of our total assets and 2% of our total revenue as of and for the year ended December 31, 2021.

Based on their evaluation as of December 31, 2021, our Chief Executive Officer and Chairman and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2021.

Management's Report on Internal Control over Financial Reporting

Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chairman and Chief Financial Officer, management conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2021, based on the criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based upon the results of the evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2021.

The effectiveness of our internal control over financial reporting as of December 31, 2021 was audited by KPMG LLP, our independent registered public accounting firm, as stated in their report appearing below, which expressed an unqualified opinion on the effectiveness of our internal control over financial reporting as of December 31, 2021.

Changes in Internal Control over Financial Reporting

As a result of the Flexion Acquisition, we have commenced a project to evaluate the processes and procedures of Pacira Therapeutics' internal control over financial reporting into our internal control over financial reporting framework. Except for the activities described above, there have been no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors
Pacira BioSciences, Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited Pacira BioSciences, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2021and 2020, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2021, and the related notes (collectively, the consolidated financial statements), and our report dated February 28, 2022 expressed an unqualified opinion on those consolidated financial statements.

The Company acquired Flexion Therapeutics, Inc. during 2021, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2021, Flexion Therapeutics, Inc.'s internal control over financial reporting associated with total assets of 13% (excluding goodwill and intangible assets, which are included in the scope of the assessment) and total revenues of 2% included in the consolidated financial statements of the Company as of and for the year ended December 31, 2021. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of Flexion Therapeutics, Inc.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ KPMG LLP

Short Hills, New Jersey
February 28, 2022

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Information required by this item will be included in the proxy statement for our 2022 annual stockholders' meeting and is incorporated by reference into this report.

Item 11. Executive Compensation

Information required by this item will be included in the proxy statement for our 2022 annual stockholders' meeting and is incorporated by reference into this report.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholders Matters

Securities Authorized For Issuance Under Equity Compensation Plans

The following table sets forth certain information, as of December 31, 2021, concerning shares of our common stock authorized for issuance under our equity compensation plans. We have two equity compensation plans under which shares are currently authorized for issuance, our Amended and Restated 2011 Stock Incentive Plan (the "2011 Plan") and our 2014 Employee Stock Purchase Plan (the "2014 ESPP"). The 2011 Plan and the 2014 ESPP were approved by stockholders. In April 2014, our board of directors adopted (without stockholder approval) the 2014 Inducement Plan, which authorized 175,000 shares of common stock to be granted as equity awards to new employees.

	(a)	(b)	(c)
	Number of Securities to be Issued Upon Exercise of Outstanding Options and Rights [1] [2]	Weighted Average Exercise Price of Outstanding Options and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) [1]
Equity compensation plans approved by stockholders [3]	6,020,510	$ 49.25	2,006,246
Equity compensation plans not approved by stockholders [3]	30,030	$ 64.21	138,924
Total equity compensation plans	6,050,540	$ 49.32	2,145,170

(1) Awards issuable under our 2011 Plan include common stock, stock options, restricted stock, restricted stock units and other incentive awards.
(2) Does not include 955,277 unvested shares outstanding as of December 31, 2021 in the form of restricted stock units under our 2011 Plan, which do not require the payment of any consideration by the recipients.
(3) See Note 14, *Stock Plans*, to our consolidated financial statements included herein for further descriptions of our equity compensation plans.

Other information required by this item will be included in the proxy statement for our 2022 annual stockholders' meeting and is incorporated by reference into this report.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Information required by this item will be included in the proxy statement for our 2022 annual stockholders' meeting and is incorporated by reference into this report.

Item 14. Principal Accountant Fees and Services

Information required by this item will be included in the proxy statement for our 2022 annual stockholders' meeting and is incorporated by reference into this report.

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) Documents filed as part of this Annual Report on Form 10-K:

(1) Financial Statements

The report of our independent registered accounting firm, KPMG LLP, with respect to the above-referenced financial statements and their report on internal control over financial reporting are included in this Form 10-K. Their consent appears as Exhibit 23.1 of this Form 10-K.

(2) Schedules

All financial statement schedules have been omitted because they are not required, are not applicable or the information is included in the consolidated financial statements or related notes thereto.

(3) Exhibits

The following exhibits are filed with, or incorporated by reference in this Form 10-K.

EXHIBIT INDEX

Exhibit Number	Description	Incorporation By Reference From		
		Form	Exhibit	Date Filed
2.1	Agreement and Plan of Merger, dated March 4, 2019, by and among Pacira Pharmaceuticals, Inc., PS Merger, Inc., MyoScience, Inc., and Fortis Advisors LLC, as the securityholders' representative. # †	8-K	2.1	3/5/2019
2.2	Agreement and Plan of Merger, dated as of October 11, 2021, by and among Flexion Therapeutics, Inc., Pacira BioSciences, Inc. and Oyster Acquisition Company Inc.	8-K	2.1	10/12/2021
3.1	Amended and Restated Certificate of Incorporation.	8-K	3.1	2/11/2011
3.2	Certificate of Amendment to the Amended and Restated Certificate of Incorporation, dated April 9, 2019.	8-K	3.1	4/9/2019
3.3	Second Amended and Restated Bylaws.	8-K	3.2	4/9/2019
4.1	Specimen Certificate Evidencing Shares of Common Stock.	10-Q	4.1	5/2/2019
4.2	Indenture (including form of 0.750% Convertible Senior Notes due 2025), dated July 10, 2020, between the Registrant and Wells Fargo Bank, National Association, as trustee.	8-K	4.1	7/10/2020
4.3	Indenture (including form of 2.375% Convertible Senior Notes due 2022), dated March 13, 2017, between the Registrant and Wells Fargo Bank, National Association, as trustee.	8-K	4.1	3/13/2017
4.4	Indenture (including form of 3.375% Convertible Senior Notes due 2024), dated as of May 2, 2017, by and between Flexion Therapeutics, Inc. and Wells Fargo Bank, National Association, as trustee.*			
4.5	First Supplemental Indenture, dated as of November 19, 2021, by and between Flexion Therapeutics, Inc. and Wells Fargo Bank, National Association, as trustee.*			
4.6	Description of Securities.	10-K	4.3	2/21/2020
10.1	Amended and Restated 2011 Stock Incentive Plan.***	8-K	10.1	6/11/2021
10.2	Form of Nonstatutory Stock Option Agreement under the Amended and Restated 2011 Stock Incentive Plan for grants made prior to February 1, 2022.***	8-K	10.3	6/4/2014
10.3	Form of Nonstatutory Stock Option Agreement (Employees) under the Amended and Restated 2011 Stock Incentive Plan for grants made on or after February 1, 2022.* ***			
10.4	Form of Nonstatutory Stock Option Agreement (Non-Employee Directors) under the Amended and Restated 2011 Stock Incentive Plan for grants made on or after February 1, 2022.* ***			
10.3	Form of Restricted Stock Unit Award Agreement (Employees) under the Amended and Restated 2011 Stock Incentive Plan.***	10-Q	10.6	7/30/2015
10.4	Form of Restricted Stock Unit Award Agreement (Non-Employee Directors) under the Amended and Restated 2011 Stock Incentive Plan.***	10-Q	10.7	7/30/2015
10.5	2014 Inducement Plan.***	10-Q	10.1	5/1/2014
10.6	2014 Employee Stock Purchase Plan.***	8-K	10.2	6/4/2014
10.7	Assignment Agreement, dated February 9, 1994, amended April 15, 2004, between the Registrant and Research Development Foundation.	S-1/A	10.4	12/3/2010
10.8	Stock Purchase Agreement, dated January 8, 2007, between SkyePharma, Inc. and the Registrant.	S-1/A	10.5	12/3/2010
10.9	Employment Agreement between the Registrant and David Stack.***	S-1/A	10.21	12/3/2010
10.10	Amendment No. 1 to Executive Employment Agreement, dated March 13, 2013, between the Registrant and David Stack.***	8-K	99.3	3/18/2013
10.11	Amendment No. 2 to Executive Employment Agreement, dated June 30, 2015, between the Registrant and David Stack.***	10-Q	10.2	7/30/2015
10.12	Employment Agreement, dated November 29, 2012, between the Registrant and Kristen Williams.***	10-Q	10.2	4/30/2015
10.13	Amendment No. 1 to Employment Agreement, dated March 13, 2013, between the Registrant and Kristen Williams.***	10-Q	10.3	4/30/2015

Exhibit Number	Description	Incorporation By Reference From		
		Form	Exhibit	Date Filed
10.14	Amendment No. 2 to Employment Agreement, dated June 30, 2015, between the Registrant and Kristen Williams.***	10-Q	10.5	7/30/2015
10.15	Executive Employment Agreement, dated May 2, 2016, between the Registrant and Charles A. Reinhart, III.***	10-Q	10.1	8/4/2016
10.16	Executive Employment Agreement, dated June 19, 2019, between the Registrant and Max Reinhardt.***	10-Q	10.1	5/7/2020
10.17	Executive Employment Agreement, dated April 24, 2017, between the Registrant and Roy Winston.***	10-Q	10.2	5/7/2020
10.18	Form of Indemnification Agreement between the Registrant and its directors and officers.***	S-1/A	10.32	1/13/2011
10.19	Commercial Outsourcing Services Agreement entered into as of August 25, 2011 by the Registrant and Integrated Commercialization Solutions, Inc.†	10-Q	10.1	8/25/2011
10.20	First Amendment to Commercial Outsourcing Services Agreement, dated August 1, 2013, between the Registrant and Integrated Commercialization Solutions, Inc.†	10-Q	10.1	10/31/2013
10.21	Second Amendment to Commercial Outsourcing Services Agreement, dated August 25, 2014, between the Registrant and Integrated Commercialization Solutions, Inc.†	10-Q	10.1	10/30/2014
10.22	Third Amendment to Commercial Outsourcing Services Agreement, dated April 29, 2015, between the Registrant and Integrated Commercialization Solutions, Inc.†	10-Q	10.1	7/30/2015
10.23	Fourth through Eleventh Amendments to Commercial Outsourcing Services Agreement, between the Registrant and Integrated Commercialization Solutions, Inc.††	10-Q	10.3	5/7/2020
10.24	Pacira BioSciences, Inc. Deferred Compensation Plan.***	8-K	10.1	6/11/2020
10.25	Pacira BioSciences, Inc. Long-Term Incentive Plan.***	8-K	10.1	12/7/2020
10.26	Strategic Co-Production Agreement dated April 4, 2014, by and between the Registrant and Patheon UK Limited.†	10-Q	10.1	7/31/2014
10.27	Manufacturing and Supply Agreement dated April 4, 2014, by and between the Registrant and Patheon UK Limited.†	10-Q	10.2	7/31/2014
10.28	Technical Transfer and Service Agreement dated April 4, 2014, by and between the Registrant and Patheon UK Limited.†	10-Q	10.3	7/31/2014
10.29	Amended and Restated Consulting Agreement, dated April 3, 2012, between the Registrant and Gary Pace.***	10-Q	10.1	5/9/2012
10.30	Second Amended and Restated Consulting Agreement, dated August 17, 2012, between the Registrant and Gary Pace.***	10-Q	10.1	11/1/2012
10.31	Third Amendment to Consulting Agreement, dated September 11, 2013, between the Registrant and Gary Pace.***	10-Q	10.3	10/31/2013
10.32	Fourth Amendment to Consulting Agreement, dated November 25, 2015, between the Registrant and Gary Pace.***	10-K	10.57	2/25/2016
10.33	Executive Employment Agreement, dated May 29, 2017, between the Registrant and Dennis McLoughlin.***	10-Q	10.1	5/2/2019
10.34	Contingent Value Right Agreement, dated as of November 19, 2021, by and between Pacira BioSciences, Inc. and American Stock Transfer & Trust Company, LLC.	8-K	10.1	11/19/2021
10.35	Credit Agreement, dated as of December 7, 2021, by and among Pacira BioSciences, Inc., the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent.##	8-K	10.1	12/9/2021
10.36	Manufacturing and Supply Agreement dated July 31, 2015, between Flexion Therapeutics, Inc. and Patheon UK Limited, as amended to date.††			
10.37	Technical Transfer and Service Agreement dated July 31, 2015, between Flexion Therapeutics, Inc. and Patheon UK Limited, as amended to date.††			
10.38	Side Letter to the Manufacturing and Supply Agreement between Flexion Therapeutics, Inc. and Patheon UK Limited, dated as of April 8, 2020.††			

Exhibit Number	Description	Incorporation By Reference From		
		Form	Exhibit	Date Filed
21.1	Subsidiaries of the Registrant.*			
23.1	Consent of KPMG LLP.*			
31.1	Certification of Chief Executive Officer and Chairman pursuant to Exchange Act Rule 13a-14(a).*			
31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rule 13a-14(a).*			
32.1	Certification of Chief Executive Officer and Chairman and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.**			
101.INS*	Inline XBRL Instance Document.*			
101.SCH*	Inline XBRL Taxonomy Schema Document.*			
101.CAL*	Inline XBRL Taxonomy Calculation Linkbase Document.*			
101.LAB*	Inline XBRL Taxonomy Label Linkbase Document.*			
101.PRE*	Inline XBRL Taxonomy Presentation Linkbase Document.*			
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.*			
104*	Cover Page Interactive Data File (Formatted as Inline XBRL and contained in Exhibit 101).			

* Filed herewith.

** Furnished herewith.

*** Denotes management contract or compensatory plan or arrangement.

† Confidential treatment has been requested or granted as to certain portions, which portions were omitted and filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Request.

†† Certain portions of the exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is (i) not material and (ii) would likely cause competitive harm to the Company if publicly disclosed.

Certain schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K under the Securities Exchange Act of 1934, as amended. The Company hereby undertakes to supplementally furnish copies of any omitted schedules to the Securities and Exchange Commission upon request.

Schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to supplementally furnish copies of any omitted schedules and exhibits to the Securities and Exchange Commission upon request.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

PACIRA BIOSCIENCES, INC.

Date: February 28, 2022

By: /s/ DAVID STACK
David Stack
Chief Executive Officer and Chairman

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ DAVID STACK David Stack	Director, Chief Executive Officer and Chairman (Principal Executive Officer)	February 28, 2022
/s/ CHARLES A. REINHART, III Charles A. Reinhart, III	Chief Financial Officer (Principal Financial Officer)	February 28, 2022
/s/ LAUREN RIKER Lauren Riker	Senior Vice President, Finance (Principal Accounting Officer)	February 28, 2022
/s/ LAURA BREGE Laura Brege	Director	February 28, 2022
/s/ CHRISTOPHER J. CHRISTIE Christopher J. Christie	Director	February 28, 2022
/s/ MARK FROIMSON Mark Froimson	Director	February 28, 2022
/s/ YVONNE GREENSTREET Yvonne Greenstreet	Director	February 28, 2022
/s/ MARK KRONENFELD Mark Kronenfeld	Director	February 28, 2022
/s/ JOHN LONGENECKER John Longenecker	Director	February 28, 2022
/s/ GARY PACE Gary Pace	Director	February 28, 2022
/s/ ANDREAS WICKI Andreas Wicki	Director	February 28, 2022
/s/ PAUL HASTINGS Paul Hastings	Lead Director	February 28, 2022

PACIRA BIOSCIENCES, INC.
ANNUAL REPORT ON FORM 10-K
FOR THE YEAR ENDED DECEMBER 31, 2021

INDEX TO THE CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and Board of Directors
Pacira BioSciences, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Pacira BioSciences, Inc. and subsidiaries (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2021, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2021, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 28, 2022 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the consolidated financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Initial fair value measurement of intangible assets acquired in connection with the acquisition of Flexion Therapeutics, Inc.

As discussed in Notes 5 and 9 to the consolidated financial statements, the Company acquired Flexion Therapeutics, Inc. (Flexion) on November 19, 2021 for consideration of approximately $578.8 million. The Company measured the assets acquired and the liabilities assumed at fair value, which resulted in the recognition of $541.0 million of intangible assets, comprised of $480.0 million of developed technology and $61.0 million of in-process research and development.

We identified the evaluation of the initial fair value measurement of the developed technology and in-process research and development intangible assets acquired in connection with the acquisition of Flexion as a critical audit matter. Evaluating the initial fair value measurement of those intangible assets was complex and required significant auditor judgment due to the high degree of subjectivity in evaluating certain assumptions used to estimate fair value. In particular, the fair value measurement was sensitive to management's forecasts of revenue and the discount rate. In

addition, the audit effort associated with the evaluation of the Company's discount rate involved the use of valuation professionals with specialized skills and knowledge.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the Company's acquisition-date valuation process, including controls related to the development of assumptions for forecasted revenues and discount rate. We performed sensitivity analyses over the forecasted revenues to assess the impact of changes in that assumption on the Company's determination of the fair value of the developed technology and in-process intangible assets. We evaluated the future revenue growth rates used by the Company to determine forecasted revenues, by comparing them to industry data that was assessed to be relevant and reliable. We involved valuation professionals with specialized skills and knowledge, who assisted in evaluating the Company's discount rate assumption, by comparing the inputs to that assumption to publicly available market data, and assessing the resulting discount rate.

Fair value measurement of the contingent consideration liabilities associated with the acquisitions of Flexion Therapeutics, Inc. and MyoScience, Inc.

As discussed in Notes 5 and 12 to the consolidated financial statements, the Company recognized contingent consideration liabilities at their estimated fair value on the acquisition date, in connection with applying the acquisition method of accounting for business combinations. Subsequent changes to the fair value of the contingent consideration liabilities were recorded in the consolidated statement of operations in the period of change. The initial fair value of the contingent consideration liability related to the acquisition of Flexion was $45.2 million. The fair value of the Flexion and MyoScience, Inc. (MyoScience) contingent consideration as of December 31, 2021 was $46.4 million and $11.2 million, respectively.

We identified the evaluation of the fair value measurement of the contingent consideration liabilities related to achieving commercial and regulatory milestones associated with the acquisitions of Flexion and MyoScience as a critical audit matter. Evaluating the fair value measurement of the contingent consideration liabilities required significant auditor judgment, due to the high degree of subjectivity inherent in certain assumptions with unobservable inputs that were used in the simulation model. In particular, the fair value measurement was sensitive to management's forecasts of revenues, estimated probabilities and timing related to the achievement of certain commercial and regulatory milestones, volatility, and discount rates. In addition, the audit effort associated with the evaluation of the Company's volatility and discount rates involved the use of valuation professionals with specialized skills and knowledge.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the Company's initial and ongoing fair value measurement process for contingent consideration liabilities related to achieving commercial and regulatory milestones. This included controls related to the development of the assumptions for forecasted revenues, estimated probabilities and timing related to the achievement of certain milestones, volatility, and discount rates. We evaluated the forecasted revenue and certain commercial and regulatory milestone assumptions used in the Company's models by comparing them to industry benchmarks and other third-party market data that were assessed to be relevant and reliable. We involved valuation professionals with specialized skills and knowledge, who assisted in evaluating the Company's volatility and discount rates, by comparing the inputs to those assumptions to publicly available market data for the comparable entities used by the Company, and assessing the resulting volatility and discount rates.

/s/ KPMG LLP

We have served as the Company's auditor since 2015.

Short Hills, New Jersey
February 28, 2022

PACIRA BIOSCIENCES, INC.
CONSOLIDATED BALANCE SHEETS

(In thousands, except share and per share amounts)

	December 31, 2021	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	$ 585,578	$ 99,957
Short-term available-for-sale investments	70,831	421,705
Accounts receivable, net	96,318	53,046
Inventories, net	98,550	64,650
Prepaid expenses and other current assets	14,771	12,265
Total current assets	866,048	651,623
Long-term available-for-sale investments	—	95,459
Fixed assets, net	188,401	136,688
Right-of-use assets, net	76,410	74,492
Goodwill	145,175	99,547
Intangible assets, net	623,968	96,521
Deferred tax assets	153,364	106,164
Investments and other assets	21,987	14,019
Total assets	$ 2,075,353	$ 1,274,513
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 10,543	$ 10,431
Accrued expenses	127,555	70,974
Lease liabilities	7,891	7,425
Convertible senior notes, net	350,466	149,648
Contingent consideration	—	14,736
Current portion of long-term debt, net	24,234	—
Income taxes payable	429	114
Total current liabilities	521,118	253,328
Convertible senior notes, net	339,267	313,030
Lease liabilities	71,727	71,025
Deferred revenue	10,125	—
Long-term debt, net	335,263	—
Contingent consideration	57,598	13,610
Other liabilities	9,847	3,832
Total liabilities	1,344,945	654,825
Commitments and contingencies (Note 21)		
Stockholders' equity:		
Preferred stock, par value $0.001; 5,000,000 shares authorized; none issued and outstanding at December 31, 2021 and 2020	—	—
Common stock, par value $0.001; 250,000,000 shares authorized; 44,734,308 and 43,636,929 shares issued and outstanding at December 31, 2021 and 2020, respectively	45	44
Additional paid-in capital	942,091	873,201
Accumulated deficit	(211,895)	(253,875)
Accumulated other comprehensive income	167	318
Total stockholders' equity	730,408	619,688
Total liabilities and stockholders' equity	$ 2,075,353	$ 1,274,513

See accompanying notes to consolidated financial statements.

PACIRA BIOSCIENCES, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share amounts)

	Year Ended December 31,		
	2021	**2020**	**2019**
Revenues:			
Net product sales	$ 538,966	$ 426,614	$ 418,926
Royalty revenue	2,442	3,033	2,100
Collaborative licensing and milestone revenue	125	—	—
Total revenues	541,533	429,647	421,026
Operating expenses:			
Cost of goods sold	140,255	117,328	106,712
Research and development	55,545	59,421	72,119
Selling, general and administrative	199,345	193,516	200,782
Amortization of acquired intangible assets	13,553	7,866	5,703
Acquisition-related charges, product discontinuation and other	42,911	5,166	25,230
Total operating expenses	451,609	383,297	410,546
Income from operations	89,924	46,350	10,480
Other (expense) income:			
Interest income	896	4,629	7,376
Interest expense	(31,750)	(25,671)	(23,628)
Loss on early extinguishment of debt	—	(8,071)	—
Other, net	(2,666)	2,852	(4,976)
Total other expense, net	(33,520)	(26,261)	(21,228)
Income (loss) before income taxes	56,404	20,089	(10,748)
Income tax (expense) benefit	(14,424)	125,434	(268)
Net income (loss)	$ 41,980	$ 145,523	$ (11,016)
Net income (loss) per share:			
Basic net income (loss) per common share	$ 0.95	$ 3.41	$ (0.27)
Diluted net income (loss) per common share	$ 0.92	$ 3.33	$ (0.27)
Weighted average common shares outstanding:			
Basic	44,262	42,671	41,513
Diluted	45,630	43,682	41,513

See accompanying notes to consolidated financial statements.

PACIRA BIOSCIENCES, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(In thousands)

	Year Ended December 31,		
	2021	**2020**	**2019**
Net income (loss)	$ 41,980	$ 145,523	$ (11,016)
Other comprehensive income (loss):			
Net unrealized gain (loss) on investments, net of tax	(180)	(3)	602
Foreign currency translation adjustments	29	(1)	—
Total other comprehensive income (loss)	(151)	(4)	602
Comprehensive income (loss)	$ 41,829	$ 145,519	$ (10,414)

See accompanying notes to consolidated financial statements

PACIRA BIOSCIENCES, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019

(In thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total
	Shares	Amount				
Balance at December 31, 2018	41,223	$ 41	$ 709,691	$ (388,226)	$ (280)	$ 321,226
Cumulative effect adjustment of the adoption of Accounting Standards Update 2016-02 (Note 3)	—	—	—	(156)	—	(156)
Exercise of stock options	425	1	8,468	—	—	8,469
Vested restricted stock units	193	—	—	—	—	—
Common stock issued under employee stock purchase plan	67	—	2,402	—	—	2,402
Stock-based compensation	—	—	33,650	—	—	33,650
Retirement of equity component of 2019 convertible senior notes (Note 11)	—	—	(233)	—	—	(233)
Other comprehensive income (Note 13)	—	—	—	—	602	602
Net loss	—	—	—	(11,016)	—	(11,016)
Balance at December 31, 2019	41,908	42	753,978	(399,398)	322	354,944
Exercise of stock options	1,428	2	45,227	—	—	45,229
Vested restricted stock units	239	—	—	—	—	—
Common stock issued under employee stock purchase plan	62	—	2,546	—	—	2,546
Stock-based compensation	—	—	39,920	—	—	39,920
Retirement of equity component of 2022 convertible senior notes (Note 11)	—	—	(33,089)	—	—	(33,089)
Equity component of 2025 convertible senior notes issued, net of deferred taxes of $20,450 (Note 11)	—	—	64,619	—	—	64,619
Other comprehensive loss (Note 13)	—	—	—	—	(4)	(4)
Net income	—	—	—	145,523	—	145,523
Balance at December 31, 2020	43,637	44	873,201	(253,875)	318	619,688
Exercise of stock options	732	1	23,833	—	—	23,834
Vested restricted stock units	310	—	—	—	—	—
Common stock issued under employee stock purchase plan	55	—	2,811	—	—	2,811
Stock-based compensation	—	—	42,246	—	—	42,246
Other comprehensive loss (Note 13)	—	—	—	—	(151)	(151)
Net income	—	—	—	41,980	—	41,980
Balance at December 31, 2021	44,734	$ 45	$ 942,091	$ (211,895)	$ 167	$ 730,408

See accompanying notes to consolidated financial statements.

PACIRA BIOSCIENCES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2021	**2020**	**2019**
Operating activities:			
Net income (loss)	$ 41,980	$ 145,523	$ (11,016)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Deferred taxes	10,872	(126,613)	(1,828)
Depreciation of fixed assets and amortization of intangible assets	28,548	19,908	19,576
Amortization of debt issuance costs	2,754	2,156	1,707
Amortization of debt discount	23,152	18,254	13,746
(Gain) loss on disposal and impairment of fixed assets	(10)	22	1,010
Loss on early extinguishment of debt	—	8,071	—
Stock-based compensation	42,246	39,920	33,650
Changes in contingent consideration (after an acquisition)	(989)	5,204	16,672
(Gain) loss on investment (net of stock dividend) and other non-operating income, net	2,673	(1,618)	4,315
Changes in operating assets and liabilities (net of acquisitions):			
Accounts receivable, net	(10,434)	(5,516)	(8,524)
Inventories, net	(4,467)	(6,353)	(8,026)
Prepaid expenses and other assets	1,142	(739)	(3,885)
Accounts payable	(10,262)	(3,312)	(1,822)
Accrued expenses and income taxes payable	5,451	(5,999)	22,041
Other liabilities	(229)	(2,467)	(6,726)
Payment of contingent consideration	(6,835)	(9,409)	(370)
Deferred revenue	125	—	—
Net cash provided by operating activities	125,717	77,032	70,520
Investing activities:			
Acquisition of Flexion Therapeutics, Inc. (net of cash acquired)	(420,042)	—	—
Acquisition of MyoScience, Inc. (net of cash acquired)	—	—	(117,691)
Purchases of fixed assets	(45,866)	(37,801)	(10,159)
Purchases of available-for-sale investments	(611,488)	(546,516)	(318,484)
Sales of available-for-sale investments	1,068,736	307,870	319,468
Payment of contingent consideration	(4,000)	—	—
Sale of equity investment	9,057	—	—
Purchases of equity and debt investments	(17,187)	(1,160)	(1,622)
Net cash used in investing activities	(20,790)	(277,607)	(128,488)
Financing activities:			
Proceeds from exercises of stock options	23,844	45,218	8,469
Proceeds from common stock issued under employee stock purchase plan	2,811	2,546	2,402
Proceeds from term loan B credit facility	363,750	—	—
Proceeds from debt component of the 2025 convertible senior notes	—	314,708	—
Proceeds from equity component of the 2025 convertible senior notes	—	87,792	—
Repayment of 2019 convertible senior notes	—	—	(338)
Repayment of 2022 convertible senior notes	—	(176,793)	—
Retirement of equity component of the 2022 convertible senior notes	—	(33,089)	—
Conversion premium on 2019 convertible senior notes	—	—	(233)
Payment of debt issuance and financing costs	(4,546)	(12,487)	—
Payment of contingent consideration	(5,165)	(5,591)	(6,630)
Net cash provided by financing activities	380,694	222,304	3,670
Net increase (decrease) in cash and cash equivalents	485,621	21,729	(54,298)
Cash and cash equivalents, beginning of year	99,957	78,228	132,526
Cash and cash equivalents, end of year	$ 585,578	$ 99,957	$ 78,228

See accompanying notes to consolidated financial statements.

PACIRA BIOSCIENCES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS (CONTINUED)
(In thousands)

	Year Ended December 31,		
	2021	2020	2019
Supplemental cash flow information:			
Cash paid for interest	$ 6,996	$ 7,205	$ 8,199
Cash paid for income taxes, net of refunds	$ 3,221	$ 2,417	$ 863
Non-cash investing and financing activities:			
Fixed assets included in accounts payable and accrued liabilities	$ 6,828	$ 9,288	$ 3,019
Net increase in contingent consideration liabilities	$ 45,241	$ —	$ 28,470

See accompanying notes to consolidated financial statements.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1—DESCRIPTION OF BUSINESS

Pacira BioSciences, Inc. and its subsidiaries (collectively, the "Company" or "Pacira") is the industry leader in its commitment to non-opioid pain management and providing a non-opioid option to as many patients as possible to redefine the role of opioids as rescue therapy only. The Company's long-acting, local analgesic, EXPAREL® (bupivacaine liposome injectable suspension), was commercially launched in the United States, or U.S., in April 2012 and approved in select European countries and the United Kingdom in November 2021. EXPAREL utilizes the Company's proprietary multivesicular liposome, or pMVL, drug delivery technology that encapsulates drugs without altering their molecular structure, and releases them over a desired period of time. In April 2019, the Company added iovera°® to its commercial offering with the acquisition of MyoScience, Inc., or MyoScience. The iovera° system is a handheld cryoanalgesia device used to deliver a precise, controlled application of cold temperature to only targeted nerves.

On November 19, 2021, the Company acquired Flexion Therapeutics, Inc., or Flexion, and added ZILRETTA® (triamcinolone acetonide extended-release injectable suspension) to its product portfolio. ZILRETTA is the first and only extended-release, intra-articular (meaning in the joint) injection indicated for the management of osteoarthritis, or OA, knee pain. For more information, see Note 5, *Acquisitions*.

Pacira is subject to risks common to companies in similar industries and stages, including, but not limited to, competition from larger companies, reliance on revenue from three products, reliance on a limited number of wholesalers, reliance on a limited number of manufacturing sites, new technological innovations, dependence on key personnel, reliance on third-party service providers and sole source suppliers, protection of proprietary technology, compliance with government regulations and risks related to cybersecurity.

Coronavirus (COVID-19) Pandemic

Since early 2020, the Company's revenues have been impacted by the global pandemic caused by a novel strain of coronavirus (COVID-19) and pandemic-related challenges that included the significant postponement or suspension in the scheduling of elective surgical procedures due to public health guidance and government directives. While the degree of impact has diminished during the course of the pandemic due to the introduction of vaccines and the lessening of elective surgery restrictions, certain pandemic-related operational challenges persist. It remains unclear how long it will take the elective surgery market to normalize or if restrictions on elective procedures will recur due to future COVID-19 variants or otherwise. For instance, while many restrictions have since eased with COVID-19 vaccines now widely available, the elective surgery market faced additional pandemic-related challenges in August and September 2021 due to regional surges in COVID-19 Delta variant cases, staffing shortages and fatigue from care teams addressing significant procedure backlogs, and in December 2021, the COVID-19 Omicron variant prompted some government restrictions on elective procedures and surgical staffing challenges which began to ease in January 2022. The Company's manufacturing sites are operational and have safety protocols and guidelines as recommended by federal, state and local governments. To date, there have been no material impacts to the Company's supply chain. The situation remains dynamic and subject to rapid and possibly material changes. Additional negative impacts may also arise from the COVID-19 pandemic that the Company is unable to foresee. The nature and extent of such impacts will depend on future developments, which are highly uncertain and cannot be predicted.

NOTE 2—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Principles of Consolidation

These consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America, or GAAP, and in accordance with the rules and regulations of the United States Securities and Exchange Commission, or SEC. The accounts of the Company's wholly owned subsidiaries are included in these consolidated financial statements. All intercompany balances and transactions have been eliminated in consolidation. Certain reclassifications were made to conform to the current presentation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires the use of estimates and assumptions that affect the reported amounts of assets and liabilities, including disclosure of contingent assets and contingent liabilities, at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates are used for, among other things, revenue recognition, purchase price allocation, stock-based compensation, inventory costs, impairments of equity investments, long-lived assets, goodwill, liabilities and accruals, including contingent consideration,

convertible senior notes, and the valuation of deferred tax assets. The Company's critical accounting policies are those that are both most important to the Company's consolidated financial condition and results of operations and require the most difficult, subjective or complex judgments on the part of management in their application, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. Because of the uncertainty of factors surrounding the estimates or judgments used in the preparation of the consolidated financial statements, actual results could differ from these estimates.

Revenue From Contracts With Customers

The Company's sources of revenue include (i) sales of EXPAREL in the U.S., European Union, or E.U. and the United Kingdom, or U.K.; (ii) sales of ZILRETTA in the U.S.; (iii) sales of iovera° in the U.S., and Canada; (iv) sales of, and royalties on, its bupivacaine liposome injectable suspension, including for veterinary use and (v) license fees and milestone payments. See Note 4, *Revenue*, for further information on the Company's accounting policies related to revenue from contracts with customers.

Collaborative Licensing and Milestone Revenue

The Company's collaboration agreements generally involve a license to the Company's products. In determining how and when to recognize the revenue under a collaboration agreement, the Company must assess whether the license is distinct, which depends upon whether the customer can benefit from the license and whether the license is separate from other performance obligations in the agreement. If the license is distinct, the Company must further assess whether the customer has a right to access or a right to use the license depending on whether the functionality of the license is expected to substantively change over time. If the license is not expected to substantively change, the revenue is recognized at the point in time when the license is provided. If the license is expected to substantively change, the revenue is recognized over the license period.

Revenue recognition from milestone payments is dependent upon the facts and circumstances surrounding the milestone payments. Milestone payments based on a non-sales metric such as a development-based milestone (e.g. obtaining regulatory approval) represent variable consideration and would be included in the transaction price subject to any constraints. If the milestone payments relate to future development, the timing of recognition depends upon historical experience and the significance a third-party has on the outcome. For milestone payments to be received upon the achievement of a sales threshold, the revenue from the milestone payments is recognized at the later of when the actual sales are incurred or the performance obligation to which the sales relate has been satisfied.

Royalty Revenue

Royalties are estimated and recognized as revenue when sales to the Company's commercial partners occur, unless some constraint exists, as the royalties predominately relate to a supply agreement. Royalties are based on sales of the Company's bupivacaine liposome injectable suspension product for veterinary use.

Concentration of Major Customers

The Company sells EXPAREL through a drop-ship program under which orders are processed through wholesalers (including AmerisourceBergen Health Corporation, Cardinal Health, Inc. and McKesson Drug Company), but shipments of the product are sent directly to individual accounts, such as hospitals, ambulatory surgery centers and individual doctors. The Company also sells EXPAREL directly to ambulatory surgery centers and physicians. The Company sells ZILRETTA primarily to specialty distributors and a specialty pharmacy, who then subsequently resell ZILRETTA to physicians, clinics and certain medical centers or hospitals. The Company also contracts directly with healthcare providers and intermediaries such as Group Purchasing Organizations, or GPOs. The Company sells its bupivacaine liposome injectable suspension for veterinary use to a third-party licensee in the U.S. and sells iovera° directly to end users.

The table below includes the percentage of revenues comprised by the Company's three largest wholesalers in each period presented:

	Year Ended December 31,		
	2021	2020	2019
Largest wholesaler	31 %	31 %	34 %
Second largest wholesaler	28 %	31 %	29 %
Third largest wholesaler	26 %	25 %	26 %
Total	85 %	87 %	89 %

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Revenue from outside the U.S. accounted for less than 1% of the Company's total revenue for the year ended December 31, 2021. The Company began selling EXPAREL in the E.U. and U.K. and iovera° in Canada in the fourth quarter of 2021. The Company had no revenue from outside the U.S. during the years ended December 31, 2020 and 2019.

Research and Development Expenses

Research and development expenditures are expensed as incurred. These include both internal and external costs, of which a significant portion of development activities are outsourced to third parties, including contract research organizations. Clinical trial costs are accrued over the service periods specified in contracts and adjusted as necessary based on an ongoing review of the level of effort and actual costs incurred. Research and development costs are presented net of reimbursements from commercial partners.

Income Taxes

The Company uses the asset and liability method of accounting for income taxes. Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to basis differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized.

The Company accrues interest and penalties, if any, on underpayment of income taxes related to unrecognized tax benefits as a component of income tax expense in its consolidated statements of operations.

Stock-Based Compensation

The Company's stock-based compensation consists of grants of stock options and restricted stock units, or RSUs, to employees, consultants and non-employee directors, in addition to the opportunity for employees to participate in an employee stock purchase plan. The expense associated with these programs is recognized in the Company's consolidated statements of operations based on their fair values as they are earned under the applicable vesting terms or the length of an offering period.

In calculating the estimated fair value of stock options granted, the Company uses the Black-Scholes option valuation model, or Black-Scholes model, which requires the consideration of the following variables for purposes of estimating fair value in addition to the closing price of the Company's common stock on the date of grant:

- Expected term of the option
- Expected volatility
- Expected dividends
- Risk-free interest rate

The Company utilizes its historical volatility data to determine expected volatility over the expected option term. The Company uses an expected term based on its historical data from stock option activity. The risk-free interest rate is based on the implied yield on U.S. Department of the Treasury zero-coupon bonds for periods commensurate with the expected term of the options. The dividend yield on the Company's common stock is estimated to be zero as the Company has not declared or paid any dividends since inception, nor does it have any intention to do so in the foreseeable future. Additionally, the Company's ability to declare and pay a dividend in the future could be limited per the agreements governing its indebtedness. The Company records forfeitures as they occur rather than estimating forfeitures during each reporting period.

Cash and Cash Equivalents

All highly liquid investments with maturities of 90 days or less when purchased are considered cash equivalents. Cash equivalents include corporate debt securities, asset backed securities and money market funds. As of December 31, 2021, the carrying value of money market funds was $223.0 million, commercial paper was $19.0 million and asset backed securities was $2.6 million. As of December 31, 2020, the carrying value of money market funds was $51.8 million and commercial paper was $6.5 million. The carrying values approximate fair value as of December 31, 2021 and 2020.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Short-Term and Long-Term Available-For-Sale Investments

Short-term available-for-sale investments consist of asset-backed securities collateralized by credit card receivables, investment grade commercial paper, corporate and government bonds, and other bonds issued in the U.S. (and denominated in the U.S. dollar) by foreign entities, all with maturities of greater than three months, but less than one year. Long-term available-for-sale investments consist of corporate and government agency bonds with maturities greater than one year. The Company evaluates the classification of its investments at the time of purchase and re-evaluates such determination at each balance sheet date, which includes an assessment of the intent to hold the available-for-sale securities. The Company's investment policy sets minimum credit quality criteria and maximum maturity limits on its investments to provide for preservation of capital, liquidity and a reasonable rate of return. The Company classifies its investments as available-for-sale. Available-for-sale securities are recorded at fair value, based on current market valuations. Unrealized holding gains and losses on available-for-sale securities (except for credit losses) are excluded from net income (loss) and are reported as a separate component of accumulated other comprehensive income (loss) until realized. Realized gains and losses are included in interest income in the consolidated statements of operations and are derived using the specific identification method for determining the cost of the securities sold. The Company evaluates whether a credit loss exists, and in the event a credit loss does exist, the credit loss is recognized in the consolidated statements of operations, based on the amount that the fair value is less than the amortized cost.

Inventories

Inventories consist of finished goods held for sale and distribution, raw materials and work in process. Inventories are stated at the lower of cost, which includes amounts related to material, labor and overhead, or net realizable value, and is determined using the first-in, first-out ("FIFO") method. The Company periodically reviews its inventory to identify obsolete, slow-moving, or otherwise unsalable inventories, and establishes allowances for situations in which the cost of the inventory is not expected to be recovered.

Fixed Assets

Fixed assets are recorded at cost, net of accumulated depreciation and amortization. The Company reviews its property, plant and equipment assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable.

Depreciation of fixed assets is provided over their estimated useful lives on a straight-line basis. Leasehold improvements are amortized on a straight-line basis over the shorter of their estimated useful lives or the related remaining lease terms. Useful lives by asset category are as follows:

Asset Category	Useful Life
Computer equipment and software	1 to 3 years
Office furniture and equipment	5 years
Manufacturing and laboratory equipment	5 to 10 years

Asset Retirement Obligations

The Company has contractual obligations stemming from certain of its lease agreements to return leased space to its original condition upon termination of such lease agreements. The Company records its asset retirement obligations, or ARO, along with a corresponding capital asset in an amount equal to the estimated fair value of the ARO, based on the present value of expected future cash flows. In subsequent periods, the Company records expense to accrete the ARO to its full value. Each ARO capital asset is depreciated over the depreciable term of the associated asset.

Leases

The Company recognizes right-of-use, or ROU, assets and lease liabilities at the commencement of its lease agreements. The leases are evaluated at commencement to determine whether they should be classified as operating or financing leases. Lease costs associated with operating leases are recognized on a straight-line basis, while lease costs for financing leases are recognized over the lease term using the effective interest method. The Company does not have any financing leases. The amount of ROU assets and lease liabilities to be recognized is impacted by the type of lease payments, the lease term and the incremental borrowing rate. Variable lease payments are not included at commencement and are recognized in the period in which they are incurred. The lease term is based on the contractual term and is adjusted for any renewal options or termination rights that are reasonably certain to be exercised. The incremental borrowing rate is based on the rate the Company estimates it would pay on a collateralized basis over a similar term in a similar economic environment.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Acquisitions

In a business combination, the acquisition method of accounting requires that the assets acquired and liabilities assumed be recorded as of the date of the acquisition at their respective fair values, with some exceptions. Assets acquired and liabilities assumed in a business combination that arise from contingencies are generally recognized at fair value. If fair value can be determined, the asset or liability is recognized; if fair value is not determinable, then no asset or liability is recognized. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date.

Acquired in-process research and development, or IPR&D, is recognized at fair value and initially characterized as an indefinite-lived intangible asset, irrespective of whether the acquired IPR&D has an alternative future use. If the acquired net assets do not constitute a business under the acquisition method of accounting, the transaction is accounted for as an asset acquisition and no goodwill is recognized. In an asset acquisition, the amount allocated to acquired IPR&D with no alternative future use is recorded as an expense at the acquisition date.

Any excess of the purchase price (consideration transferred) over the estimated fair values of net assets acquired is recorded as goodwill. Transaction costs and costs to restructure the acquired company are expensed as incurred. The operating results of the acquired business are reflected in the Company's consolidated financial statements after the date of the acquisition.

Contingent Consideration

Subsequent to an acquisition, the Company measures contingent consideration arrangements at fair value each period, with changes in fair value recognized in the consolidated statements of operations as acquisition-related charges. Changes in contingent consideration can result from changes in the assumed achievement and timing of estimated sales, costs of goods sold and regulatory approvals. In the absence of new information, changes in fair value reflect the passage of time towards achievement of the milestones, and are accreted to the period in which payments are expected to be made.

Goodwill

Goodwill represents the excess of the purchase price over the estimated fair value of the net assets acquired in a business combination and is not amortized, but is subject to impairment testing at least annually or when a triggering event occurs that could indicate a potential impairment.

Intangible Assets

Intangible assets with definite useful lives are amortized on a straight-line basis over their estimated useful lives and are recorded at cost, net of accumulated amortization.

Equity Investments

The Company holds investments in equity securities without a readily determinable fair value. In the fourth quarter of 2019, the equity investment then held became publicly traded and thereafter, was recognized at its fair value at each reporting period with any unrealized holding gains (losses) included in other income (expense). The equity method investments without a readily determinable fair value are recognized at cost less any impairments, plus or minus any changes resulting from observable price changes in orderly transactions for a similar investment.

Impairment of Long-Lived Assets

Management reviews long-lived assets, including fixed assets and intangible assets, for impairment whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the future undiscounted net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the assets exceeds the fair value of the assets.

Convertible Debt Transactions

The Company separately accounts for the liability and equity components of convertible debt instruments by allocating the proceeds from the issuance between the liability component and the embedded conversion option, or equity component. The value of the equity component is calculated by first measuring the fair value of the liability component, using the interest rate of a similar liability that does not have a conversion feature, as of the issuance date. The difference between the initial proceeds

from the convertible debt issuance and the fair value of the liability component is recorded as the carrying amount of the equity component. The Company recognizes the amortization of the resulting discount as part of interest expense in its consolidated statements of operations. See Note 3, *Recent Accounting Pronouncements*, for the expected impact of Accounting Standards Update 2020-06 on accounting for convertible debt, which is effective January 1, 2022.

Upon settlement of the convertible debt, the liability component is measured at fair value. The Company allocates a portion of the fair value of the total settlement consideration transferred to the extinguishment of the liability component equal to the fair value of that component immediately prior to the settlement. Any difference between the consideration attributed to the liability component and the net carrying amount of the liability component, including any unamortized debt issuance costs and debt discount, is recognized as a gain or loss in the consolidated statements of operations. Any remaining consideration is allocated to the retirement of the equity component and is recognized as a reduction of additional paid-in capital.

Per Share Data

Basic net income (loss) per common share is computed by dividing net income (loss) available (attributable) to common stockholders by the weighted average number of shares of common stock outstanding during the period.

Diluted net income (loss) per common share is calculated by dividing net income (loss) available (attributable) to common stockholders as adjusted for the effect of dilutive securities, if any, by the weighted average number of shares of common stock and dilutive common stock outstanding during the period. Potential common shares include the shares of common stock issuable upon the exercise of outstanding stock options, the RSUs expected to vest, the shares to be purchased under the Company's employee stock purchase plan (using the treasury stock method), and the excess conversion value on the Company's convertible senior notes. See Note 3, *Recent Accounting Pronouncements*, for the expected impact of Accounting Standards Update 2020-06 on the calculation of dilutive shares for convertible debt, which is effective January 1, 2022.

Foreign Currencies

The balance sheet accounts of the Company's foreign subsidiaries with functional currencies other than the U.S. Dollar are translated using the exchange rate at each respective balance sheet date. Revenues and expenses are translated using average exchange rates for each calendar month during the year. Translation adjustments are recorded as a component of accumulated other comprehensive income (loss) in the consolidated financial statements. Gains or losses from foreign currency exchanges are recorded in other, net in the consolidated statements of operations.

Segment Reporting

The Company is managed and operated as a single business focused on the development, manufacture, marketing, distribution and sale of non-opioid pain management and regenerative health solutions. The Company is managed by a single management team, and, consistent with its organizational structure, the Chief Executive Officer manages and allocates resources at a consolidated level. Accordingly, the Company views its business as one reportable operating segment to evaluate performance, allocate resources, set operational targets and forecast its future financial results.

NOTE 3—RECENT ACCOUNTING PRONOUNCEMENTS

Recently Adopted Accounting Pronouncements

In October 2021, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, 2021-08, *Business Combinations (Topic 805), Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*, which amends Accounting Standards Codification, or ASC, 805 to add contract assets and contract liabilities to the list of exceptions to the recognition and measurement principles that apply to business combinations and to require that an entity (acquirer) recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with ASC Topic 606. As a result of the amendments made by the ASU, it is expected that an acquirer will generally recognize and measure acquired contract assets and contract liabilities in a manner consistent with how the acquiree recognized and measured them in its pre-acquisition financial statements. The ASU's amendments are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The amendments should be applied prospectively to business combinations occurring on or after the effective date of the amendments. Early adoption of the amendments is permitted, including adoption in an interim period. An entity that early adopts in an interim period should apply the amendments (i) retrospectively to all business combinations for which the acquisition date occurs on or after the beginning of the fiscal year that includes the interim period of early application and (ii) prospectively to all business combinations that occur

on or after the date of initial application. The Company has decided to early adopt this standard and will apply it to the valuation of a Flexion deferred revenue contract.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740), Simplifying the Accounting for Income Taxes*, which amended the approaches and methodologies in accounting for income taxes during interim periods and makes changes to certain income tax classifications. The standard allows for certain exceptions, including the exception to the use of the incremental approach for intra-period tax allocations, when there is a loss from continuing operations and income or a gain from other items, and to the general methodology for calculating income taxes in an interim period, when a year-to-date loss exceeds the anticipated loss for the year. The standard also required franchise or similar taxes partially based on income to be reported as income tax and to reflect the effects of enacted changes in tax laws or rates in the annual effective tax rate computation from the date of enactment. Lastly, in future acquisitions, the Company will be required to evaluate when the step-up in the tax basis of goodwill is part of the business combination and when it should be considered a separate transaction. The standard became effective for the Company beginning January 1, 2021, and there were no material impacts to the consolidated financial statements upon adoption.

Recent Accounting Pronouncements Not Adopted as of December 31, 2021

In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)*, which limits the number of convertible instruments that require separate accounting to (i) those with embedded conversion features that are not clearly and closely related to the debt, that meet the definition of a derivative, and that do not qualify for the scope exception from derivative accounting and (ii) convertible debt instruments issued with substantial premiums for which the premiums are recorded as paid in capital. In addition, the new guidance requires diluted earnings per share calculations to be prepared using the if-converted method, instead of the treasury stock method. The guidance must be applied in fiscal years beginning after December 15, 2021, including interim periods within those fiscal years, with early adoption permitted no earlier than for fiscal years beginning after December 15, 2020. The Company has elected to adopt the new guidance using a modified retrospective method of transition, which would be applied to transactions outstanding at January 1, 2022. As a result, after adopting the ASU's guidance, the Company will not separately present in equity an embedded conversion feature for its convertible debt. Instead, the Company will account for a convertible debt instrument wholly as debt. In addition, the Company will not record interest expense on the previously recorded discount on convertible debt. The impact on the balance sheet at January 1, 2022 increased net debt by approximately $64.9 million, reduced accumulated deficit by $47.2 million, reduced additional paid-in capital by $96.5 million and decreased deferred tax liabilities by $15.7 million. The impact on the consolidated statement of operations will reduce interest expense by approximately $18.0 million in 2022, with a resultant impact on basic and diluted income (loss) per share.

NOTE 4—REVENUE

The Company's net product sales consist of (i) EXPAREL in the U.S., the E.U., and the U.K.; (ii) ZILRETTA in the U.S.; (iii) iovera° in the U.S. and Canada and (iv) sales of, and royalties on, its bupivacaine liposome injectable suspension for veterinary use. Royalty revenues are from the Company's collaborative licensing agreements. The Company does not consider revenue from sources other than sales of EXPAREL and ZILRETTA to be material sources of its consolidated revenue. As such, the following disclosure only relates to revenue associated with net EXPAREL and ZILRETTA product sales.

Net Product Sales

The Company sells EXPAREL through a drop-ship program under which orders are processed through wholesalers based on orders of the product placed by end-users, namely hospitals, ambulatory surgery centers and healthcare provider offices. EXPAREL is delivered directly to the end-user without the wholesaler ever taking physical possession of the product. The Company primarily sells ZILRETTA to specialty distributors and a specialty pharmacy, who then subsequently resell ZILRETTA to physicians, clinics and certain medical centers or hospitals. The Company also contracts directly with healthcare providers and intermediaries such as GPOs. Product revenue is recognized when control of the promised goods are transferred to the customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for transferring those goods. EXPAREL and ZILRETTA revenue is recorded at the time the product is delivered to the customer.

Revenues from sales of products are recorded net of returns allowances, prompt payment discounts, service fees, government rebates, volume rebates and chargebacks. These reserves are based on estimates of the amounts earned or to be claimed on the related sales. These amounts are treated as variable consideration, estimated and recognized as a reduction of the transaction price at the time of the sale, using the most likely amount method, except for returns, which is based on the expected value method. The Company includes these estimated amounts in the transaction price to the extent it is probable that a

significant reversal of cumulative revenue recognized for such transaction will not occur, or when the uncertainty associated with the variable consideration is resolved. The calculation of some of these items requires management to make estimates based on sales data, historical return data, contracts, statutory requirements and other related information that may become known in the future. The adequacy of these provisions is reviewed on a quarterly basis.

The following table provides a summary of activity with respect to the Company's sales related allowances and accruals related to EXPAREL for the years ended December 31, 2021, 2020 and 2019, as well as ZILRETTA for the year ended December 31, 2021 (in thousands):

	Returns Allowances	Prompt Payment Discounts	Service Fees	Volume Rebates and Chargebacks	Government Rebates	Total
Balance at December 31, 2018	$ 344	$ 779	$ 1,167	$ 1,010	$ —	$ 3,300
Provision	783	8,426	6,267	11,475	—	26,951
Payments/Adjustments	(587)	(8,243)	(5,948)	(10,669)	—	(25,447)
Balance at December 31, 2019	540	962	1,486	1,816	—	4,804
Provision	794	8,541	6,437	12,345	—	28,117
Payments/Adjustments	(311)	(8,496)	(6,755)	(12,561)	—	(28,123)
Balance at December 31, 2020	1,023	1,007	1,168	1,600	—	4,798
Provision	3,095	10,388	10,112	17,101	1,139	41,835
Payments/Adjustments	(757)	(10,217)	(7,644)	(15,207)	(378)	(34,203)
Balance at December 31, 2021	$ 3,361	$ 1,178	$ 3,636	$ 3,494	$ 761	$ 12,430

Collaborative Licensing and Milestone Revenue

The Company's collaboration agreements generally involve a license to the Company's products. In determining how and when to recognize the revenue under a collaboration agreement, the Company must assess whether the license is distinct, which depends upon whether the customer can benefit from the license and whether the license is separate from other performance obligations in the agreement. If the license is distinct, the Company must further assess whether the customer has a right to access or a right to use the license depending on whether the functionality of the license is expected to substantively change over time. If the license is not expected to substantively change, the revenue is recognized at the point in time when the license is provided. If the license is expected to substantively change, the revenue is recognized over the license period.

Revenue recognition from milestone payments is dependent upon the facts and circumstances surrounding the milestone payments. Milestone payments based on a non-sales metric such as a development-based milestone (e.g. obtaining regulatory approval) represent variable consideration and are included in the transaction price subject to any constraints. If the milestone payments relate to future development, the timing of recognition depends upon historical experience and the significance a third-party has on the outcome. For milestone payments to be received upon the achievement of a sales threshold, the revenue from the milestone payments is recognized at the later of when the actual sales are incurred or the performance obligation to which the sales relate has been satisfied.

Accounts Receivable

The majority of accounts receivable arise from product sales and represent amounts due from wholesalers, hospitals, ambulatory surgery centers, specialty distributors, specialty pharmacy, GPOs and doctors. Payment terms generally range from zero to 97 days from the date of the transaction, and accordingly, there is no significant financing component.

Performance Obligations

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account in ASC 606. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied.

At contract inception, the Company assesses the goods promised in its contracts with customers and identifies a performance obligation for each promise to transfer to the customer a good that is distinct. When identifying individual performance obligations, the Company considers all goods promised in the contract regardless of whether explicitly stated in the customer contract or implied by customary business practices. The Company's contracts with customers require it to transfer an individual distinct product, which represents a single performance obligation. The Company's performance obligation with respect to its product sales is satisfied at a point in time, which transfers control upon delivery of EXPAREL and ZILRETTA to its customers. The Company considers control to have transferred upon delivery because the customer has legal title to the asset, physical possession of the asset has been transferred, the customer has significant risks and rewards of ownership of the asset and the Company has a present right to payment at that time.

Disaggregated Revenue

The following table represents disaggregated net product sales in the periods presented as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Net product sales:			
EXPAREL	$ 506,515	$ 413,338	$ 407,877
ZILRETTA	12,683	—	—
iovera°	16,162	8,817	7,896
Bupivacaine liposome injectable suspension	3,606	4,459	3,153
Total net product sales	$ 538,966	$ 426,614	$ 418,926

The Company began recognizing revenue from net product sales of ZILRETTA on November 19, 2021, the date of the Flexion Acquisition.

NOTE 5—ACQUISITIONS

Flexion Therapeutics, Inc.

On November 19, 2021, the Company acquired Flexion (the "Flexion Acquisition"), a biopharmaceutical company focused on the discovery, development, and commercialization of novel, local therapies for the treatment of patients with musculoskeletal conditions, beginning with osteoarthritis, the most common form of arthritis, pursuant to an Agreement and Plan of Merger (the "Merger Agreement"), dated as of October 11, 2021, by and among the Company, Oyster Acquisition Company Inc., a Delaware corporation and wholly owned subsidiary of the Company ("Purchaser"), and Flexion. Following the completion of a successful tender offer for the shares of Flexion's common stock, and pursuant to the terms of the Merger Agreement and in accordance with Section 251(h) of the General Corporation Law of the State of Delaware, Purchaser merged with and into Flexion with Flexion surviving as a wholly owned subsidiary of the Company. The Company changed the name of Flexion to Pacira Therapeutics, Inc. after completing the merger.

The total consideration for the Flexion Acquisition was approximately $578.8 million consisting of: (i) $448.5 million of cash paid to former Flexion stockholders and to settle restricted stock units and in-the-money stock options; (ii) an $85.1 million cash payment of Flexion debt not to be assumed by the Company and (iii) $45.2 million of estimated contingent consideration related to contingent value rights, or CVRs, that were issued to Flexion shareholders and certain equity award holders in conjunction with the Flexion Acquisition. The consideration is subject to adjustments based on the achievement of certain potential milestone payments. The Company estimates that up to an additional $380.2 million in the aggregate may be payable to holders of the CVRs if each of the applicable milestones are achieved, as follows:

(i) $1.00 per CVR the first time that net sales of ZILRETTA in any calendar year equal or exceed $250.0 million;

(ii) $2.00 per CVR, the first time that net sales of ZILRETTA in any calendar year equal or exceed $375.0 million;

(iii) $3.00 per CVR, the first time that net sales of ZILRETTA in any calendar year equal or exceed $500.0 million;

(iv) $1.00 per CVR upon approval by the U.S. Food and Drug Administration, or FDA, of a Biologics License Application (BLA) for PCRX-201 (formerly FX-201), a clinical stage gene therapy product candidate; and

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(v) $1.00 per CVR upon approval by the FDA of a new drug application, or NDA, for PCRX-301 (formerly FX-301), an investigational product candidate.

The total consideration for the Flexion Acquisition was $578.8 million, which consisted of the following (in thousands, except per share amounts):

Fair Value of Purchase Price Consideration	Amount
Fair value of purchase consideration paid at closing:	
Cash consideration for all outstanding shares of Flexion's common stock (50,392 shares of common stock acquired at $8.50 per share)	$ 428,333
Cash consideration paid to settle RSUs and in-the-money options	20,153
Cash paid to settle Flexion debt	85,118
	533,604
Fair value of contingent value rights (CVRs)	45,241
Total purchase consideration	$ 578,845

The Company has accounted for the Flexion Acquisition using the acquisition method of accounting and, accordingly, has included the assets acquired, liabilities assumed and results of operations in its consolidated financial statements from the acquisition date of November 19, 2021.

The preliminary purchase price allocation is based on estimates, assumptions, valuations and other studies which have not yet been finalized. Prior to the finalization of the purchase price allocation, if information becomes available that would indicate it is probable that unknown events had occurred and the amounts can be reasonably estimated, such items will be included in the final purchase price allocation and may change the carrying value of goodwill. The Company is finalizing its valuation of intangible assets, tangible assets, liabilities and tax analyses, and anticipates finalizing the purchase price allocation as the information necessary to complete the analysis is obtained, but no later than one year after the acquisition date.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The following tables set forth the preliminary allocation of the Flexion Acquisition purchase price to the estimated fair value of the net assets acquired at the acquisition date (in thousands):

	Amounts Recognized at the Acquisition Date
ASSETS ACQUIRED	
Cash and cash equivalents	$ 113,562
Short-term available-for-sale investments	11,153
Accounts receivable	32,838
Inventories	29,667
Prepaid expenses and other assets	4,852
Fixed assets	23,307
Deferred tax assets	58,015
Right-of-use assets	6,585
Identifiable intangible assets	480,000
In-process research and development (IPR&D)	61,000
Total assets	$ 820,979
LIABILITIES ASSUMED	
Accounts payable	$ 9,794
Accrued expenses	22,746
Deferred revenue	10,000
Lease liabilities	6,585
Other liabilities	1,187
Long-term debt	201,450
Total liabilities	251,762
Total identifiable net assets acquired	569,217
Goodwill	9,628
Total consideration transferred	$ 578,845

The acquired identifiable intangible assets and IPR&D assets were valued from a market participants' perspective using a multi-period excess earnings methodology (income approach). The identifiable finite-lived intangible asset, ZILRETTA, is a developed technology for OA knee pain with a value of $480.0 million and a useful life of 9.7 years. A discount rate of 17.5% was used in calculating the fair value of this technology. The IPR&D asset relates to the use of ZILRETTA for the treatment of OA pain of the shoulder and was valued at $60.0 million. The projected cash flows for this asset were adjusted for the probability of successful development and commercialization, and were discounted at 18.0%.

The excess of the purchase price over the fair value of identifiable net assets acquired represents goodwill. This goodwill is primarily attributable to the value of combining ZILRETTA with iovera° and EXPAREL as a safe and effective non-opioid multimodal regimen for pain management, as well as the synergies of merging operations. The acquired goodwill and intangible assets are currently not deductible for tax purposes. However, the Company is considering certain tax elections that would allow for the future deduction of acquired goodwill and intangible assets.

Flexion results from the acquisition date of November 19, 2021 through December 31, 2021, which are included in the consolidated statements of operations, are as follows (in thousands):

Classification in Consolidated Statements of Operations	Acquisition Date Through December 31, 2021
Total revenues	$ 12,683
Net loss	$ (25,010)

Refer to Note 18, *Acquisition-Related Charges Product Discontinuation and Other*, for further information on costs incurred related to the Flexion Acquisition.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Unaudited Pro Forma Summary of Operations

The following table shows the unaudited pro forma summary of operations for the years ended December 31, 2021 and 2020, as if the Flexion Acquisition had occurred on January 1, 2020. This pro forma information does not purport to represent what the Company's actual results would have been if the acquisition had occurred as of January 1, 2020, and is not indicative of what such results would be expected for any future period (in thousands, except per share amounts):

	Year Ended December 31,	
	2021	2020
Total revenues	$ 630,942	$ 515,199
Net loss	(67,264)	(19,711)
Pro forma basic and diluted net loss per share	$ (1.52)	$ (0.46)

The unaudited pro forma financial information was prepared using the acquisition method of accounting and was based on the historical financial information of the Company and Flexion. The summary pro forma financial information primarily reflects the following pro forma adjustments:

- Removal of the acquisition-related transaction fees and costs, including certain stock-based compensation and other compensation expenses related to the acquisition, from the years ended December 31, 2021 and 2020;
- Removal of the income tax benefit resulting from the Company decreasing its existing valuation allowance on deferred tax assets from the years ended December 31, 2021 and 2020;
- Removal of Flexion's interest expense and associated deferred financing cost amortization;
- Adjustments to the Company's interest income for the cash used to acquire Flexion;
- Additional cost of goods sold related to the step-up value in inventory;
- Additional amortization expense from the acquired developed technology intangible assets;
- Additional depreciation of fixed assets; and
- Additional lease expense on the ROU assets.

In addition, all of the above adjustments were adjusted for the applicable tax impact.

MyoScience, Inc.

On April 9, 2019, the Company acquired MyoScience (the "MyoScience Acquisition"), a privately held medical device company, in which MyoScience became a wholly owned subsidiary of the Company and was renamed Pacira CryoTech, Inc. The total consideration was $147.5 million, which included a cash payment of $119.0 million and the fair value of contingent consideration in the amount of $28.5 million. The contingent consideration consisted of contingent milestone payments up to an aggregate of $100.0 million upon the achievement of certain regulatory and commercial milestones, of which $43.0 million are available as of December 31, 2021. The Company's obligation to make milestone payments is limited to those milestones achieved through December 31, 2023, with any such milestones payable within 60 days of the end of the fiscal quarter of achievement. During the years ended December 31, 2021, 2020 and 2019, the Company made $12.0 million, $15.0 million and $7.0 million of cash payments for the achievement of certain milestones, respectively. See Note 12, *Financial Instruments*, for information on the measurement and amounts recognized in the Company's consolidated financial statements for contingent consideration. See Note 21, *Commitments and Contingencies*, for information on a dispute regarding the achievement of certain milestone payments.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

NOTE 6—INVENTORIES

The components of inventories, net are as follows (in thousands):

	December 31,	
	2021	2020
Raw materials	$ 36,337	$ 26,886
Work-in-process	35,182	16,266
Finished goods	27,031	21,498
Total	$ 98,550	$ 64,650

NOTE 7—FIXED ASSETS

Fixed assets, net, summarized by major category, consist of the following (in thousands):

	December 31,	
	2021	2020
Machinery and equipment	$ 117,264	$ 74,966
Leasehold improvements	59,740	54,434
Computer equipment and software	13,197	12,170
Office furniture and equipment	2,883	2,387
Construction in progress	80,557	71,091
Total	273,641	215,048
Less: accumulated depreciation	(85,240)	(78,360)
Fixed assets, net	$ 188,401	$ 136,688

For information on useful lives by asset category, refer to Note 2, *Summary of Significant Accounting Policies*.

Depreciation expense for the years ended December 31, 2021, 2020 and 2019 was $15.0 million, $12.0 million and $14.0 million, respectively. During the years ended December 31, 2021, 2020 and 2019, the Company capitalized interest of $3.9 million, $2.4 million and less than $0.1 million, respectively.

As of December 31, 2021 and 2020, total fixed assets, net, includes leasehold improvements and manufacturing process equipment located outside of the U.S. in the amount of $65.4 million and $67.5 million, respectively.

As of December 31, 2021 and 2020, the Company had AROs of $2.4 million and $2.0 million, respectively, included in accrued expenses and other liabilities on its consolidated balance sheet, for costs associated with returning leased space to its original condition upon the termination of certain lease agreements.

NOTE 8—LEASES

The Company leases all of its facilities, including its EXPAREL manufacturing facility in San Diego, California and its iovera° manufacturing facility in Fremont, California. These leases have remaining terms up to 8.7 years, some of which provide renewal options at the then-current market value. The Company also has an embedded lease with Thermo Fisher Scientific Pharma Services for the use of their manufacturing facility in Swindon, England. A portion of the associated monthly base fees has been allocated to the lease component based on a relative fair value basis. As a result of the Flexion Acquisition, the Company recorded new operating lease liabilities of $6.6 million arising from obtaining ROU lease assets for three locations.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The operating lease costs for the facilities include lease and non-lease components, such as common area maintenance and other common operating expenses, along with executory costs such as insurance and real estate taxes. Total operating lease costs are as follows (in thousands):

	Year Ended December 31,		
Operating Lease Costs	**2021**	**2020**	**2019**
Fixed lease costs	$ 11,976	$ 10,055	$ 6,225
Variable lease costs	1,722	2,096	1,651
Total	$ 13,698	$ 12,151	$ 7,876

Supplemental cash flow information related to operating leases is as follows (in thousands):

	Year Ended December 31,		
	2021	**2020**	**2019**
Cash paid for operating lease liabilities, net of lease incentive	$ 12,709	$ 14,347	$ 7,346
Right-of-use assets recorded in exchange for lease obligations	$ 8,692	$ 42,191	$ 41,605

The Company has elected to net the amortization of the ROU asset and the reduction of the lease liability principal in other liabilities in the consolidated statement of cash flows.

The Company has measured its operating lease liabilities at an estimated discount rate at which it could borrow on a collateralized basis over the remaining term for each operating lease. The weighted average remaining lease term and the weighted average discount rate are summarized as follows:

	December 31,	
	2021	**2020**
Weighted average remaining lease term	7.77 years	9.18 years
Weighted average discount rate	6.96%	6.87%

As of December 31, 2021, maturities of the Company's operating lease liabilities are as follows (in thousands):

Year	**Aggregate Payments Due**
2022	$ 13,171
2023	13,292
2024	13,422
2025	12,561
2026	12,296
2027 and thereafter	39,423
Total lease payments	104,165
Less: imputed interest	(24,547)
Total operating lease liabilities	$ 79,618

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

NOTE 9—GOODWILL AND INTANGIBLE ASSETS

Goodwill

The Company's goodwill results from the acquisition of Pacira Pharmaceuticals, Inc. from SkyePharma Holding, Inc. (now a subsidiary of Vectura Group plc), or Skyepharma in 2007 (the "Skyepharma Acquisition"), the MyoScience Acquisition in 2019 and the Flexion Acquisition in 2021. The change in the carrying value of the Company's goodwill is summarized as follows (in thousands):

	Carrying Value
Balance at December 31, 2019	$ 99,547
2020 accumulated adjustments	—
Balance at December 31, 2020	99,547
Goodwill arising from milestones achieved under the Skyepharma Acquisition	36,000
Goodwill arising from the Flexion Acquisition	9,628
Balance at December 31, 2021	$ 145,175

The Skyepharma Acquisition was accounted for under Statement of Financial Accounting Standards 141, *Accounting for Business Combinations*, which was the effective GAAP standard at the date of acquisition. In connection with the Skyepharma Acquisition, the Company agreed to certain milestone payments for DepoBupivacaine products, including EXPAREL. In the fourth quarter of 2021, the Company met both of its two remaining milestones due to Skyepharma: $4.0 million upon the first commercial sale in the U.K., France, Germany, Italy or Spain which was paid in the fourth quarter of 2021; and $32.0 million when annual net sales collected reached $500.0 million, which was paid in the first quarter of 2022. These milestone payments were treated as additions to the Skyepharma Acquisition and, therefore, recorded as goodwill. The Company made a tax election that allows the acquired goodwill and intangible assets associated with the MyoScience Acquisition to be tax deductible.

In connection with the Flexion Acquisition, the Company recorded goodwill totaling $9.6 million. The acquired goodwill and intangible assets are currently not deductible for tax purposes. However, the Company is considering certain tax elections that would allow for the future deduction of acquired goodwill and intangible assets.

Intangible Assets

Intangible assets, net, consist of the IPR&D and developed technology from the Flexion Acquisition and developed technology and customer relationships from the MyoScience Acquisition and are summarized as follows (dollar amounts in thousands):

December 31, 2021	Gross Carrying Value	Accumulated Amortization	Intangible Assets, Net	Weighted-Average Useful Lives
Developed technologies	$ 590,000	$ (27,097)	$ 562,903	10 years, 5 months
Customer relationships	90	(25)	65	10 years
Total finite-lived intangible assets, net	590,090	(27,122)	562,968	
Acquired IPR&D	61,000	—	61,000	
Total intangible assets, net	$ 651,090	$ (27,122)	$ 623,968	

December 31, 2020	Gross Carrying Value	Accumulated Amortization	Intangible Assets, Net	Weighted-Average Useful Lives
Developed technology	$ 110,000	$ (13,553)	$ 96,447	14 years
Customer relationships	90	(16)	74	10 years
Total intangible assets, net	$ 110,090	$ (13,569)	$ 96,521	

Amortization expense on intangible assets for the years ended December 31, 2021 and 2020 was $13.6 million and $7.9 million, respectively. Assuming no changes in the gross carrying amount of these intangible assets, the future estimated

amortization expense on the finite-lived intangible assets will be $57.4 million through 2028, $57.3 million in 2029 and 2030, $36.9 million in 2031, $7.9 million in 2032 and $2.2 million in 2033.

NOTE 10—ACCRUED EXPENSES

Accrued expenses consist of the following (in thousands):

	December 31,	
	2021	2020
Accrued selling, general and administrative expenses	$ 12,063	$ 23,288
Accrued research and development expenses	5,480	6,682
Other accrued operating expenses	14,912	11,196
Compensation and benefits	45,491	22,202
Accrued royalties [(1)]	35,298	3,040
Accrued interest	5,358	2,376
Product returns and wholesaler service fees	8,953	2,190
Total	$ 127,555	$ 70,974

(1) At December 31, 2021, accrued royalties included a $32.0 million milestone payment to Skyepharma that was met in the fourth quarter of 2021 for achieving annual net sales collected of $500.0 million on the Company's DepoBupivacaine products, including EXPAREL. This milestone was subsequently paid in the first quarter of 2022. See Note 9, *Goodwill and Intangible Assets*, for more information.

NOTE 11—DEBT

The carrying value of the Company's outstanding debt is summarized as follows (amounts in thousands):

	December 31,	
	2021	2020
Term loan B facility maturing December 2026	$ 359,497	$ —
0.750% Convertible senior notes due August 2025	330,627	313,030
3.375% Convertible senior notes due May 2024	201,249	—
2.375% Convertible senior notes due April 2022	157,857	149,648
Total	$ 1,049,230	$ 462,678

Term Loan B Facility

On December 7, 2021, the Company entered into a term loan credit agreement (the "Credit Agreement") with JP Morgan Chase Bank, N.A., as administrative agent and the initial lender. The term loan issued under the Credit Agreement (the "Term Loan"), which was issued at a 3% discount and allows for a single-advance term loan B facility in the principal amount of $375.0 million, which is secured by substantially all of the Company's and each subsidiary guarantor's assets. Subject to certain conditions, the Company may, at any time, on one or more occasions, add one or more new classes of term facilities and/or increase the principal amount of the loans of any existing class by requesting one or more incremental term facilities. The net proceeds of the Term Loan were approximately $363.8 million after deducting an original issue discount of $11.2 million.

The total debt composition of the Term Loan is as follows (in thousands):

	December 31, 2021
Term Loan maturing December 2026	$ 375,000
Deferred financing costs	(4,443)
Discount on debt	(11,060)
Total debt, net of debt discount and deferred financing costs	$ 359,497

The Term Loan matures on December 7, 2026 and requires quarterly repayments of principal in the amount of $9.4 million. commencing June 30, 2022, and increasing to $14.1 million commencing December 31, 2025, with a remaining balloon payment of approximately $188.0 million due at maturity. During 2022, the Company will be required to make three

quarterly payments totaling $28.1 million. The Company is also required to make mandatory prepayments of principal from (i) commencing with the fiscal year ending December 31, 2022, the Company's excess cash flow (as defined in the Credit Agreement) existing in any fiscal year and if the Senior Secured Leverage Ratio (as defined in the Credit Agreement) for such fiscal year exceeds certain predetermined limits (ii) net proceeds (as defined in the Credit Agreement) of non-ordinary course assets sales and casualty events and (iii) debt issuance proceeds (other than permitted debt under the Credit Agreement). No mandatory prepayments are due for 2021. Prepayment penalties for the Term Loan are 3% in loan year 1, 2% in loan year 2, 1% in loan year 3 and no prepayment penalties thereafter. Prepayment penalties generally do not apply to mandatory prepayment obligations under the Credit Agreement, such as prepayments due in connection with excess cash flow.

The Term Loan requires the Company to, among other things, maintain (i) a first lien net leverage ratio, determined as of the last day of any fiscal quarter, of no greater than 1.75 to 1.00 and (ii) liquidity, at any time, of at least $150.0 million. The Term Loan also contains customary affirmative and negative covenants, financial covenants, representations and warranties, events of default and other provisions. As of December 31, 2021, the Company was in compliance with all financial covenants under the Credit Agreement.

The Company may elect to borrow either term benchmark borrowings or alternate base rate borrowings. Term benchmark borrowings bear interest at a variable rate per annum equal to the Adjusted Term SOFR Rate (as defined in the Credit Agreement) (subject to a 75 basis points floor) plus an applicable margin of 700 basis points. Alternate base rate borrowings bear interest at a variable rate per annum determined using a base rate (subject to a 175 basis points floor) equal to the greatest of (i) Prime Rate (as defined in the Credit Agreement) in effect on such day, (ii) NYFRB Rate (as defined in the Credit Agreement) plus 50 basis points or (iii) the Adjusted Term SOFR Rate (as defined in the Credit Agreement) plus 100 basis points, subject to certain exceptions, plus an applicable margin of 600 basis points. As of December 31, 2021, borrowings under the Term Loan consisted entirely of term benchmark borrowings at a rate of 7.75%.

Convertible Senior Notes Due 2025

In July 2020, the Company completed a private placement of $402.5 million in aggregate principal amount of its 0.750% convertible senior notes due 2025, or 2025 Notes, and entered into an indenture, or 2025 Indenture, with respect to the 2025 Notes. The 2025 Notes accrue interest at a fixed rate of 0.750% per year, payable semiannually in arrears on February 1st and August 1st of each year, beginning on February 1, 2021. The 2025 Notes mature on August 1, 2025.

The total debt composition of the 2025 Notes is as follows (in thousands):

	December 31,	
	2021	2020
0.750% Convertible senior notes due August 2025	$ 402,500	$ 402,500
Deferred financing costs	(7,155)	(8,940)
Discount on debt	(64,718)	(80,530)
Total debt, net of debt discount and deferred financing costs	$ 330,627	$ 313,030

The net proceeds from the issuance of the 2025 Notes was approximately $390.0 million, after deducting commissions and the offering expenses paid by the Company. A portion of the net proceeds from the 2025 Notes was used by the Company to repurchase $185.0 million in aggregate principal amount of its outstanding 2.375% convertible senior notes due 2022 in privately negotiated transactions for a total of $211.1 million of cash (including accrued interest).

Holders may convert the 2025 Notes at any time prior to the close of business on the business day immediately preceding February 3, 2025, only under the following circumstances:

(i) during any calendar quarter (and only during such calendar quarter), if the last reported sale price of the Company's common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;

(ii) during the five-business day period immediately after any five consecutive trading day period (the "measurement period") in which the trading price (as defined in the 2025 Indenture) per $1,000 principal amount of notes for each trading day

of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day;

(iii) upon the occurrence of specified corporate events, including a merger or a sale of all or substantially all of the Company's assets; or

(iv) if the Company calls the 2025 Notes for redemption, until the close of business on the business day immediately preceding the redemption date.

On or after February 3, 2025, until the close of business on the second scheduled trading day immediately preceding August 1, 2025, holders may convert their 2025 Notes at any time.

None of these conditions for conversion were met during the quarter ended December 31, 2021.

Upon conversion, holders will receive the principal amount of their 2025 Notes and any excess conversion value, calculated based on the per share volume-weighted average price for each of the 40 consecutive trading days during the observation period (as more fully described in the 2025 Indenture). For both the principal and excess conversion value, holders may receive cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's option. The initial conversion rate for the 2025 Notes is 13.9324 shares of common stock per $1,000 principal amount, which is equivalent to an initial conversion price of $71.78 per share of the Company's common stock. The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. The initial conversion price of the 2025 Notes represents a premium of approximately 32.5% to the closing sale price of $54.17 per share of the Company's common stock on the Nasdaq Global Select Market on July 7, 2020, the date that the Company priced the private offering of the 2025 Notes.

As of December 31, 2021, the 2025 Notes had a market price of $1,113 per $1,000 principal amount. In the event of conversion, holders would forgo all future interest payments, any unpaid accrued interest and the possibility of further stock price appreciation. Upon the receipt of conversion requests, the settlement of the 2025 Notes will be paid pursuant to the terms of the 2025 Indenture. In the event that all of the 2025 Notes are converted, the Company would be required to repay the $402.5 million in principal value and any conversion premium in any combination of cash and shares of its common stock (at the Company's option).

Prior to August 1, 2023, the Company may not redeem the 2025 Notes. On or after August 1, 2023 (but, in the case of a redemption of less than all of the outstanding 2025 Notes, no later than the 40th scheduled trading day immediately before the maturity date), the Company may redeem for cash all or part of the 2025 Notes if the last reported sale price (as defined in the 2025 Indenture) of the Company's common stock has been at least 130% of the conversion price then in effect for (i) each of at least 20 trading days (whether or not consecutive) during any 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related notice of redemption and (ii) the trading day immediately before the date the Company sends such notice. The redemption price will equal the sum of (i) 100% of the principal amount of the 2025 Notes being redeemed, plus (ii) accrued and unpaid interest, including additional interest, if any, to, but excluding, the redemption date. In addition, calling the 2025 Notes for redemption will constitute a "make-whole fundamental change" (as defined in the 2025 Indenture) and will, in certain circumstances, increase the conversion rate applicable to the conversion of such notes if it is converted in connection with the redemption. No sinking fund is provided for the 2025 Notes.

If the Company undergoes a fundamental change, as defined in the 2025 Indenture, subject to certain conditions, holders of the 2025 Notes may require the Company to repurchase for cash all or part of their 2025 Notes at a repurchase price equal to 100% of the principal amount of the 2025 Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. In addition, if a make-whole fundamental change occurs prior to August 1, 2025, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its notes in connection with the make-whole fundamental change.

The 2025 Notes are the Company's general unsecured obligations that rank senior in right of payment to all of its indebtedness that is expressly subordinated in right of payment to the 2025 Notes, and equal in right of payment to the Company's unsecured indebtedness. The 2025 Notes are also effectively junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness, and are structurally subordinated to any debt or other liabilities (including trade payables) of the Company's subsidiaries.

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While the 2025 Notes are currently classified on the Company's consolidated balance sheet at December 31, 2021 as long-term debt, the future convertibility and resulting balance sheet classification of this liability is monitored at each quarterly reporting date and is analyzed dependent upon market prices of the Company's common stock during the prescribed measurement periods. In the event that the holders of the 2025 Notes have the election to convert the 2025 Notes at any time during the prescribed measurement period, the 2025 Notes would then be considered a current obligation and classified as such.

Under ASC 470-20, *Debt with Conversion and Other Options*, an entity must separately account for the liability and equity components of convertible debt instruments (such as the 2025 Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The liability component of the instrument is valued in a manner that reflects the market interest rate for a similar nonconvertible instrument at the date of issuance. The initial carrying value of the liability component of $314.7 million was calculated using a 5.78% assumed borrowing rate. The equity component of $87.8 million, representing the conversion option, was determined by deducting the fair value of the liability component from the par value of the 2025 Notes and is recorded in additional paid-in capital on the consolidated balance sheet at the issuance date. The equity component is treated as a discount on the liability component of the 2025 Notes, which is amortized over the five-year term of the 2025 Notes using the effective interest rate method. The equity component is not re-measured as long as it continues to meet the conditions for equity classification. A deferred tax liability was recognized in the amount of $20.5 million, with the offsetting amount recorded in additional paid-in capital. See Note 16, *Income Taxes*, for information regarding the Company's deferred taxes.

The Company allocated the total transaction costs of approximately $12.5 million related to the issuance of the 2025 Notes to the liability and equity components of the 2025 Notes based on their relative values. Transaction costs attributable to the liability component are amortized to interest expense over the five-year term of the 2025 Notes, and transaction costs attributable to the equity component totaling $2.7 million are netted with the equity component in stockholders' equity.

The 2025 Notes do not contain any financial or operating covenants or any restrictions on the payment of dividends, the issuance of other indebtedness or the issuance or repurchase of securities by the Company. The 2025 Indenture contains customary events of default with respect to the 2025 Notes, including that upon certain events of default, 100% of the principal and accrued and unpaid interest on the 2025 Notes will automatically become due and payable.

Convertible Senior Notes Due 2024 Assumed from the Flexion Acquisition

Prior to the Flexion Acquisition, on May 2, 2017, Flexion issued an aggregate of $201.3 million principal amount of 3.375% convertible senior notes due 2024 (the "Flexion 2024 Notes"), pursuant to the indenture, dated as of May 2, 2017 (the "Original Flexion Indenture"), between Flexion and Wells Fargo Bank, National Association, as trustee (the "Flexion Trustee"), as supplemented by the First Supplemental Indenture, dated as of November 19, 2021, between Flexion and the Flexion Trustee (the "First Supplemental Flexion Indenture" and, together with the Original Flexion Indenture, the "Flexion Indenture"). The Flexion 2024 Notes have a maturity date of May 1, 2024, are unsecured, and accrue interest at a rate of 3.375% per annum, payable semi-annually on May 1 and November 1 of each year. Upon the Flexion Acquisition, the principal was assumed and recorded at fair value by the Company.

Upon conversion of the Flexion 2024 Notes, at the election of each holder thereof, each Flexion 2024 Note was convertible into cash, shares of Flexion's common stock, or a combination thereof, at Flexion's election, at a conversion rate of approximately 37.3413 shares of Flexion common stock per $1,000 principal amount of the Flexion 2024 Notes, which corresponded to an initial conversion price of approximately $26.78 per share of Flexion's common stock. As a result of the Flexion Acquisition, and in connection with the Notice (as defined below), holders of the Flexion 2024 Notes became entitled to certain Flexion Acquisition-related conversion and repurchase rights, as discussed below. In addition, as a result of the Flexion Acquisition and as discussed in more detail below, any future conversion rights are subject to the occurrence of any future events giving rise to such conversion rights under the Flexion Indenture.

On December 6, 2021, as a result of the Flexion Acquisition and in accordance with the Flexion Indenture, Flexion provided a Fundamental Change Company Notice and Offer to Purchase (the "Notice") to the holders of the Flexion 2024 Notes and offered to repurchase for cash all of the outstanding Flexion 2024 Notes, at a repurchase price in cash equal to 100% of the principal amount of the Flexion 2024 Notes being repurchased, plus accrued and unpaid interest thereon to, but excluding, January 7, 2022, subject to the terms and conditions set forth therein. The offer to purchase expired at 5:00 p.m., New York City time, on January 6, 2022, as scheduled.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Any holder that did not exercise its repurchase right in accordance with the terms of the Notice retained the conversion rights associated with such holder's Flexion 2024 Notes under the Flexion Indenture. For conversion of Flexion 2024 Notes in connection with the Fundamental Change and the Make-Whole Fundamental Change (each as defined in the Flexion Indenture) resulting from the Flexion Acquisition, each $1,000 principal amount of the Flexion 2024 Notes was convertible into (i) $317.40 in cash and (ii) 37.3413 CVRs, based on the conversion rate of 37.3413, prior to 5:00 p.m., New York City time, on January 7, 2022. Alternatively, holders could retain their Flexion 2024 Notes and such Flexion 2024 Notes would remain outstanding subject to their existing terms, including with respect to a holder's right to receive interest payments on the Flexion 2024 Notes and exercise any future conversion rights that may arise under the Flexion Indenture.

On January 7, 2022, following the expiration of the offer to purchase, the Company accepted the $192.6 million aggregate principal amount of Flexion 2024 Notes that were validly tendered (and not validly withdrawn). No Flexion 2024 Notes were converted in connection with the Notice. The remaining principal outstanding is $8.6 million as of the date of this report.

Convertible Senior Notes Due 2022

In March 2017, the Company completed a private placement of $345.0 million in aggregate principal amount of 2.375% convertible senior notes due 2022, or 2022 Notes, and entered into an indenture, or 2022 Indenture, with respect to the 2022 Notes. The 2022 Notes accrue interest at a fixed rate of 2.375% per year, payable semiannually in arrears on April 1st and October 1st of each year. The 2022 Notes mature on April 1, 2022. As discussed above, in July 2020, the Company used part of the net proceeds from the issuance of the 2025 Notes to repurchase $185.0 million aggregate principal amount of the 2022 Notes in privately negotiated transactions for an aggregate of $211.1 million in cash (including accrued interest). The partial repurchase of the 2022 Notes resulted in an $8.1 million loss on early extinguishment of debt during the year ended December 31, 2020.

The total debt composition of the 2022 Notes is as follows (in thousands):

	December 31,	
	2021	2020
2.375% Convertible senior notes due April 2022	$ 160,000	$ 160,000
Deferred financing costs	(223)	(1,089)
Discount on debt	(1,920)	(9,263)
Total debt, net of debt discount and deferred financing costs	$ 157,857	$ 149,648

Holders may convert their 2022 Notes at any time through the close of business on the second scheduled trading day immediately preceding April 1, 2022. Upon conversion, holders will receive the principal amount of their 2022 Notes and any excess conversion value, calculated based on the per share volume-weighted average price for each of the 40 consecutive trading days during the observation period (as more fully described in the 2022 Indenture). For both the principal and excess conversion value, holders may receive cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's option. The initial conversion rate for the 2022 Notes is 14.9491 shares of common stock per $1,000 principal amount, which is equivalent to an initial conversion price of $66.89 per share of the Company's common stock. The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. The initial conversion price of the 2022 Notes represents a premium of approximately 37.5% to the closing sale price of $48.65 per share of the Company's common stock on the Nasdaq Global Select Market on March 7, 2017, the date that the Company priced the private offering of the 2022 Notes.

As of December 31, 2021, the 2022 Notes had a market price of $1,039 per $1,000 principal amount. In the event of conversion, holders would forgo all future interest payments, any unpaid accrued interest and the possibility of stock price appreciation. Upon the receipt of conversion requests, the settlement of the 2022 Notes will be paid pursuant to the terms of the 2022 Indenture. In the event that all of the 2022 Notes are settled, the Company would be required to repay the remaining $160.0 million in principal value and any conversion premium in any combination of cash and shares of its common stock (at the Company's option).

As of April 1, 2020, the Company may redeem for cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's option, all or part of the 2022 Notes if the last reported sale price (as defined in the 2022 Indenture) of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading-day period ending within five

trading days prior to the date on which the Company provides notice of redemption. This condition was not met during the quarter ended December 31, 2021. The redemption price will equal the sum of (i) 100% of the principal amount of the 2022 Notes being redeemed, plus (ii) accrued and unpaid interest, including additional interest, if any, to, but excluding, the redemption date. In addition, calling the 2022 Notes for redemption will constitute a "make-whole fundamental change" (as defined in the 2022 Indenture) and will, in certain circumstances, increase the conversion rate applicable to the conversion of such notes if it is converted in connection with the redemption. No sinking fund is provided for the 2022 Notes.

If the Company undergoes a fundamental change, as defined in the 2022 Indenture, subject to certain conditions, holders of the 2022 Notes may require the Company to repurchase for cash all or part of their 2022 Notes at a repurchase price equal to 100% of the principal amount of the 2022 Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. In addition, if a make-whole fundamental change occurs prior to April 1, 2022, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its notes in connection with the make-whole fundamental change.

The 2022 Notes are the Company's general unsecured obligations that rank senior in right of payment to all of its indebtedness that is expressly subordinated in right of payment to the 2022 Notes, and equal in right of payment to the Company's unsecured indebtedness. The 2022 Notes are also effectively junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness, and are structurally subordinated to any debt or other liabilities (trade payables) of the Company's subsidiaries.

Under ASC 470-20, *Debt with Conversion and Other Options*, an entity must separately account for the liability and equity components of convertible debt instruments (such as the 2022 Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The liability component of the instrument is valued in a manner that reflects the market interest rate for a similar nonconvertible instrument at the date of issuance. The initial carrying value of the liability component of $274.1 million was calculated using a 7.45% assumed borrowing rate. The equity component of $70.9 million, representing the conversion option, was determined by deducting the fair value of the liability component from the par value of the 2022 Notes and was recorded in additional paid-in capital on the consolidated balance sheet at the issuance date. That equity component is treated as a discount on the liability component of the 2022 Notes, which is amortized over the five-year term of the 2022 Notes using the effective interest rate method. The equity component is not re-measured as long as it continues to meet the conditions for equity classification.

The Company allocated the total transaction costs of $11.0 million related to the issuance of the 2022 Notes to the liability and equity components of the 2022 Notes based on their relative values. Transaction costs attributable to the liability component are amortized to interest expense over the five-year term of the 2022 Notes, and transaction costs attributable to the equity component are netted with the equity component in stockholders' equity.

The 2022 Notes do not contain any financial or operating covenants or any restrictions on the payment of dividends, the issuance of other indebtedness or the issuance or repurchase of securities by the Company. The 2022 Indenture contains customary events of default with respect to the 2022 Notes, including that upon certain events of default, 100% of the principal and accrued and unpaid interest on the 2022 Notes will automatically become due and payable.

Interest Expense

The following table sets forth the total interest expense recognized in the periods presented (dollar amounts in thousands):

	Year Ended December 31,		
	2021	2020	2019
Contractual and other interest expense	$ 9,759	$ 7,650	$ 8,195
Amortization of debt issuance costs	2,754	2,156	1,707
Amortization of debt discount	23,152	18,254	13,746
Capitalized interest (Note 7)	(3,915)	(2,389)	(20)
Total	$ 31,750	$ 25,671	$ 23,628
Effective interest rate on total debt	6.66 %	7.15 %	7.81 %

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

NOTE 12—FINANCIAL INSTRUMENTS

Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or be paid to transfer a liability in the principal or most advantageous market in an orderly transaction. To increase consistency and comparability in fair value measurements, the FASB established a three-level hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of fair value measurements are:

- *Level 1:* Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.
- *Level 2:* Observable prices that are based on inputs not quoted on active markets, but corroborated by market data.
- *Level 3:* Unobservable inputs that are used when little or no market data is available. The fair value hierarchy gives the lowest priority to Level 3 inputs.

The carrying value of financial instruments including cash and cash equivalents, accounts receivable and accounts payable approximate their respective fair values due to the short-term nature of these items. The fair value of the Company's equity investment with a readily determinable fair value was calculated utilizing market quotations from a major American stock exchange (Level 1). The fair value of the Company's convertible senior notes are calculated utilizing market quotations from an over-the-counter trading market for these notes (Level 2). The fair value of the Company's acquisition-related contingent consideration is reported at fair value on a recurring basis (Level 3). The carrying amounts of equity investments and convertible notes receivable without readily determinable fair values have not been adjusted for either impairments or upward or downward adjustments based on observable transactions. The carrying values and fair values of the Company's financial assets and liabilities at December 31, 2021 are as follows (in thousands):

	Carrying Value	Fair Value Measurements Using		
		Level 1	Level 2	Level 3
Financial Assets and Financial Liabilities Measured at Fair Value on a Recurring Basis:				
Financial Asset:				
Equity investments	$ 14,127	$ —	$ —	$ 14,127
Convertible notes receivable	$ 4,132	$ —	$ —	$ 4,132
Financial Liabilities:				
Acquisition-related contingent consideration	$ 57,598	$ —	$ —	$ 57,598
Financial Liabilities Measured at Amortized Cost:				
Term loan facility due December 2026	$ 359,497	$ —	$ 371,250	$ —
2.375% convertible senior notes due 2022 (1)	$ 157,857	$ —	$ 166,200	$ —
0.750% convertible senior notes due 2025 (1)	$ 330,627	$ —	$ 447,781	$ —
3.375% convertible senior notes due 2024 (2)	$ 201,249	$ —	$ 201,552	$ —

(1) The closing price of the Company's common stock as reported on the Nasdaq Global Select Market was $60.17 per share at December 31, 2021 compared to a conversion price of $66.89 per share for the 2022 Notes and a conversion price of $71.78 per share for the 2025 Notes. Therefore, at December 31, 2021, the conversion prices were above the stock price. The maximum conversion premium that could have been due on the 2022 Notes and 2025 Notes at December 31, 2021 was approximately 2.4 million and 5.6 million shares of the Company's common stock, respectively. These figures assume no increases in the conversion rate for certain corporate events.

(2) Relates to the Flexion 2024 Notes. For more information, See Note 11, *Debt*.

Certain assets and liabilities are measured at fair value on a non-recurring basis, including assets and liabilities acquired in a business combination and long-lived assets, which would be recognized at fair value if deemed impaired or if reclassified as assets held for sale. The fair value in these instances would be determined using Level 3 inputs.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Financial Liabilities Measured at Fair Value on a Recurring Basis

The Company has recognized contingent consideration related to the Flexion Acquisition and the MyoScience Acquisition in the amount of $57.6 million and $28.3 million as of December 31, 2021 and 2020, respectively. Refer to Note 5, *Acquisitions* and Note 18, *Acquisition-Related Charges, Product Discontinuation and Other,* for more information.

The Company's contingent consideration obligations are recorded at their estimated fair values and are revalued each reporting period if and until the related contingencies are resolved. The Company has measured the fair value of its contingent consideration using a probability-weighted discounted cash flow approach that is based on unobservable inputs and a Monte Carlo simulation. These inputs include, as applicable, estimated probabilities and the timing of achieving specified commercial and regulatory milestones, estimated forecasts of revenue and costs and the discount rate used to calculate the present value of estimated future payments. Significant changes may increase or decrease the probabilities of achieving the related commercial and regulatory events, shorten or lengthen the time required to achieve such events, or increase or decrease estimated forecasts.

On November 19, 2021, as part of the purchase price consideration related to the Flexion Acquisition, the Company recorded contingent consideration of $45.2 million, which represents the Company's achievement of meeting regulatory and sales-based milestones. For the period of acquisition through December 31, 2021, the Company recorded an additional $1.2 million liability due to an estimated $0.02 increase to contingent consideration per CVR fair value, which was included in acquisition-related charges in the consolidated statements of operations. At December 31, 2021, the weighted average discount rate was 12.2% and the weighted average probability of success for regulatory milestones was 12.7%.

For the year ended December 31, 2021, the Company recognized an acquisition-related gain of $2.2 million and for the years ended December 31, 2020 and 2019, the Company recognized acquisition-related charges of $5.2 million and $16.7 million, respectively, related to the MyoScience Acquisition, as a result of revisions to the probabilities of regulatory milestones being met and future projections, which have been included in acquisition-related charges in the consolidated statements of operations. At December 31, 2021, the weighted average discount rate was 11.8% and the weighted average probability of success for regulatory milestones was 1%.

The following table includes the key assumptions used in the valuation of the Company's contingent consideration:

Assumption	Flexion Ranges Utilized as of December 31, 2021	MyoScience Ranges Utilized as of December 31, 2021
Discount rates	11.39% to 12.92%	11.42% to 12.13%
Probability of achieving regulatory milestones	10.00% to 15.00%	1.00%
Projected year of achieving regulatory milestones	2026 to 2028	2023

The maximum remaining potential payments related to the contingent consideration from the Flexion Acquisition and MyoScience Acquisition are $425.5 million and $43.0 million, respectively, as of December 31, 2021.

The change in the Company's contingent consideration recorded at fair value using Level 3 measurements is as follows (in thousands):

	Contingent Consideration Fair Value
Balance at December 31, 2020	$ 28,346
Contingent consideration related to the Flexion Acquisition	45,241
Fair value adjustments and accretion	(989)
Payments made or offset against amounts due	(15,000)
Balance at December 31, 2021	$ 57,598

Investments

Short-term investments consist of asset-backed securities collateralized by credit card receivables, investment grade commercial paper and corporate and government bonds with maturities greater than three months, but less than one year. Long-term investments consist of government bonds with maturities greater than one year but less than three years. Net unrealized gains and losses (excluding credit losses, if any) from the Company's short-term and long-term investments are reported in other comprehensive income (loss). At December 31, 2021, all of the Company's short-term investments are classified as

available-for-sale investments and are determined to be Level 2 instruments, which are measured at fair value using standard industry models with observable inputs. The fair value of the commercial paper is measured based on a standard industry model that uses the three-month U.S. Treasury bill rate as an observable input. The fair value of the asset-backed securities and corporate bonds is principally measured or corroborated by trade data for identical issues in which related trading activity is not sufficiently frequent to be considered a Level 1 input or that of comparable securities. At the time of purchase, all short-term and long-term investments had an "A" or better rating by Standard & Poor's.

The following summarizes the Company's investments at December 31, 2021 and 2020 (in thousands):

December 31, 2021 Investments:	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value (Level 2)
Short-term:				
Asset-backed securities	$ 3,182	$ —	$ —	$ 3,182
Commercial paper	57,533	80	(2)	57,611
Corporate bonds	9,936	102	—	10,038
Total	$ 70,651	$ 182	$ (2)	$ 70,831

December 31, 2020 Investments:	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value (Level 2)
Short-term:				
Asset-backed securities	$ 34,918	$ 98	$ —	$ 35,016
Commercial paper	221,494	36	(18)	221,512
Corporate bonds	120,375	179	(11)	120,543
U.S. Government bonds	44,629	7	(2)	44,634
Subtotal	421,416	320	(31)	421,705
Long-term:				
U.S. Government bonds	95,429	30	—	95,459
Subtotal	95,429	30	—	95,459
Total	$ 516,845	$ 350	$ (31)	$ 517,164

At December 31, 2021, there were no investments available for sale that were materially less than their amortized cost.

The Company elects to recognize its interest receivable separate from its available-for-sale investments. At December 31, 2021 and December 31, 2020, the interest receivable recognized in prepaid expenses and other current assets was $0.1 million and $1.6 million, respectively.

Equity and Convertible Note Investments

At December 31, 2021 and 2020, the Company held an equity investment of $4.1 million and $1.2 million, respectively, in GeneQuine Biotherapeutics GmbH, or GeneQuine, a privately held biopharmaceutical company headquartered in Hamburg, Germany. This investment has no readily determinable fair value and is recorded at cost minus impairment, if any, plus or minus observable price changes of identical or similar investments. During 2021, the Company purchased a convertible note from GeneQuine in the amount of $1.2 million and invested an additional $3.0 million in equity investments. During the year ended December 31, 2021, the valuation of the convertible note was reduced by less than $0.1 million due to changes in foreign currency exchange rates. The Company has the right to make additional investments in debt securities of $1.7 million predicated upon GeneQuine achieving certain prespecified near-term milestones.

In April 2021, the Company purchased preferred shares in Coda BioTherapeutics, Inc., a privately held preclinical stage biopharmaceutical company that is developing a gene-therapy platform to treat neurological disorders and diseases for a purchase price of $10.0 million. There were no adjustments to this investment during the year ended December 31, 2021.

In April 2021, the Company purchased a convertible note in the amount of $3.0 million from Spine BioPharma, LLC, a preclinical stage biopharmaceutical company. There were no adjustments to this investment during the year ended December 31, 2021.

At December 31, 2020, the Company held an equity investment in TELA Bio, Inc., or TELA Bio, in its consolidated balance sheets in the amount of $11.6 million. During the year ended December 31, 2021, the Company sold its investment in TELA Bio for net cash proceeds of $9.1 million and recognized a realized loss of $2.6 million, which was recorded in other, net in the consolidated statements of operations. In 2020, the fair value of TELA Bio increased by $1.6 million, which was recorded in other, net in the consolidated statement of operations and in 2019, the Company also recognized an impairment loss of $5.7 million in other, net related to its investment in TELA Bio. The fair values of TELA Bio at December 31, 2020 and 2019 were based on Level 1 inputs.

Subsequent to December 31, 2021, in January 2022, the Company purchased preferred shares in the privately-held Genascence Corporation, a preclinical stage biopharmaceutical company, for $7.5 million, recorded as an equity investment.

Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents, short-term and long-term investments and accounts receivable. The Company maintains its cash and cash equivalents with high-credit quality financial institutions. Such amounts may exceed federally insured limits.

As of December 31, 2021, four wholesalers each accounted for over 10% of the Company's accounts receivable at 30%, 20%, 17% and 11%. At December 31, 2020, three wholesalers each accounted for over 10% of the Company's accounts receivable at 36%, 28% and 23%. For additional information regarding the Company's wholesalers, see Note 2, *Summary of Significant Accounting Policies*. EXPAREL revenues are primarily derived from major wholesalers that generally have significant cash resources. The Company performs ongoing credit evaluations of its customers as warranted and generally does not require collateral. Allowances for credit losses on the Company's accounts receivable are maintained based on historical payment patterns, current and estimated future economic conditions, aging of accounts receivable and its write-off history. As of December 31, 2021 and 2020, the Company did not deem any allowances for credit losses on its accounts receivable necessary.

NOTE 13—STOCKHOLDERS' EQUITY

Common Stock

The Company is authorized to issue up to 250,000,000 shares of common stock, of which 44,734,308 and 43,636,929 were issued and outstanding at December 31, 2021 and 2020, respectively.

Preferred Stock

The Company is authorized to issue up to 5,000,000 shares of preferred stock. No preferred stock was issued or outstanding at either December 31, 2021 or 2020.

Accumulated Other Comprehensive Income (Loss)

The following table illustrates the changes in the balances of the Company's accumulated other comprehensive income (loss) for the periods presented (in thousands):

	Net Unrealized Gains (Losses) From Available For Sale Investments	Unrealized Foreign Currency Translation	Accumulated Other Comprehensive Income (Loss)
Balance at December 31, 2018	$ (280)	$ —	$ (280)
Net unrealized gain on investments, net of tax	602	—	602
Balance at December 31, 2019	322	—	322
Net unrealized loss on investments, net of tax	(3)	—	(3)
Foreign currency translation adjustments	—	(1)	(1)
Balance at December 31, 2020	319	(1)	318
Net unrealized loss on investments, net of tax	(180)	—	(180)
Foreign currency translation adjustments	—	29	29
Balance at December 31, 2021	$ 139	$ 28	$ 167

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

NOTE 14—STOCK PLANS

Stock Incentive Plans

The Company's amended and restated 2011 stock incentive plan, or 2011 Plan, was originally adopted by its board of directors and approved by its stockholders in June 2011 and was amended in June 2014, June 2016, June 2019 and June 2021. The June 2021 amendment and approval by the Company's stockholders increased the number of shares of common stock authorized for issuance as equity awards under the plan by 1,500,000 shares.

The 2011 Plan allows the granting of incentive stock options, non-statutory stock options, restricted stock awards and other stock-based awards. In April 2014, the Company's board of directors also adopted the 2014 Inducement Plan.

The Company's stock option grants have an exercise price equal to the closing price of the Company's common stock on the date of grant, generally have a 10-year contractual term and vest in increments (typically over four years from the date of grant, although the Company may occasionally grant options with different vesting terms, including grants made to its non-employee directors). The Company also grants RSUs to employees and non-employee directors generally vesting in increments over four years from the date of grant, except for such grants made to non-employee directors. The Company uses authorized but unissued shares of its common stock to satisfy its obligations under these plans.

2014 Employee Stock Purchase Plan

The Company's 2014 Employee Stock Purchase Plan, or ESPP, was adopted by its board of directors in April 2014 and approved by the Company's stockholders in June 2014. The purpose of the ESPP is to provide a vehicle for eligible employees to purchase shares of the Company's common stock at a discounted price and to help retain and motivate current employees as well as attract new talent. Under the ESPP, up to 500,000 shares of common stock may be sold. The plan expires in June 2024. The ESPP is intended to qualify as an "employee stock purchase plan" within the meaning of Section 423 of the Internal Revenue Code, or IRC. The maximum fair market value of stock which can be purchased by a participant in a calendar year is $25,000. Six-month offering periods begin on January 1 and July 1 of each year. During an offering period, eligible employees have the opportunity to elect to purchase shares of the Company's common stock on the purchase dates of June 30 and December 31 (or the last trading day of an offering period). The per share purchase price will be equal to the lesser of 85% of the fair market value of the Company's common stock on either the offering date or the purchase date. During the year ended December 31, 2021, 55,483 shares were purchased and issued through the ESPP.

The following tables contain information about the Company's stock incentive plans at December 31, 2021:

Stock Incentive Plan	Awards Reserved For Issuance	Awards Issued	Awards Available For Grant
2011 Plan	14,431,701	12,425,455	2,006,246
2014 Inducement Plan	175,000	36,076	138,924
Total	14,606,701	12,461,531	2,145,170

Employee Stock Purchase Plan	Shares Reserved For Purchase	Shares Purchased	Shares Available For Purchase
2014 ESPP	500,000	409,049	90,951

Stock-Based Compensation

Compensation expense for stock options and RSUs is based on the estimated grant date fair value of an award recognized over the requisite service period on a straight-line expense attribution method. Compensation expense for ESPP share options is based on the estimated grant date fair value of the ESPP shares and the grant date number of shares that can be purchased, which is recognized as expense over the length of an offering period.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The Company recognized stock-based compensation expense in its consolidated statements of operations for the years ended December 31, 2021, 2020 and 2019 as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Cost of goods sold	$ 5,891	$ 5,589	$ 4,665
Research and development	5,465	5,211	5,114
Selling, general and administrative	30,890	29,120	23,871
Total	$ 42,246	$ 39,920	$ 33,650
Stock-based compensation from:			
Stock options	$ 25,980	$ 26,749	$ 23,360
RSUs	15,335	12,266	9,511
ESPP	931	905	779
Total	$ 42,246	$ 39,920	$ 33,650
Related income tax benefit	$ 8,989	$ 8,578	$ —

The following table summarizes the Company's stock option activity and related information for the period from December 31, 2018 to December 31, 2021:

	Number of Options	Weighted Average Exercise Price (Per Share)	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in Thousands)
Outstanding at December 31, 2018	5,722,818	$ 41.69	7.07	$ 49,166
Granted	1,872,758	42.75		
Exercised	(425,495)	19.90		$ 9,441
Forfeited	(286,779)	39.22		
Expired	(176,924)	63.33		
Outstanding at December 31, 2019	6,706,378	42.80	7.05	$ 50,652
Granted	1,502,803	47.50		
Exercised	(1,428,111)	31.67		$ 34,227
Forfeited	(426,925)	42.08		
Expired	(119,027)	71.71		
Outstanding at December 31, 2020	6,235,118	45.98	6.97	$ 102,955
Granted	890,277	60.27		
Exercised	(732,117)	32.56		$ 23,967
Forfeited	(278,233)	46.46		
Expired	(64,505)	80.31		
Outstanding at December 31, 2021	6,050,540	$ 49.32	6.59	$ 81,407
Exercisable at December 31, 2021	3,826,646	$ 48.38	5.49	$ 59,972
Vested and expected to vest at December 31, 2021	6,050,540	$ 49.32	6.59	$ 81,407

As of December 31, 2021, $47.3 million of total unrecognized compensation cost related to unvested stock options is expected to be recognized over a weighted average period of 2.6 years. The Company's stock options have a maximum expiration date of ten years from the date of grant.

The weighted average fair value of stock options granted for the years ended December 31, 2021, 2020 and 2019 was $26.74, $22.40 and $20.92 per share, respectively. The fair values of stock options granted were estimated using the Black-Scholes model with the following weighted average assumptions:

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

	Year Ended December 31,		
Black-Scholes Weighted Average Assumption	**2021**	**2020**	**2019**
Expected dividend yield	None	None	None
Risk-free interest rate	0.43% - 1.21%	0.22% - 1.60%	1.33% - 2.54%
Expected volatility	49.1%	53.5%	53.9%
Expected term of options	5.36 years	5.36 years	5.22 years

The following table summarizes the Company's RSU activity and related information for the period from December 31, 2018 to December 31, 2021:

	Number of Units	Weighted Average Grant Date Fair Value (Per Share)	Aggregate Intrinsic Value (in Thousands)
Unvested at December 31, 2018	577,964	$ 42.14	$ 24,864
Granted	305,418	43.56	
Vested	(192,760)	45.55	
Forfeited	(59,481)	41.22	
Unvested at December 31, 2019	631,141	41.87	$ 28,591
Granted	665,476	48.70	
Vested	(239,085)	41.91	
Forfeited	(100,079)	44.43	
Unvested at December 31, 2020	957,453	46.34	$ 57,294
Granted	446,450	60.81	
Vested	(309,779)	45.16	
Forfeited	(138,847)	50.67	
Unvested and expected to vest at December 31, 2021	955,277	$ 52.85	$ 57,479

As of December 31, 2021, $41.0 million of total unrecognized compensation cost related to unvested RSUs is expected to be recognized over a weighted average period of 2.9 years. The Company's RSUs have a maximum vest date of four years from the date of grant. The fair values of RSUs awarded are equal to the closing price of the Company's common stock on the date of grant.

The fair values of the ESPP share options granted were estimated using the Black-Scholes model with the following weighted average assumptions:

	Year Ended December 31,		
Black-Scholes Weighted Average Assumption	**2021**	**2020**	**2019**
ESPP share option fair value	$15.16 - $15.23	$11.02 - $17.54	$11.13 - $11.36
Expected dividend yield	None	None	None
Risk-free interest rate	0.50% - 0.90%	0.14% - 1.57%	2.10% - 2.56%
Expected volatility	37.0%	44.9%	40.2%
Expected term of ESPP share options	6 months	6 months	6 months

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

NOTE 15—NET INCOME (LOSS) PER SHARE

Potential common shares are excluded from the diluted net income (loss) per share computation to the extent that they would be antidilutive. Because the Company reported a net loss for the year ended December 31, 2019, no potentially dilutive securities were included in the computation of diluted net loss per share for that period. As discussed in Note 11, *Debt*, the Company has the option to pay cash for the aggregate principal amount due upon the conversion of its 2022 Notes and 2025 Notes. Since it is the Company's intent to settle the principal amount of its 2022 Notes and 2025 Notes in cash, the potentially dilutive effect of such notes on net income (loss) per share is computed under the treasury stock method. As discussed in Note 3, *Recent Accounting Pronouncements*, ASU 2020-06 will require the Company to use the if-converted method upon adoption; this new accounting pronouncement was not adopted as of December 31, 2021.

The following table sets forth the computation of basic and diluted net income (loss) per common share for the years ended December 31, 2021, 2020 and 2019 (in thousands, except per share amounts):

	Year Ended December 31,		
	2021	2020	2019
Numerator:			
Net income (loss)	$ 41,980	$ 145,523	$ (11,016)
Denominator:			
Weighted average shares of common stock outstanding—basic	44,262	42,671	41,513
Computation of diluted securities:			
Dilutive effect of stock options	1,030	783	—
Dilutive effect of RSUs	298	227	—
Dilutive effect of conversion premium on the 2022 Notes	38	—	—
Dilutive effect of ESPP purchase options	2	1	—
Weighted average shares of common stock outstanding—diluted	45,630	43,682	41,513
Net income (loss) per share:			
Basic net income (loss) per common share	$ 0.95	$ 3.41	$ (0.27)
Diluted net income (loss) per common share	$ 0.92	$ 3.33	$ (0.27)

The following table summarizes the outstanding stock options, RSUs and ESPP purchase options that were excluded from the diluted net income (loss) per common share calculation because the effect of including these potential shares were antidilutive in the periods presented (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Weighted average number of stock options	2,141	4,237	6,404
Weighted average number of RSUs	116	99	606
Weighted average ESPP purchase options	13	16	34
Total	2,270	4,352	7,044

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

NOTE 16—INCOME TAXES

Income (loss) before income taxes and the related tax expense (benefit) is as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Income (loss) before income taxes:			
Domestic	$ 64,751	$ 17,000	$ (7,026)
Foreign	(8,348)	3,089	(3,722)
Total income (loss) before income taxes	$ 56,403	$ 20,089	$ (10,748)
Current taxes:			
Federal	$ —	$ (6)	$ —
State	3,533	1,185	2,096
Foreign	19	—	—
Total current taxes	$ 3,552	$ 1,179	$ 2,096
Deferred taxes:			
Federal	$ 12,554	$ (99,164)	$ (1,828)
State	(1,682)	(27,449)	—
Total deferred taxes	$ 10,872	$ (126,613)	$ (1,828)
Total income tax expense (benefit)	$ 14,424	$ (125,434)	$ 268

The income tax expense of $14.4 million for the year ended December 31, 2021 represents the effective tax rate applied to domestic operating results adjusted for certain discrete tax items including deductible stock-based compensation, non-deductible capital losses and tax credits. For the year ended December 31, 2020, the Company had an income tax benefit of $125.4 million primarily related to the release of a valuation allowance on its domestic net deferred assets. The income tax expense for the year ended December 31, 2019 consists primarily of state income taxes in jurisdictions where the availability of carryforward losses are either limited or fully utilized as well as state taxes on the one-time gain from the deemed sale of assets resulting from an IRC section 338(g) tax election made by the Company related to the MyoScience Acquisition. This was partially offset by a reduction in the Company's valuation allowance on its deferred tax assets due to the MyoScience Acquisition.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

A reconciliation of income taxes at the U.S. federal statutory rate to the provision for income taxes is as follows:

	Year Ended December 31,		
	2021	2020	2019
U.S. federal statutory rate	21.00 %	21.00 %	21.00 %
State taxes	3.82 %	3.15 %	(7.33)%
Foreign taxes	(1.15)%	3.18 %	(3.95)%
Change in valuation allowance	6.55 %	(647.87)%	19.76 %
Stock-based compensation	(3.80)%	(1.08)%	(10.53)%
Tax credits	(3.00)%	(7.92)%	19.93 %
Effect of rate changes	— %	— %	(0.42)%
Convertible senior notes refinancing	— %	(5.22)%	— %
Nondeductible expenses	5.13 %	4.55 %	(13.58)%
Reserves	(1.31)%	7.66 %	(15.41)%
338(g) tax election	— %	— %	(9.61)%
Other	(1.67)%	(1.84)%	(2.35)%
Effective tax rate	25.57 %	(624.39)%	(2.49)%

The Company's effective tax rates of 25.57%, (624.39)% and (2.49)% for the years ended December 31, 2021, 2020 and 2019, respectively, differed from the expected U.S. statutory tax rate of 21.0%. The difference in tax rates for the year ended December 31, 2021 was primarily driven by non-deductible expenses and valuation allowances recorded against capital loss carryforwards, partially offset by stock-based compensation deductions and tax credits. The difference in tax rates for the year ended December 31, 2020 was primarily due to the release of a domestic valuation allowance of $126.6 million as discussed below. The difference for the year ended December 31, 2019 was primarily driven by pretax losses for which the Company concluded that a majority of its tax benefits are not more-likely-than-not to be realized, resulting in the recording of a full valuation allowance.

Deferred taxes reflect the tax effects of the differences between the amounts recorded as assets and liabilities for financial reporting purposes and the comparable amounts recorded for income tax purposes. At each reporting date, the Company considers new evidence, both positive and negative, that could affect its view of the future realization of deferred tax assets. During the year ended December 31, 2020, the Company determined there was sufficient positive evidence to conclude that it was more-likely-than-not the domestic deferred taxes of $126.6 million were realizable and, therefore, the domestic valuation allowance was released. The Company maintains a full valuation allowance on its foreign net deferred tax balances as it is more-likely-than-not the tax benefits are not realizable.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Significant components of the Company's deferred tax assets and liabilities at December 31, 2021 and 2020 are as follows (in thousands):

	December 31,	
	2021	2020
Deferred tax assets:		
Net operating loss carryforwards	$ 174,203	$ 66,123
Federal and state credits	35,414	17,335
Accruals and reserves	80,237	7,254
Stock based compensation	24,545	21,862
Deferred revenue	2,430	—
Inventory	572	1,345
Other	2,441	2,138
Total deferred tax assets	319,842	116,057
Deferred tax liabilities:		
Depreciation and amortization	(131,964)	13,473
Discount on convertible senior notes	(15,521)	(20,851)
Total deferred tax liabilities	(147,485)	(7,378)
Deferred tax assets, net of deferred tax liabilities	172,357	108,679
Less: valuation allowance	(18,993)	(2,515)
Net deferred tax assets	$ 153,364	$ 106,164

As of December 31, 2021, the Company's federal net operating losses, or NOLs, and federal tax credit carryforwards totaled $662.6 million and $25.9 million, respectively. The Company also had state NOLs and state tax credit carryforwards of $171.6 million and $9.5 million, respectively, which are subject to change on an annual basis due to variations in the Company's annual state apportionment factors. The Company's federal and state NOLs carryforwards include $538.6 million and $28.6 million, respectively, attributed to the Flexion Acquisition. Additionally, the Company's federal and state tax credits include $11.0 million and $3.6 million, respectively, as a result of the Flexion Acquisition. The federal and state NOLs will begin to expire in 2032 and 2028, respectively. The Company had non-U.S. tax NOLs of $10.3 million at December 31, 2021. The non-U.S. NOLs do not expire.

Since the Company had cumulative changes in ownership of more than 50% within a three-year period, under IRC sections 382 and 383, the Company's ability to use certain net operating losses, tax attributes and credit carryforwards to offset taxable income or tax will be limited. Such ownership changes were triggered by the initial acquisition of the Company's stock in 2007 as well as cumulative ownership changes arising as a result of the completion of the Company's initial public offering and other financing transactions. Additionally, on November 19, 2021, the Company completed the Flexion Acquisition which also triggered an ownership change. As a result of these ownership changes, the Company estimates $531.7 million of federal net operating losses and $21.2 million of other tax attributes are subject to annual limitations. At December 31, 2021, all of these federal net operating losses and other tax attributes were available. The Company estimates that an additional $35.4 million will come available in each of 2022 to 2025, $30.8 million in 2026 and $6.9 million in 2027 and thereafter.

In accordance with ASC Topic 740, the Company establishes a valuation allowance for deferred tax assets that, in its judgment, are not more-likely-than-not realizable. These judgments are based on projections of future income, including tax-planning strategies, by individual tax jurisdictions. In each reporting period, the Company assesses the likelihood that its deferred tax assets will be realized and determines if adjustments to its valuation allowance are appropriate. The Company had a net increase in its valuation allowance of $16.5 million and a net reduction in its valuation allowance of $126.6 million for the years ended December 31, 2021 and December 31, 2020, respectively. The current year net increase in The Company's valuation allowance includes $12.5 million as a result of the Flexion Acquisition, $2.2 million against U.S. capital loss carryforwards and $1.8 million against foreign net deferred tax assets. The Company continues to maintain a full valuation allowance against foreign net deferred tax assets since it is more-likely-than-not the tax benefit related to the foreign losses are not realizable. During the year ended December 31, 2020, the Company determined that there was sufficient positive evidence to conclude that it is more likely than not that additional domestic deferred taxes of $126.6 million are realizable and, therefore, reduced the valuation allowance accordingly.

In 2021, the Company recorded a reserve of $2.9 million related to unrecognized tax benefits, or UTBs of which $4.3 million related to tax credit positions taken during the year, offset by a $1.4 million reduction for prior year tax credit positions. The Company's UTB liability at December 31, 2021 was $9.0 million. The change in the Company's UTBs for the year ended December 31, 2021 is summarized as follows (in thousands):

	Unrecognized Tax Benefit
Balance at December 31, 2020	$ 6,076
Additions for current year positions	4,300
Reduction for prior year positions	(1,355)
Balance at December 31, 2021	$ 9,021

The Company regularly assesses the likelihood of additional tax assessments by jurisdiction and, if necessary, adjusts its reserve for UTBs based on new information or developments. Due to the Company's tax credit carryforwards, the reserve was recorded as a reduction of the Company's deferred tax assets, and any potential deficiency would not result in a tax liability. Therefore, no interest or penalties were recognized in income tax expense for the years ended December 31, 2021, 2020 and 2019.

The Company is currently subject to audit by the U.S. Internal Revenue Service, or IRS, for the years 2018 through 2021, and state tax jurisdictions for the years 2017 through 2021. However, the IRS or states may still examine and adjust an NOL arising from a closed year to the extent it is utilized in a year that remains subject to audit. The Company's previously filed income tax returns are not presently under audit by the IRS or state tax authorities.

NOTE 17—EMPLOYEE BENEFIT PLANS

401(k) Plan

The Company's 401(k) plan is a deferred salary arrangement under section 401(k) of the IRC. Under the 401(k) plan, participating U.S. employees may defer a portion of their pre-tax earnings which are eligible for a discretionary percentage match as defined in the 401(k) plan and determined by the Company's board of directors (up to the maximum amount permitted by the IRC). The Company recognized $2.8 million, $2.9 million and $2.6 million of related compensation expense for its 401(k) discretionary match for the years ended December 31, 2021, 2020 and 2019, respectively.

Deferred Compensation Plan

In June 2020, the Company's board of directors adopted the Company's Deferred Compensation Plan, or DCP. The Company intends that the DCP constitute, and be construed and administered as, an unfunded plan of deferred compensation within the meaning of the Employee Retirement Income Security Act of 1974, as amended, and the IRC of 1986, as amended, under which eligible participants may elect to defer the receipt of current compensation. Eligible participants include select management and highly compensated employees of the Company, including the Company's named executive officers. Pursuant to the DCP, subject to any minimum and maximum deferral requirements that the administrator of the DCP may establish, participants may elect to defer their base salary and annual incentive awards. In addition to elective deferrals, the DCP permits the Company to make matching and certain other discretionary contributions to the participants. The Company recognized $0.2 million of related compensation expense for its DCP discretionary match for each of the years ended December 31, 2021 and 2020.

Cash Long-Term Incentive Plan

In December 2020, the Company's board of directors adopted a cash long-term incentive plan, or LTIP, commencing in 2021, focused on pre-determined, objective performance goals. The LTIP provides cash awards to participants based on the achievement of certain performance goals during each applicable performance period from January 1 through December 31 of each calendar year. Award amounts ranging from 0% to 225% of the target cash award are earned based on achievement of two equally weighted financial metrics: net revenue and adjusted earnings before interest, taxes, depreciation and amortization (EBITDA), with a relative total shareholder return modifier based on the Company's stock price performance relative to the companies comprising the S&P Pharmaceuticals Select Industry Index. The performance period for these metrics is one year, with an additional three years of time-vesting following the performance period. The first performance period began on January

1, 2021, and for the year ended December 31, 2021, the Company recognized $1.1 million of related compensation expense under the LTIP, which is payable to participants in January 2025 after the three-year vesting period concludes.

NOTE 18—ACQUISITION–RELATED CHARGES, PRODUCT DISCONTINUATION AND OTHER

Acquisition-related charges, product discontinuation and other for the years ended December 31, 2021, 2020 and 2019 are summarized below (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Severance-related expenses	$ 26,371	$ —	$ 494
Acquisition-related fees	10,963	—	4,211
Other acquisition expenses	3,566	150	194
Total acquisition-related charges	40,900	150	4,899
Flexion contingent consideration	1,174	—	—
MyoScience contingent consideration	(2,163)	5,204	16,672
Termination of Nuance agreement	3,000	—	—
Discontinuation of DepoCyt(e)	—	(188)	159
Department of Justice settlement	—	—	3,500
Total acquisition-related charges, product discontinuation and other	$ 42,911	$ 5,166	$ 25,230

Flexion Acquisition

The Company recognized acquisition-related costs of $40.2 million, primarily severance, legal fees, third-party services and other one-time charges during the year ended December 31, 2021 related to the Flexion Acquisition. See Note 5, *Acquisitions*, for more information.

On November 19, 2021, as part of the purchase price consideration related to the Flexion Acquisition, the Company recorded a contingent consideration of $45.2 million, which represents the Company's achievement of meeting regulatory and sales-based milestones. From the date of the acquisition through December 31, 2021, the Company recorded an additional $1.2 million charge due to an estimated $0.02 per CVR increase to the fair value of contingent consideration, which was included in acquisition-related charges in the consolidated statements of operations. See Note 12, *Financial Instruments*, for information regarding the method and key assumptions used in the fair value measurements of contingent consideration.

In conjunction with the Flexion Acquisition, the Company initiated a restructuring through a headcount reduction in the sales and administrative functions.

MyoScience Acquisition

The Company recognized acquisition-related and other charges of $0.7 million, $0.2 million and $4.9 million during the years ended December 31, 2021, 2020 and 2019, respectively, related to the MyoScience Acquisition. The 2021 charges relate to one-time termination benefits in the event of a facility closure. For more information see Note 21, *Commitments and Contingencies*. The 2020 charges relate to acquisition-related accounting services. The 2019 charges include $4.2 million for advisory costs, including legal, financial, accounting and tax services and $0.7 million for separation costs, asset write-downs and other restructuring charges. In addition, the Company recognized a contingent consideration credit of $2.2 million in 2021 and contingent consideration charges of $5.2 million and $16.7 million in 2020 and 2019, respectively. See Note 12, *Financial Instruments*, for information regarding the method and key assumptions used in the fair value measurements of contingent consideration.

In conjunction with the MyoScience Acquisition, the Company initiated a restructuring through a headcount reduction in the sales and administrative functions. In addition, the Company terminated a number of existing distributor agreements that were maintained by MyoScience.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Nuance Biotech Co. Ltd.

In June 2018, the Company entered an agreement with Nuance Biotech Co. Ltd., or Nuance, a China-based specialty pharmaceutical company, to advance the development and commercialization of EXPAREL in China. Under the terms of the agreement, the Company had granted Nuance the exclusive rights to develop and commercialize EXPAREL. In April 2021, the Company and Nuance agreed to a mutual termination of the agreement due to the lack of a viable regulatory pathway that adequately safeguards the Company's intellectual property against the risk of a generic product. Dissolution costs of $3.0 million were included in acquisition-related charges, product discontinuation and other in the consolidated statements of operations during the year ended December 31, 2021.

DepoCyt(e) Discontinuation

In April 2018, the Company received formal notice of the termination of a Supply Agreement and a Distribution Agreement (and all related agreements as subsequently amended) from Mundipharma International Corporation Limited and Mundipharma Medical Company, respectively (collectively, "Mundipharma"). In November 2019, the Company reached a settlement with Mundipharma and made a $5.3 million payment related to the DepoCyt(e) discontinuation which had previously been accrued.

The Company recorded a gain of $0.2 million during the year ended December 31, 2020, and a charge of $0.2 million in the year ended December 31, 2019, respectively, related to the discontinuation of its DepoCyt(e) manufacturing activities in June 2017 due to persistent technical issues specific to the DepoCyt(e) manufacturing process. No costs related to the Company's DepoCyt(e) discontinuation were recognized in the year ended December 31, 2021 as the lease of the idle DepoCyt(e) manufacturing facility expired in August 2020.

Department of Justice Inquiry Settlement

During the year ended December 31, 2019, the Company recorded a charge of $3.5 million for the settlement of a U.S. Department of Justice inquiry. Refer to Note 21, *Commitments and Contingencies*, for further information surrounding our legal proceedings.

NOTE 19—COMMERCIAL PARTNERS AND OTHER AGREEMENTS

Thermo Fisher Scientific Pharma Services

In April 2014, the Company and Thermo Fisher entered into a Strategic Co-Production Agreement, a Technical Transfer and Service Agreement (the "EXPAREL Technical Transfer and Service Agreement") and a Manufacturing and Supply Agreement to collaborate in the manufacture of EXPAREL. Under the terms of the EXPAREL Technical Transfer and Service Agreement, Thermo Fisher agreed to undertake certain technical transfer activities and construction services needed to prepare its Swindon, England facility for the manufacture of EXPAREL in two dedicated manufacturing suites. The Company contracted to purchase EXPAREL from Thermo Fisher, beginning with FDA approval of the first suite, which occurred in May 2018. Commercial production began in February 2019. Under these agreements, the Company makes monthly base fee payments to Thermo Fisher. Unless earlier terminated by giving notice of up to three years (other than termination by the Company in the event of a material breach by Thermo Fisher), this agreement will expire in May 2028.

Prior to the Flexion Acquisition, in July 2015, Flexion and Thermo Fisher entered into a Manufacturing and Supply Agreement (the "ZILRETTA Manufacturing and Supply Agreement") and a Technical Transfer and Service Agreement related to the manufacture of ZILRETTA at the same Thermo Fisher site in Swindon, England where the Company's EXPAREL suites are located. Thermo Fisher agreed to undertake certain transfer activities and construction services needed to prepare its facility for the commercial manufacture of ZILRETTA in dedicated manufacturing suites. Flexion provided Thermo Fisher with certain equipment and materials necessary to manufacture ZILRETTA. The Company makes monthly payments to Thermo Fisher for such activities and reimburses Thermo Fisher for certain material, equipment and miscellaneous expenses and additional services.

The initial term of the ZILRETTA Manufacturing and Supply Agreement that the Company assumed as part of the Flexion Acquisition expires in October 2027. The Company pays a monthly base fee to Thermo Fisher for the operation of the manufacturing suites and a per product fee for each vial of ZILRETTA based upon a forecast of commercial demand. The Company also reimburses Thermo Fisher for purchases of materials and equipment made on its behalf, certain nominal expenses and additional services. The ZILRETTA Manufacturing and Supply Agreement will remain in full effect unless and

until it expires or is terminated. Upon termination of the ZILRETTA Manufacturing and Supply Agreement (other than termination by the Company in the event that Thermo Fisher does not meet the construction and manufacturing milestones or for a breach by Thermo Fisher), the Company will be obligated to pay for the costs incurred by Thermo Fisher associated with the removal of its manufacturing equipment and for Thermo Fisher's termination costs up to a specified capped amount.

Eurofarma Laboratories S.A.

In June 2021, the Company entered into a distribution agreement with Eurofarma Laboratories S.A., or Eurofarma, for the development and commercialization of EXPAREL in Latin America. Under the terms of the agreement, Eurofarma obtained the exclusive right to market and distribute EXPAREL in 19 countries in Latin America, including Argentina, Brazil, Colombia and Mexico. In addition, Eurofarma is responsible for regulatory filings for EXPAREL in these countries. The Company received a $0.3 million upfront payment that is partially refundable upon certain circumstances and will receive royalties based on Eurofarma's future commercialization of the product and is also eligible to receive milestone payments that are triggered by the achievement of certain regulatory and commercial events. The Company recognized $0.1 million of collaborative licensing and milestone revenue in its consolidated statements of operations during the year ended December 31, 2021.

Verve Medical Products, Inc.

In July 2021, the Company entered into a licensing agreement with Verve Medical Products, Inc. for the distribution of iovera° in Canada. The Company began selling iovera° in Canada in the fourth quarter of 2021.

DePuy Synthes Sales, Inc.

In January 2017, the Company announced a Co-Promotion Agreement with DePuy Synthes Sales, Inc., or DePuy Synthes, part of the Johnson & Johnson family of companies, to market and promote the use of EXPAREL for orthopedic procedures in the U.S. DePuy Synthes field representatives, specializing in joint reconstruction, spine, sports medicine, trauma and cranio-maxillofacial (CMF) procedures, collaborated with and supplemented the Company's field teams by expanding the reach and frequency of EXPAREL education in the hospital surgical suite and ambulatory surgery center settings.

In July 2020, the Company notified DePuy Synthes that the Co-Promotion Agreement would terminate on January 2, 2021. The Company recorded termination-related costs of $8.8 million which were recorded in selling, general and administrative expense during the year ended December 31, 2020.

Aratana Therapeutics, Inc.

In December 2012, the Company entered into a worldwide license, development and commercialization agreement with Aratana Therapeutics, Inc., a wholly owned subsidiary of Elanco Animal Health, Inc., or Aratana. Under the agreement, the Company granted Aratana an exclusive royalty-bearing license, including the limited right to grant sublicenses, for the development and commercialization of the Company's bupivacaine liposome injectable suspension product for veterinary use. Under the agreement, Aratana developed and obtained FDA approval for the use of the product in veterinary surgery to manage postsurgical pain. The Company is eligible to receive from Aratana up to an aggregate of $40.0 million upon the achievement of commercial milestones. Aratana is required to pay the Company a tiered double-digit royalty on certain net sales made in the U.S. If the product is approved by foreign regulatory agencies for sale outside of the U.S., Aratana will be required to pay the Company a tiered double-digit royalty on such net sales. Royalty rates will be reduced by a certain percentage upon the entry of a generic competitor for animal health indications into certain jurisdictions or if Aratana must pay royalties to third parties under certain circumstances. Unless terminated earlier pursuant to its terms, the license agreement is effective until July 2033, after which Aratana has the option to extend the agreement for an additional five-year term, subject to certain requirements.

Aratana began purchasing bupivacaine liposome injectable suspension product in 2016, which they market under the trade name NOCITA® (a registered trademark of Aratana) for veterinary use.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Hong Kong Pharma Tainuo Ltd.

Prior to the Flexion Acquisition, in March 2020, Flexion entered into an exclusive license agreement with Hong Kong Tainuo Pharma Ltd., or HK Tainuo, and Jiangsu Tainuo Pharmaceutical Co. Ltd., or Jiangsu Tainuo, a subsidiary of China Shijiazhuang Pharmaceutical Co, Ltd., for the development and commercialization of ZILRETTA in Greater China (consisting of mainland China, Hong Kong, Macau and Taiwan). Under the terms of the agreement, HK Tainuo paid Flexion an upfront payment of $10.0 million during the year ended December 31, 2020 which was recorded as deferred revenue as of December 31, 2021. The Company is also eligible to receive up to $32.5 million in aggregate development, regulatory and commercial sales milestone payments. HK Tainuo is responsible for the clinical development, product registration and commercialization of ZILRETTA in Greater China. The Company is solely responsible for the manufacture and supply of ZILRETTA to HK Tainuo for all clinical and commercial activities. The terms related to product manufacturing and supply, including pricing and minimum purchase requirements agreed to in the license agreement, will be covered by a separate supply agreement, which has not yet been finalized. Unless terminated earlier in accordance with its terms, the license agreement continues in effect in perpetuity or as long as HK Tainuo or Jiangsu Tainuo continue to sell ZILRETTA in Greater China. The proceeds associated with the upfront payment have been recorded in long-term deferred revenue on the consolidated balance sheet, as there is uncertainty around the timing of when the revenue will be recognized.

NOTE 20—RELATED PARTY TRANSACTIONS

In April 2012, the Company entered into a consulting agreement with Dr. Gary Pace, a director of the Company. In connection with the consulting agreement, Dr. Pace received an option to purchase 20,000 shares of common stock at an exercise price of $11.02 per share and an option to purchase 70,000 shares of common stock at an exercise price of $16.67 per share, the latter of which were fully exercised in 2020. No services were provided under the consulting agreement in the years ended December 31, 2021, 2020, or 2019, and as of December 31, 2021 and 2020, there was nothing payable to Dr. Pace for consulting services.

NOTE 21—COMMITMENTS AND CONTINGENCIES

Legal Proceedings

From time to time, the Company has been and may again become involved in legal proceedings arising in the ordinary course of its business, including those related to patents, product liability and government investigations. Except as described below, the Company is not presently a party to any legal proceedings that it believes to be material, and is not aware of any pending or threatened litigation against the Company which it believes could have a material adverse effect on its business, operating results, financial condition or cash flows.

MyoScience Milestone Litigation

In August 2020, the Company and its subsidiary, Pacira CryoTech, Inc. (“Pacira CryoTech”), filed a lawsuit in the Court of Chancery of the State of Delaware against Fortis Advisors LLC (“Fortis”), solely in its capacity as representative for the former securityholders of MyoScience, and certain other defendants, seeking declaratory judgment with respect to certain terms of the merger agreement for the MyoScience Acquisition (the “Merger Agreement”), specifically related to the achievement of certain milestone payments under the Merger Agreement. In addition, the Company and Pacira CryoTech sought general, special and compensatory damages against the other defendants related to breach of fiduciary duties in connection with the purported achievement of milestone payments under the Merger Agreement, and breach of the Merger Agreement and certain other agreements with the defendants. In October 2020, Fortis filed an answer and counterclaim against the Company and Pacira CryoTech seeking to recover certain milestone payments under the Merger Agreement. The total remaining value of these milestones is $30.0 million, plus attorneys’ fees. The Company believes that the counterclaim from Fortis is without merit and intends to vigorously defend against all claims. The Company is unable to predict the outcome of this action at this time.

eVenus Pharmaceutical Laboratories Litigations

In October 2021, the Company received a Notice Letter advising that eVenus Pharmaceutical Laboratories, Inc., or eVenus, of Princeton, New Jersey, submitted to the FDA an Abbreviated New Drug Application (ANDA) with a Paragraph IV certification seeking authorization for the manufacturing and marketing of a generic version of EXPAREL (266 mg/20 mL) in the U.S. prior to the expiration of U.S. Patent No. 11,033,495 (the ’495 patent).

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

In November 2021, the Company filed a patent infringement suit against eVenus and its parent company in the U.S. District Court for the District of New Jersey (21-cv-19829) asserting infringement of the ’495 patent. This triggered an automatic 30-month stay of final approval of the eVenus ANDA. On January 6, 2022, eVenus filed an Answer with counterclaims to the Complaint, alleging the ’495 patent is invalid and/or not infringed through the manufacture, sale, or offer for sale of the product described in product described in eVenus’s ANDA submission.

In December 2021, the Company received a second Notice Letter advising that eVenus submitted to the FDA an amendment to its ANDA with a Paragraph IV Certification seeking authorization for the manufacturing and marketing of a generic version of EXPAREL (133 mg/10 mL) in the U.S. prior to the expiration of the ’495 patent. In the Notice Letter, eVenus also advised that it submitted a Paragraph IV Certification to the FDA seeking authorization for the manufacturing and marketing of a generic version of EXPAREL (266 mg/20 mL and 133 mg/10 mL) in the U.S. prior to the expiration of U.S. Patent No. 11,179,336 (the ’336 patent). eVenus further alleges in the Notice Letter that both the ’495 patent and the ’366 patent are invalid and/or not infringed.

In February 2022, the Company filed a second patent infringement suit against eVenus and its parent company in the U.S. District Court for the District of New Jersey (22-cv-00718) asserting that the 133 mg/10 mL ANDA product will infringe the ’495 and ’336 patents and that the 266 mg/20 mL ANDA product will infringe the ’336 patent. This filing triggered a second automatic 30-month stay of final approval for the 133 mg/10 mL ANDA product.

These litigations are in their infancy, and the Company is unable to predict the outcome of this action at this time.

Research Development Foundation

Pursuant to an agreement with the Research Development Foundation, or RDF, the Company was required to pay RDF a low single-digit royalty on the collection of revenues from certain products, for as long as certain patents assigned to the Company under the agreement remain valid. RDF has the right to terminate the agreement for an uncured material breach by the Company, in connection with its bankruptcy or insolvency or if it directly or indirectly opposes or disputes the validity of the assigned patent rights. The Company’s U.S. Patent No. 11,033,495 issued on June 15, 2021. Thereafter, RDF asserted that the issuance of that patent extends the Company’s royalty obligations under the agreement until 2041. The Company believes that the royalty period under the agreement was set to end on December 24, 2021 with the expiration of its U.S. Patent No. 9,585,838. Because of the disagreement over the interpretation of the agreement, in December 2021, the Company filed a declaratory judgment lawsuit in the U.S. District Court for the District of Nevada (21-cv-02241). The lawsuit seeks a declaration from the court that the Company owes no royalties to RDF with respect to its EXPAREL product after December 24, 2021. During the pendency of the lawsuit, the Company will continue to pay royalties to RDF under protest, however, the Company is unable to predict the outcome of this action at this time.

Department of Justice Inquiry Settlement

In April 2015, the Company received a subpoena from the U.S. Department of Justice, U.S. Attorney’s Office for the District of New Jersey pertaining to marketing and promotional practices related to EXPAREL. In July 2020, the Company formally entered into settlement agreements that resolved all outstanding investigations and claims by the United States Department of Justice, the United States Department of Health and Human Services, various States Attorneys’ General and a private plaintiff. This agreement concluded a five-year investigation related to the sale and marketing of EXPAREL. Under the various settlement agreements, the Company paid a global settlement of $3.5 million, which was recorded in acquisition-related charges, product discontinuation and other in the consolidated financial statements for the year ended December 31, 2019. The Company expressly denies all allegations and contentions and has admitted no wrongdoing in connection with the settlement agreements. The Company has been given assurances that this concluded the investigation that originated from the U.S. Department of Justice subpoena in April 2015.

Purchase Obligations

The Company has approximately $50.3 million of minimum, non-cancelable contractual commitments for contract manufacturing services and $9.2 million of minimum, non-cancelable contractual commitments for the purchase of certain raw materials as of December 31, 2021.

PACIRA BIOSCIENCES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Other Commitments and Contingencies

Pediatric Trial Commitments

The FDA, as a condition of EXPAREL approval, has required the Company to study EXPAREL in pediatric patients, as well as the administration of EXPAREL as a nerve block in the pediatric setting. The Company was granted a deferral for the required pediatric trials until after the indications were approved in adults. Similarly, in Europe, the Company agreed with the European Medicines Agency, or EMA, on a Pediatric Investigation Plan as a prerequisite for submitting a Marketing Authorization Application (MAA) in the E.U. Despite the U.K.'s withdrawal from the E.U., the agreed pediatric plan is applicable in the U.K.

In December 2019, the Company announced positive results for its extended pharmacokinetic and safety study ("PLAY") for local analgesia in children aged six to 17 undergoing cardiovascular or spine surgeries. Those positive results were the basis for the submission of a supplemental New Drug Application, or sNDA, in the U.S. and Type II variations in the E.U. and U.K. to expand the EXPAREL label to include use in patients six years of age and older for single-dose infiltration to produce postsurgical local analgesia. In March 2021, the Company announced that the FDA approved the submission of the sNDA in the U.S. The EMA and the Medicines and Healthcare Products Regulatory Agency, or MHRA, are still reviewing the Type II variations.

The Company is working with the FDA, MAA and MHRA to finalize the regulatory pathway for its remaining pediatric commitments.

Contingent Milestone Payments

Refer to Note 5, *Acquisitions*, for information on potential contingent milestone payments related to the MyoScience and Flexion acquisitions.

PCRX-201 and PCRX-301

PCRX-201 (formerly FX-201) and PCRX-301 (formerly FX-301) were added to the Company's portfolio as part of the Flexion Acquisition.

Prior to the Flexion Acquisition, in February 2017, Flexion entered into an agreement with GeneQuine to acquire the global rights to PCRX-201, a gene therapy product candidate. As part of the agreement, up to an aggregate of $56.0 million of payments could become due upon the achievement of certain development and regulatory milestones.

Prior to the Flexion Acquisition, in September 2019, Flexion entered into a definitive agreement with Xenon Pharmaceuticals, Inc. to acquire the global rights to PCRX-301, a locally administered $Na_V1.7$ inhibitor. As part of the agreement, up to an aggregate of $45.8 million of payments could become due upon the achievement of certain development and regulatory milestones and up to $75.0 million of payments could become due for sales-related milestones.

One-Time Termination Benefits

The Company has communicated to a select number of employees a commitment to provide one-time termination benefits in the event that a facility closure occurs. The Company is recognizing these expenses ratably over the remaining service period required. The Company currently estimates the total cost of these one-time benefits to be approximately $1.1 million. During the year ended December 31, 2021, the Company recognized $0.7 million in one-time termination charges, which are included in acquisition-related (gains) charges, product discontinuation and other in the consolidated statements of operations.

EXECUTION VERSION

FLEXION THERAPEUTICS, INC.

AND

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Trustee

INDENTURE

Dated as of May 2, 2017

3.375% Convertible Senior Notes due 2024

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ARTICLE 17
MISCELLANEOUS PROVISIONS

EXHIBITS

INDENTURE dated as of May 2, 2017 between Flexion Therapeutics, Inc., a Delaware corporation, as issuer (the "**Company**," as more fully set forth in Section 1.01) and Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States of America, as trustee (the "**Trustee**," as more fully set forth in Section 1.01).

W I T N E S S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 3.375% Convertible Senior Notes due 2024 (the "**Notes**"), initially in an aggregate principal amount not to exceed $201,250,000 and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the benefit of each other and for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein," "hereof," "hereunder" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 4.06(d), Section 4.06(e) and Section 6.03, as applicable.

"**Additional Shares**" shall have the meaning specified in Section 14.03(a).

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Notwithstanding anything to the contrary herein, the determination of whether one Person is an "Affiliate" of another Person for purposes of this Indenture shall be made based on the facts at the time such determination is made or required to be made, as the case may be, hereunder.

"**Agent**" means any Registrar, Paying Agent, Conversion Agent, or Custodian.

"**Applicable Procedures**" means, with respect to any matter at any time relating to a Global Note, the rules, policies and procedures of the Depositary applicable to such matter.

"**Bid Solicitation Agent**" means the Company or the Person appointed by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 14.01(b)(i). The Company shall initially act as the Bid Solicitation Agent.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

"**Board Resolution**" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" means, with respect to any Note, any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

"**Capital Stock**" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity, but shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition.

"**Cash Settlement**" shall have the meaning specified in Section 14.02(a).

"**Clause A Distribution**" shall have the meaning specified in Section 14.04(c).

"**Clause B Distribution**" shall have the meaning specified in Section 14.04(c).

"**Clause C Distribution**" shall have the meaning specified in Section 14.04(c).

"**close of business**" means 5:00 p.m. (New York City time).

"**Combination Settlement**" shall have the meaning specified in Section 14.02(a).

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

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the common stock of the Company, par value $0.001 per share, at the date of this Indenture, subject to Section 14.07.

"**Company**" shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

"**Company Order**" means a written order of the Company, signed by one of its Officers and delivered to the Trustee.

"**Conversion Agent**" shall have the meaning specified in Section 4.02.

"**Conversion Date**" shall have the meaning specified in Section 14.02(c).

"**Conversion Obligation**" shall have the meaning specified in Section 14.01(a).

"**Conversion Price**" means as of any time, $1,000, *divided by* the Conversion Rate as of such time.

"**Conversion Rate**" shall have the meaning specified in Section 14.01(a).

"**Corporate Trust Office**" means the office of the Trustee at which at any time its corporate trust business in respect of this Indenture shall be administered, which office is located at (i) subject to clauses (ii) and (iii), 333 S. Grand Avenue, 5th Floor, Suite 5A, MAC: E2064-05A, Los Angeles, CA 90071, Attention: Corporate, Municipal and Escrow Services, (ii) subject to clause (iii), with respect to Agent services, such office shall also mean the office or agency of the Trustee located on the date hereof at Corporate Trust Operations, MAC N9300-070, 600 South Fourth Street, Minneapolis, MN 55415, or (iii) such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

"**Custodian**" means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

"**Daily Conversion Value**" means, for each of the 40 consecutive Trading Days during the Observation Period, one-fortieth (1/40th) of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP for such Trading Day.

"**Daily Measurement Value**" means the Specified Dollar Amount (if any), *divided by* 40.

"**Daily Settlement Amount**," for each of the 40 consecutive Trading Days during the Observation Period, shall consist of:

(a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and

(b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, divided by (ii) the Daily VWAP for such Trading Day.

"**Daily VWAP**" means, for each of the 40 consecutive Trading Days during the relevant Observation Period, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "FLXN <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The "**Daily VWAP**" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**Default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Default Settlement Method**" means, initially, Physical Settlement. Other than during any period (i) after the date the Company issues a Notice of Redemption in accordance with Article 16 and prior to the related Redemption Date or (ii) on or after February 1, 2024, the Company may change the Default Settlement Method by delivering to the Trustee, the Conversion Agent (if other than the Trustee) and the Holders a written notice specifying a new Default Settlement Method selected by the Company. Such new Default Settlement Method shall apply to all conversions of Notes with respect to which the Default Settlement Method applies and the relevant Conversion Date occurs on or after the Scheduled Trading Day following the date on which such notice is delivered.

"**Defaulted Amounts**" means any amounts on any Note (including, without limitation, the Redemption Price, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

"**Depositary**" means, with respect to each Global Note, the Person specified in Section 2.05(c) as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Distributed Property**" shall have the meaning specified in Section 14.04(c).

"**Effective Date**" shall have the meaning specified in Section 14.03(c), except that, as used in Section 14.04 and Section 14.05, "**Effective Date**" means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

"**Event of Default**" shall have the meaning specified in Section 6.01.

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

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

"**Exchange Election**" shall have the meaning specified in Section 14.13.

"**Form of Assignment and Transfer**" means the "Form of Assignment and Transfer" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Form of Fundamental Change Repurchase Notice**" means the "Form of Fundamental Change Repurchase Notice" attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

"**Form of Note**" means the "Form of Note" attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Freely Tradable**" means that the Notes are eligible for sale and transfer without registration under the Securities Act pursuant to Rule 144 (without being subject to limitations on volume or manner of sale pursuant to Rule 144).

"**Fundamental Change**" shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, its direct or indirect Wholly Owned Subsidiaries and the employee benefit plans of the Company and its direct or indirect Wholly Owned Subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the voting power of the Company's Common Equity;

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock,

other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company's direct or indirect Wholly Owned Subsidiaries; *provided, however*, that a transaction described in clause (B) in which the holders of all classes of the Company's Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions (relative to each other) as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other common stock underlying the Notes) ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors);

provided, *however*, that a transaction or transactions described in clause (a) or clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the Common Stock, excluding cash payments for fractional shares and cash payments made in respect of dissenters' rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the Notes become convertible into such consideration, excluding cash payments for fractional shares and cash payments made in respect of dissenters' rights (subject to the provisions of Section 14.02(a)). For purposes of the definition of "Fundamental Change," any transaction that constitutes a Fundamental Change pursuant to both clause (a) and clause (b) of the definition thereof shall be deemed a Fundamental Change solely under clause (b) of the definition thereof. If any transaction occurs in which the Common Stock is converted into, or exchanged for, Reference Property consisting of common equity of another entity, following completion of any related Make-Whole Fundamental Change Period (or, in the case of a transaction that would have been a Fundamental Change or a Make-Whole Fundamental Change but for the proviso immediately following clause (d) of the definition thereof, following the effective date of such transaction), references to the Company in this definition shall instead be references to such other entity.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 15.02(c).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 15.02(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 15.02(b)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 15.02(a).

The term "**given**", "**mailed**", "**notify**" or "**sent**" with respect to any notice to be given to a Holder pursuant to this Indenture, shall mean notice (x) given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with accepted practices or procedures at the Depositary (in the case of a Global Note) or (y) mailed to such Holder by first class mail, postage prepaid, at its address as it appears on the Note Register (in the case of a Physical Note), in each case, in accordance with Section 17.03. Notice so "given" shall be deemed to include any notice to be "mailed" or "delivered," as applicable, under this Indenture.

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Holder**," as applied to any Note, or other similar terms (but excluding the term "beneficial holder"), means any Person in whose name at the time a particular Note is registered on the Note Register.

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Interest Payment Date**" means each May 1 and November 1 of each year, beginning on November 1, 2017.

"**Last Reported Sale Price**" of the Common Stock (or other security for which a closing sale price must be determined) on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or such other security) is traded. If the Common Stock (or such other security) is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the "**Last Reported Sale Price**" shall be the last quoted bid price for the Common Stock (or such other security) in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock (or such other security) is not so quoted, the "**Last Reported Sale Price**" shall be the average of the mid-point of the last bid and ask prices for the Common Stock (or such other security) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

"**Make-Whole Fundamental Change Period**" shall have the meaning specified in Section 14.03(a).

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

"**Maturity Date**" means May 1, 2024.

"**Measurement Period**" shall have the meaning specified in Section 14.01(b)(i).

"**Merger Event**" shall have the meaning specified in Section 14.07(a).

"**Note**" or "**Notes**" shall have the meaning specified in the first paragraph of the recitals of this Indenture.

"**Note Register**" shall have the meaning specified in Section 2.05(a).

"**Note Registrar**" shall have the meaning specified in Section 2.05(a).

"**Notice of Conversion**" shall have the meaning specified in Section 14.02(b).

"**Notice of Redemption**" shall have the meaning specified in Section 16.02(a).

"**Observation Period**" with respect to any Note surrendered for conversion means: (i) subject to clause (ii), if the relevant Conversion Date occurs prior to February 1, 2024, the 40 consecutive Trading Day period beginning on, and including, the third Trading Day immediately succeeding such Conversion Date; (ii) if the relevant Conversion Date occurs on or after the date of the Company's issuance of a Notice of Redemption with respect to the Notes pursuant to Article 16 and prior to the relevant Redemption Date, the 40 consecutive Trading Day period beginning on, and including, the 42nd Scheduled Trading Day immediately preceding such Redemption Date; and (iii) subject to clause (ii), if the relevant Conversion Date occurs on or after February 1, 2024, the 40 consecutive Trading Day period beginning on, and including, the 42nd Scheduled Trading Day immediately preceding the Maturity Date.

"**Offering Memorandum**" means the preliminary offering memorandum dated April 25, 2017, as supplemented by the related pricing term sheet dated April 26, 2017, relating to the offering and sale of the Notes.

"**Officer**" means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, the Treasurer, the Assistant Treasurer, the General Counsel, the Secretary, any Executive or Senior Vice President or any

Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President").

"**Officer's Certificate**," when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed by any Officer of the Company. Each such certificate shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section. The Officer giving an Officer's Certificate pursuant to Section 4.08 shall be the principal executive, financial or accounting officer of the Company.

"**open of business**" means 9:00 a.m. (New York City time).

"**Opinion of Counsel**" means, with respect to the Company, an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, that is delivered and acceptable to the Trustee, which opinion may contain customary exceptions and qualifications as to the matters set forth therein. Each such opinion shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section 17.05.

"**Optional Redemption**" shall have the meaning specified in Section 16.01.

"**outstanding**," when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;

(d) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08;

(e) Notes redeemed pursuant to Article 16; and

(f) Notes repurchased by the Company pursuant to the penultimate sentence of Section 2.10.

"**Paying Agent**" shall have the meaning specified in Section 4.02.

"**Person**" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"**Physical Notes**" means permanent certificated Notes in registered form issued in denominations of $1,000 principal amount and integral multiples thereof.

"**Physical Settlement**" shall have the meaning specified in Section 14.02(a).

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

"**Redemption Date**" shall have the meaning specified in Section 16.02(a).

"**Redemption Price**" means, for any Notes to be redeemed pursuant to Section 16.01, 100% of the principal amount of such Notes, *plus* accrued and unpaid interest, if any, to, but excluding, the Redemption Date (unless the Redemption Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case interest accrued to the Interest Payment Date will be paid to Holders of record of such Notes on such Regular Record Date, and the Redemption Price will be equal to 100% of the principal amount of such Notes).

"**Reference Property**" shall have the meaning specified in Section 14.07(a).

"**Regular Record Date**," with respect to any Interest Payment Date, means the April 15 or October 15 (whether or not such day is a Business Day) immediately preceding the applicable May 1 or November 1 Interest Payment Date, respectively.

"**Resale Restriction Termination Date**" shall have the meaning specified in Section 2.05(c).

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers that have direct responsibility for the administration of this Indenture,

respectively, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such person's knowledge of and familiarity with the particular subject.

"**Restricted Securities**" shall have the meaning specified in Section 2.05(c).

"**Rule 144**" means Rule 144 as promulgated under the Securities Act.

"**Rule 144A**" means Rule 144A as promulgated under the Securities Act.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, "**Scheduled Trading Day**" means a Business Day.

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

"**Settlement Amount**" has the meaning specified in Section 14.02(a)(iv).

"**Settlement Method**" means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

"**Settlement Notice**" has the meaning specified in Section 14.02(a)(iii).

"**Significant Subsidiary**" means a Subsidiary of the Company that meets the definition of "significant subsidiary" in Rule 1-02(w) of Regulation S-X under the Exchange Act; *provided* that, in the case of a Subsidiary of the Company that meets the criteria of clause (3) of the definition thereof but not clause (1) or clause (2) of the definition thereof, such Subsidiary shall not be deemed to be a Significant Subsidiary unless such Subsidiary's income (or loss) from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds $5,000,000.

"**Specified Dollar Amount**" means the maximum cash amount per $1,000 principal amount of Notes to be received upon conversion as specified in the Settlement Notice (or deemed specified as provided in Section 14.02(a)(iii)) related to any converted Notes.

"**Spin-Off**" shall have the meaning specified in Section 14.04(c).

"**Stock Price**" shall have the meaning specified in Section 14.03(c).

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or

trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"**Successor Company**" shall have the meaning specified in Section 11.01(a).

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

"**Trading Price**" of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for $2,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects for this purpose; *provided* that if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for $2,000,000 principal amount of Notes from a nationally recognized securities dealer on any determination date, then the Trading Price per $1,000 principal amount of Notes on such determination date shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate.

"**transfer**" shall have the meaning specified in Section 2.05(c).

"**Trigger Event**" shall have the meaning specified in Section 14.04(c).

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term "Trust Indenture Act" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Trustee**" shall mean or include each Person who is then a Trustee hereunder.

"**unit of Reference Property**" shall have the meaning specified in Section 14.07(a).

"**Valuation Period**" shall have the meaning specified in Section 14.04(c).

"**Wholly Owned Subsidiary**" means, with respect to any Person, any Subsidiary of such Person, except that, solely for purposes of this definition, the reference to "more than 50%" in the definition of "Subsidiary" shall be deemed replaced by a reference to "100%", the calculation of which shall exclude nominal amounts of the voting power of shares of Capital Stock or other interests in the relevant Subsidiary as may be required to satisfy local minority interest requirements outside of the United States.

Section 1.02. *References to Interest.* Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of Section 4.06(d), Section 4.06(e) and Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE 2
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Designation and Amount.* The Notes shall be designated as the "3.375% Convertible Senior Notes due 2024." The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to $201,250,000, subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02. *Form of Notes.* The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. In the case of any conflict between this Indenture and a Note, the provisions of this Indenture shall control and govern to the extent of such conflict.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or

designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers, exchanges or issuances of additional Notes (to the extent such issuances are fungible with the Notes represented by such Global Note for U.S. federal income tax and securities law purposes) permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03. *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the continental United States of America, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay, or cause the Paying Agent to pay, interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than $5,000,000, either by check mailed to each

Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States if such Holder has provided the Company, the Trustee, the Registrar or the Paying Agent with the requisite information necessary to make such wire transfer, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts, together with such interest thereon, shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment (unless the Trustee shall consent to an earlier date). The Company shall promptly notify the Trustee of such special record date, and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be delivered to each Holder not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03 (c). The Trustee shall have no responsibility whatsoever for the calculation of any Defaulted Amounts.

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment

pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04. *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder; provided that the Trustee shall be entitled to receive an Officer's Certificate and an Opinion of Counsel of the Company addressing such matters as the Trustee may reasonably request.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized officer of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05. *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations

and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15 or (iii) any Notes selected for redemption in accordance with Article 16, except the unredeemed portion of any Note being redeemed in part.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Depositary or the nominee of the Depositary. Each Global Note shall bear the legend required on a Global Note set forth in Exhibit A hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the Applicable Procedures.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in Section 2.05(d), collectively, the "**Restricted**

Securities") shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term "**transfer**" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the "**Resale Restriction Termination Date**") that is the later of (1) the date that is one year after the last date of original issuance of the Notes, or such shorter period of time as permitted by Rule 144 or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF FLEXION THERAPEUTICS, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

Any Note (or security issued in exchange or substitution therefor) (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in clause (i) through (iii) of the immediately preceding sentence have been satisfied, and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the restrictive legend specified in this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall promptly notify the Trustee upon the occurrence of the Resale Restriction Termination Date and promptly after a registration statement, if any, with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to each Global Note. Initially, each Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as custodian for Cede & Co. The Company has entered into a letter of representations with the Depositary in the form provided by the Depositary, and the Trustee and each Agent are hereby authorized to act in accordance with such letter and Applicable Procedures.

If (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee or any agent of the Company or the Trustee shall have any responsibility or liability for any act or omission of the Depositary, or for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records of the Depositary relating to such beneficial ownership interests.

(d) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of a Note shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF FLEXION THERAPEUTICS, INC. (THE "**COMPANY**") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE OF THE SERIES OF NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY'S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(d).

(e) Any Note or Common Stock issued upon the conversion or exchange of a Note that is purchased or owned by any Affiliate of the Company (or any Person who was an Affiliate of the Company at any time during the three months preceding) may not be resold by such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note or Common Stock, as the case may be, no longer being a "restricted security" (as defined under Rule 144). The Company shall cause any Note that is repurchased or owned by it or any of its Subsidiaries to be surrendered to the Trustee for cancellation in accordance with Section 2.08.

(f) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among depositary participants or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.06. *Mutilated, Destroyed, Lost or Stolen Notes*. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by each of them to save each of them harmless from any loss,

liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by each of them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, redemption, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, redemption, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07. *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global

Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08. *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase, redemption, registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company's agents, Subsidiaries or Affiliates), to be surrendered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it, and, except as expressly permitted by the provisions of this Indenture, no Notes shall be authenticated in exchange thereof. The Trustee shall dispose of canceled Notes in accordance with its customary procedures.

Section 2.09. *CUSIP Numbers.* The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.10. *Additional Notes; Repurchases.* The Company may, without the consent of, or notice to, the Holders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes hereunder with the same terms and with the same CUSIP number as the Notes initially issued hereunder (other than differences in the issue date, the issue price and interest accrued prior to the issue date of such additional Notes and, if applicable, restrictions on transfer in respect of such additional Notes) in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax purposes or securities law purposes, such additional Notes shall have one or more separate CUSIP numbers. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 17.05, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives, in each case, without prior notice to the Holders of the Notes. The Company shall cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation in accordance with Section 2.08, and such Notes shall no longer be considered outstanding under this Indenture upon their repurchase.

ARTICLE 3
SATISFACTION AND DISCHARGE

Section 3.01. *Satisfaction and Discharge.* (a) This Indenture and the Notes shall cease to be of further effect when (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06) have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after all of the Notes have become due and payable, whether on the Maturity Date, any Redemption Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or cash, shares of Common Stock or a combination thereof, as applicable, solely to satisfy the Company's Conversion Obligation, sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Trustee, upon request of the Company contained in an Officer's Certificate and at the expense of the Company, shall execute proper instruments acknowledging such satisfaction and discharge of this Indenture and the Notes, when the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture and the Notes have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01. *Payment of Principal and Interest.* The Company covenants and agrees that it will pay or cause to be paid the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 4.02. *Maintenance of Office or Agency.* The Company will maintain in the continental United States of America an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee in the continental United States of America.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the continental United States of America for such purposes. The Company will give

prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "**Paying Agent**" and "**Conversion Agent**" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as the office or agency in the continental United States of America where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase or for conversion. Notices and demands to or upon the Company in respect of the Notes and this Indenture may be served on the Company as provided in Section 17.03.

Section 4.03. *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04. *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable)

and accrued and unpaid interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Subject to any escheatment laws, any money and shares of Common Stock deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years (or as of any common law escheatment date) after such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable), interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money and shares of Common Stock, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 4.05. *Existence.* Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 4.06. *Rule 144A Information Requirement and Annual Reports.* (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and, upon written request, any Holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issuable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A.

(b) The Company shall file with the Trustee, within 15 days after the same are required to be filed with the Commission (giving effect to any grace period provided by Rule 12b-25 or any successor rule under the Exchange Act), copies of any annual or quarterly reports (on Form 10-K or 10-Q or any respective successor form) that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (excluding any information, documents or reports, or portions thereof, subject to confidential treatment and any

correspondence with the Commission). Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor thereto) shall be deemed to be filed with the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or any successor thereto), it being understood that the Trustee shall not be responsible for determining whether such filings have been made.

(c) Delivery of the reports, information and documents described in subsection (a) or subsection (b) above to the Trustee is for informational purposes only, and the information and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein, or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

(d) If, at any time during the six-month period beginning on, and including, the date that is six months after the last date of original issuance of the Notes, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than reports on Form 8-K), or the Notes are not otherwise Freely Tradable by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of 0.50% per annum of the principal amount of the Notes outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or the Notes are not otherwise Freely Tradable by Holders other than the Company's Affiliates (or Holders that have been the Company's Affiliates at any time during the three months preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes. As used in this Section 4.06(d), documents or reports that the Company is required to "file" with the Commission pursuant to Section 13 or 15(d) of the Exchange Act do not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act.

(e) If, and for so long as, the restrictive legend on the Notes specified in Section 2.05(c) has not been removed, the Notes are assigned a restricted CUSIP number or the Notes are not otherwise Freely Tradable by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 380th day after the last date of original issuance of the Notes, the Company shall pay Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of Notes outstanding until the restrictive legend on the Notes has been removed in accordance with Section 2.05(c), the Notes are assigned an unrestricted CUSIP number and the Notes are Freely Tradable by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the three months preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes.

(f) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(g) Subject to the immediately succeeding sentence, the Additional Interest that is payable in accordance with Section 4.06 (d) or Section 4.06 (e) shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to Section 6.03. However, in no event shall any Additional Interest that may accrue as a result of the Company's failure to comply with its obligations pursuant to Section 4.06(d) and Section 4.06(e), together with any Additional Interest payable at the Company's election pursuant to Section 6.03 as the remedy for an Event of Default relating to its failure to comply with its obligations as set forth in Section 4.06(b), accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

(h) If Additional Interest is payable by the Company pursuant to Section 4.06 (d) or Section 4.06 (e), the Company shall deliver to the Trustee an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment. Neither the Trustee nor the Paying Agent shall have any responsibility for the determination, verification or calculation of any Additional Interest.

Section 4.07. *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08. *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2017) an Officer's Certificate that need not comply with Section 17.05 stating whether the signer thereof has knowledge of any Event of Default or Default that occurred during the previous fiscal year.

In addition, the Company shall deliver to the Trustee, within 30 days after the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof.

Section 4.09. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01. *Lists of Holders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 days after each April 15 and October 15 in each year beginning with October 15, 2017, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02. *Preservation and Disclosure of Lists.* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01. *Events of Default.* Each of the following events shall be an "**Event of Default**" with respect to the Notes:

(a) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 days;

(b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon Optional Redemption, upon any required repurchase, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder's conversion right, and such failure continues for a period of five Business Days;

(d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(c), notice of the Effective Date of a Make-Whole Fundamental Change in accordance with Section 14.03(b) or notice of a specified corporate event in accordance with Section 14.01(b)(ii) or Section 14.01(b)(iii), in each case, when due;

(e) failure by the Company to comply with its obligations under Article 11;

(f) failure by the Company for 60 days after written notice has been received by the Company from the Trustee or by the Company and the Trustee from the Holders of at least 25%

in principal amount of the Notes then outstanding to comply with any of its other agreements contained in the Notes or this Indenture;

(g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of $15,000,000 (or its foreign currency equivalent) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, if such default is not cured or waived, or such acceleration is not rescinded, within 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of the Notes then outstanding;

(h) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due;

(i) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 consecutive days; or

(j) a final judgment or judgments for the payment of $15,000,000 (or its foreign currency equivalent) or more (excluding any amounts covered by insurance) in the aggregate rendered against the Company or any Significant Subsidiary, which judgment is not discharged, bonded, paid, waived or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished.

Section 6.02. *Acceleration; Rescission and Annulment*. If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders

of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal of, and accrued and unpaid interest on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything contained in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate borne by the Notes at such time) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09 and all amounts owing to the Trustee have been paid, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03. *Additional Interest*. Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall (i) for the first 180 days after the occurrence of such an Event of Default (which, for the avoidance of doubt, shall not commence until the 60-day period described in Section 6.01(f) has passed), consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to 0.25% per annum of the principal amount of the Notes outstanding for each day during such 180-day period on which such Event of Default is continuing and (ii) for the period from, and including, the 181st day after the occurrence of such an Event of Default to, and including, the

360th day after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of the Notes outstanding for each day during such additional 180-day period on which such an Event of Default is continuing. Subject to the last paragraph of this Section 6.03, Additional Interest payable pursuant to this Section 6.03 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to Section 4.06(d) or Section 4.06(e). If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 361st day after such Event of Default (if the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) is not cured or waived prior to such 361st day), the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders of Notes in the event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in Section 4.06(b). In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elects to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 360 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify all Holders of the Notes, the Trustee and the Paying Agent of such election prior to the beginning of such 360-day period (which, for the avoidance of doubt, shall not commence until the 60-day period described in Section 6.01(f) has passed). Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In no event shall Additional Interest payable at the Company's election as the remedy for an Event of Default relating to its failure to comply with its obligations under Section 4.06(b) as set forth in this Section 6.03, together with any interest that may accrue as a result of the Company's failure to comply with its obligations as described in Section 4.06(d) and Section 4.06(e), accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

Section 6.04. *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05. *Application of Monies Collected by Trustee.* Any money or property collected by the Trustee pursuant to this Article 6, and after an Event of Default any money or other property distributable in respect of the Company's obligations under this Indenture, shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee under this Indenture;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Redemption Price, the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Redemption Price, the Fundamental Change Repurchase Price and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Redemption Price, the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06. *Proceedings by Holders.* Except to enforce the right to receive payment of principal (including, if applicable, the Redemption Price and the Fundamental Change Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such security or indemnity reasonably satisfactory to it against any loss, cost, liability or expense to be incurred therein or thereby;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no written direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07. *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08. *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09. *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes; *provided*, *however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not any such directions are unduly prejudicial to such Holders) or that would involve the Trustee in personal liability. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Redemption Price and any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Section 10.02 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and

to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10. *Notice of Defaults.* The Trustee shall deliver to all Holders notice of all Defaults actually known to a Responsible Officer that have occurred and are continuing within 90 days after a Responsible Officer receives written notice thereof; *provided* that, except in the case of a Default in the payment of the principal of (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Redemption Price and the Fundamental Change Repurchase Price, if applicable) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of Article 14.

ARTICLE 7
CONCERNING THE TRUSTEE

Section 7.01. *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In the event an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security reasonably satisfactory to it against any loss, cost, liability or expense that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event;

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02. *Reliance on Documents, Opinions, Etc*. Except as otherwise provided in Section 7.01:

(a) before the Trustee acts or refrains from acting, it may require an Officer's Certificate, an Opinion of Counsel or both, and the Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion;

(b) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(c) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(d) the Trustee may consult with counsel of its election and require an Opinion of Counsel, and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or

attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder;

(g) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

(h) under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Notes;

(i) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be compensated, reimbursed and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(j) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder; and

(k) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

In no event shall the Trustee be liable for any consequential, punitive, indirect or special loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or by any Holder of the Notes at the Corporate Trust Office and such notice references the Notes and this Indenture. The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts.

Section 7.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to and shall not be responsible for the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture or any money paid to the Company or upon the Company's direction under any provision of this Indenture. The Trustee shall not be bound to ascertain or inquire as to the performance, observance, or breach of any covenants,

conditions, representations, warranties or agreements on the part of the Company, but the Trustee may require full information and advice as to the performance of the aforementioned covenants. The Trustee makes no representation as to and shall not be responsible for any statement or recital herein or any statement in the Offering Memorandum or any other document in connection with the sale of the Notes. The Trustee shall have no obligation to independently determine or verify if any Fundamental Change, Make Whole Fundamental Change, Merger Event, or any other event has occurred or notify the Holders of any such event.

Section 7.04. *Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent, Bid Solicitation Agent (if other than the Company) or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent and may become a creditor of, or otherwise deal with, the Company or any of its Affiliates with the same rights it would have if it were not Trustee, Bid Solicitation Agent or Note Registrar.

Section 7.05. *Monies and Shares of Common Stock to Be Held in Trust.* All monies and shares of Common Stock received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money and shares of Common Stock held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money or shares of Common Stock received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 7.06. *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall receive, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as finally adjudicated by a court of competent jurisdiction. The Company also covenants to indemnify the Trustee in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim (whether asserted by the Company, a Holder or any other Person), damage, liability, cost or expense incurred without gross negligence or willful misconduct as finally adjudicated by a court of competent jurisdiction on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected

by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes, and for the avoidance of doubt, such lien shall not be extended in a manner that would conflict with the Company's obligations to its other creditors. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The obligations of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(h) or Section 6.01(i) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws. "Trustee" for the purposes of this Section 7.06 shall include any predecessor Trustee and the Trustee in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder; provided, however, that the gross negligence or willful misconduct of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

Section 7.07. *Officer's Certificate and Opinion of Counsel as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence and willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate and Opinion of Counsel delivered to the Trustee, and such Officer's Certificate and Opinion of Counsel, in the absence of gross negligence and willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act (as if the Trust Indenture Act were applicable hereto) to act as such and has a combined capital and surplus of at least $50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving 30 days' advance written notice of such resignation to the Company and by delivering notice thereof to the Holders. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and

one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation to the Holders, the resigning Trustee may, upon ten Business Days' advance written notice to the Company and the Holders, petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction at the expense of the Company for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time on 30 days' advance written notice remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless, within ten days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10. *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor

trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders. If the Company fails to deliver such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11. *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12. *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 8
CONCERNING THE HOLDERS

Section 8.01. *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02. *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03. *Who Are Deemed Absolute Owners*. The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and

notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal (including any Redemption Price and any Fundamental Change Repurchase Price) of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. The sole registered holder of a Global Note shall be the Depositary or its nominee. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04. *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary thereof or by any Affiliate of the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action, only Notes that a Responsible Officer knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or an Affiliate of the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05. *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether

any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9
HOLDERS' MEETINGS

Section 9.01. *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes. Such notice shall also be delivered to the Company. Such notices shall be delivered not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03. *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by delivering notice thereof as provided in Section 9.02.

Section 9.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05. *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the outstanding Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him or her; *provided*, *however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06. *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was delivered as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman

and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07. *No Delay of Rights by Meeting.* Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10
SUPPLEMENTAL INDENTURES

Section 10.01. *Supplemental Indentures Without Consent of Holders.* The Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency, as set forth in an Officer's Certificate;

(b) to provide for the assumption by a Successor Company of the obligations of the Company under the Notes and this Indenture pursuant to Article 11;

(c) to add guarantees with respect to the Notes;

(d) to secure the Notes;

(e) to add to the covenants or Events of Default of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company under this Indenture;

(f) to make any change that does not adversely affect the rights of any Holder;

(g) to increase the Conversion Rate as provided in Article 14;

(h) to provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under this Indenture by more than one trustee;

(i) to provide that the Notes are convertible into Reference Property in connection with any Merger Event, subject to the provisions of Section 14.02, and make such related changes to the terms of the Notes in accordance with Section 14.07;

(j) to conform the provisions of this Indenture or the Notes to the "Description of Notes" section of the Offering Memorandum, as set forth in an Officer's Certificate; or

(k) to irrevocably elect a Settlement Method (including a Default Settlement Method).

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02. *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner, waiving or eliminating any of the provisions of this Indenture or the Notes or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided*, *however*, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

(a) reduce the amount of Notes whose Holders must consent to an amendment;

(b) reduce the rate of or extend the stated time for payment of interest on any Note;

(c) reduce the principal of or extend the Maturity Date of any Note;

(d) except as required by this Indenture, make any change that adversely affects the conversion rights of any Notes;

(e) reduce the Redemption Price or Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(f) make any Note payable in a currency, or at a place of payment, other than that stated in the Note;

(g) change the ranking of the Notes;

(h) impair the right of any Holder to receive payment of principal and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes; or

(i) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee of evidence satisfactory to it of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall send to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05. *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee.* In addition to the documents required by Section 17.05, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10, is permitted or authorized by this Indenture and is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with such supplemental indenture's terms.

ARTICLE 11
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01. *Company May Consolidate, Etc. on Certain Terms.* Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated properties and assets of the Company and its Subsidiaries, taken as a whole, to, another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture; and

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture.

Section 11.02. *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the consolidated properties and assets of the Company and its Subsidiaries, taken as a whole, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03. *Opinion of Counsel to Be Given to Trustee.* If the Successor Company is not the Company, no such consolidation, merger, sale, conveyance, transfer or lease shall be effective unless the Trustee shall have received an Officer's Certificate and an Opinion of Counsel certifying that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with this Indenture.

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01. *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or accrued and unpaid interest on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
[INTENTIONALLY OMITTED]

ARTICLE 14
CONVERSION OF NOTES

Section 14.01. *Conversion Privilege.* (a) Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 14.01(b), at any time prior to the close of business on the Business Day immediately preceding February 1, 2024 under the circumstances and during the periods set forth in Section 14.01(b), and (ii) regardless of the conditions described in Section 14.01(b), on or after February 1, 2024 and prior to the close of business on the Business Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 37.3413 shares of Common Stock (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per $1,000

principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**").

(b) (i) Prior to the close of business on the Business Day immediately preceding February 1, 2024, a Holder may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any ten consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per $1,000 principal amount of Notes, as determined following a request by a Holder of Notes in accordance with this subsection (b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each such Trading Day. The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (b)(i) and the definition of Trading Price set forth in this Indenture. The Company shall provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price per $1,000 principal amount of Notes pursuant to this subsection (b)(i) and the definition of Trading Price set forth in this Indenture unless the Company has requested such determination in writing, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price) or to determine the Trading Price per $1,000 principal amount of Notes unless a Holder of at least $2,000,000 aggregate principal amount of Notes provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Notes would be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate, at which time the Company shall instruct the Bid Solicitation Agent (if other than the Company) to determine, or if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price per $1,000 principal amount of Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate. If (x) the Company is not acting as Bid Solicitation Agent, and the Company does not instruct the Bid Solicitation Agent, in writing, to obtain bids when obligated as provided in the immediately preceding sentence, or if the Company instructs the Bid Solicitation Agent, in writing, to obtain bids and the Bid Solicitation Agent fails to make such determination or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such determination when obligated as provided in the immediately preceding sentence, then, in each case, the Trading Price per $1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each Trading Day of such failure. If the Trading Price condition set forth above has been met and the Notes are convertible pursuant to this Section 14.01(b)(i), the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per $1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for such date, the Company shall so notify the Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing.

(ii) If, prior to the close of business on the Business Day immediately preceding February 1, 2024, the Company elects to:

(A) issue to all or substantially all holders of the Common Stock any rights, options or warrants (other than in connection with a stockholder rights plan prior to separation of the relevant rights) entitling them, for a period of not more than 60 calendar days after the declaration date for such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such issuance; or

(B) distribute to all or substantially all holders of the Common Stock the Company's assets, securities or rights to purchase securities of the Company, which distribution has a per share value, as reasonably determined by the Board of Directors, exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day preceding the declaration date for such distribution,

then, in either case, the Company shall notify all Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) at least 50 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution. Once the Company has given such notice, a Holder may surrender all or any portion of its Notes for conversion at any time until the earlier of (1) the close of business on the Business Day immediately preceding the Ex-Dividend Date for such issuance or distribution and (2) the Company's announcement that such issuance or distribution will not take place, in each case, even if the Notes are not otherwise convertible at such time.

(iii) If (A) a transaction or event that constitutes a Fundamental Change or a Make-Whole Fundamental Change occurs prior to the close of business on the Business Day immediately preceding February 1, 2024, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 15.02, or (B) the Company is a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, prior to the close of business on the Business Day immediately preceding February 1, 2024, in each case, pursuant to which the Common Stock would be converted into cash, securities or other assets, then, in the case of either (A) or (B), all or any portion of a Holder's Notes may be surrendered for conversion at any time from or after the effective date of such transaction or event until 35 Trading Days after the effective date of such transaction or event (or, if the Company gives notice after the effective date of such transaction or event pursuant to the succeeding sentence, until the 35th Trading Day after the Company gives such notice) or, if such transaction or event also constitutes a Fundamental Change, until the related Fundamental Change Repurchase Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) within three Business Days of the effective date of such transaction or event.

(iv) Prior to the close of business on the Business Day immediately preceding February 1, 2024, a Holder may surrender all or any portion of its Notes for conversion at any time during any calendar quarter commencing after the calendar quarter ending on June 30, 2017 (and only during such calendar quarter), if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 130% of the Conversion Price on each applicable Trading Day. Neither the Trustee nor any Agent shall have any obligation to make any calculation or to determine whether the Notes may be surrendered for conversion, or to notify the Company, the Depositary or any of the Holders of the Notes if the Notes have become convertible.

(v) If the Company delivers a Notice of Redemption in respect of any or all of the Notes pursuant to Article 16, then a Holder may surrender all or any portion of its Notes for conversion at any time prior to the close of business on the Business Day immediately preceding the relevant Redemption Date, even if the Notes are not otherwise convertible at such time. After that time, the right to convert on account of the Company's delivery of the Notice of Redemption shall expire, unless the Company defaults in the payment of the Redemption Price, in which case a Holder of Notes may convert its Notes until the Business Day immediately preceding the date on which the Redemption Price has been paid or duly provided for.

Section 14.02. *Conversion Procedure; Settlement Upon Conversion.*

(a) Subject to this Section 14.02, Section 14.03(b) and Section 14.07(a), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder, in respect of each $1,000 principal amount of Notes being converted, cash ("**Cash Settlement**"), shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 ("**Physical Settlement**") or a combination of cash and shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 ("**Combination Settlement**"), at its election, as set forth in this Section 14.02.

(i) All conversions for which the relevant Conversion Date occurs on or after February 1, 2024, and all conversions for which the relevant Conversion Date occurs on or after the Company's issuance of a Notice of Redemption with respect to the Notes and prior to the related Redemption Date, shall be settled using the same Settlement Method.

(ii) Except for any conversions for which the relevant Conversion Date occurs on or after February 1, 2024, and any conversions for which the relevant Conversion Date occurs on or after the Company's issuance of a Notice of Redemption with respect to the Notes but prior to the related Redemption Date, the Company shall use the same Settlement Method for all conversions with the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions with different Conversion Dates.

(iii) If, in respect of any Conversion Date (or one of the periods described in the third immediately succeeding set of parentheses, as the case may be), the Company elects to deliver a notice (the "**Settlement Notice**") of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company, through the Trustee, shall deliver such Settlement Notice to converting Holders no later than the close of business on the Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions for which the relevant Conversion Date occurs (x) after the date of issuance of a Notice of Redemption with respect to the Notes and prior to the related Redemption Date, in such Notice of Redemption, or (y) on or after February 1, 2024, no later than February 1, 2024). If the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall settle such conversions using the Default Settlement Method. Such Settlement Notice shall specify the relevant Settlement Method and, in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount per $1,000 principal amount of Notes. If the Company delivers a Settlement Notice electing Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount per $1,000 principal amount of Notes in such Settlement Notice, or if Combination Settlement otherwise applies but the Company does not timely notify holders of the Specified Dollar Amount per $1,000 principal amount of Notes, the Specified Dollar Amount per $1,000 principal amount of Notes shall be deemed to be $1,000. At any time prior to February 1, 2024, the Company may irrevocably elect to settle all conversions occurring on or after the date the Company gives notice thereof to Holders, the Trustee and the Conversion Agent (if other than the Trustee) through Combination Settlement with a Specified Dollar Amount the Company elects.

(iv) The cash, shares of Common Stock or combination of cash and shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver to the converting Holder in respect of each $1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date;

(B) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each $1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 40 consecutive Trading Days during the related Observation Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall pay or deliver, as the case may be, in respect of each $1,000 principal amount of Notes being converted, a Settlement Amount equal to the

sum of the Daily Settlement Amounts for each of the 40 consecutive Trading Days during the related Observation Period.

(v) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional shares of Common Stock. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the Applicable Procedures of the Depositary in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile, PDF or other electronic transmission thereof) (a "**Notice of Conversion**") at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents, (4) if required, pay all transfer and similar taxes as set forth in Section 14.02(d) and Section 14.02(e) and (5) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered. Any exercise by a Holder of its conversion rights in respect of a Note shall be irrevocable.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the "**Conversion Date**") that the Holder has complied with the requirements set forth in subsection (b) above. Except as set forth in Section 14.03(b) and Section 14.07(a), the Company shall pay or deliver, as the case may be, the consideration

due in respect of the Conversion Obligation on the third Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the third Business Day immediately following the last Trading Day of the Observation Period, in the case of any other Settlement Method. If any shares of Common Stock are due to converting Holders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Holder, or such Holder's nominee or nominees, certificates or a book-entry transfer through the Depositary for the full number of shares of Common Stock to which such Holder shall be entitled in satisfaction of the Company's Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute, and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian (if other than the Trustee) at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date, Holders of such Notes as of the close of business on such Regular

Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted; *provided* that no such payment shall be required (1) for conversions following the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (3) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note. Therefore, for the avoidance of doubt, all Holders of record on the Regular Record Date immediately preceding the Maturity Date, any Redemption Date described in clause (2) of the immediately preceding sentence and any Fundamental Change Repurchase Date described in clause (3) of the immediately preceding sentence shall receive the full interest payment due on the Maturity Date or other applicable Interest Payment Date regardless of whether their Notes have been converted following such Regular Record Date.

(i) The Person in whose name the shares of Common Stock shall be issuable upon conversion shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation by Physical Settlement) or the last Trading Day of the relevant Observation Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon conversion based on the Daily VWAP for the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP for the last Trading Day of the relevant Observation Period (in the case of Combination Settlement). For each Note surrendered for conversion, if the Company has elected Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Observation Period, and any fractional shares remaining after such computation shall be paid in cash.

Section 14.03. *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes or Notice of Redemption.* (a) If (x) the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date or (y) the Company gives a Notice of Redemption with respect to any or all of the Notes in accordance with Article 16 and, in each case, a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change or Notice of Redemption, as applicable, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**"), as described below. A conversion of Notes shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the relevant Notice of

Conversion is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change) (such period, the "**Make-Whole Fundamental Change Period**"). A conversion of Notes shall be deemed for these purposes to be "in connection with" a Notice of Redemption if the relevant Notice of Conversion is received by the Conversion Agent from, and including, the date of the Notice of Redemption until the close of business on the Business Day immediately preceding the corresponding Redemption Date.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change or Notice of Redemption, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 14.02; *provided*, *however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per $1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be paid to Holders in cash on the third Business Day following the Conversion Date. The Company shall notify the Holders of Notes of the Effective Date of any Make-Whole Fundamental Change no later than five Business Days after such Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective or the date of the relevant Notice of Redemption (in each case, the "**Effective Date**") and the price paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change or with respect to the Notice of Redemption, as the case may be (the "**Stock Price**"). If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change or the date of the Notice of Redemption, as the case may be. The Board of Directors shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date (as such term is used in Section 14.04) or expiration date of the event occurs during such five consecutive Trading Day period. In the event that a conversion in connection with a Notice of Redemption would also be deemed to be in connection with a Make-Whole Fundamental Change, a Holder of the Notes to be converted shall be entitled solely to a single increase to the

Conversion Rate with respect to the first to occur of the applicable date of the Notice of Redemption or the Effective Date of the applicable Make-Whole Fundamental Change.

(d) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(e) The following table sets forth the number of Additional Shares of Common Stock by which the Conversion Rate shall be increased per $1,000 principal amount of Notes pursuant to this Section 14.03 for each Stock Price and Effective Date set forth below:

	Stock Price										
Effective Date	**$20.60**	**$23.00**	**$26.78**	**$30.00**	**$34.81**	**$40.00**	**$50.00**	**$60.00**	**$70.00**	**$80.00**	**$100.00**
May 2, 2017	11.2023	9.2965	7.1669	5.8903	4.5412	3.5443	2.3392	1.6148	1.1307	0.7825	0.3094
May 1, 2018	11.2023	9.0265	6.8577	5.5787	4.2514	3.2905	2.1580	1.4942	1.0577	0.7469	0.3094
May 1, 2019	11.2023	8.7465	6.5127	5.2227	3.9138	2.9920	1.9406	1.3452	0.9621	0.6926	0.3094
May 1, 2020	11.2023	8.4426	6.1072	4.7943	3.5027	2.6270	1.6742	1.1595	0.8373	0.6140	0.3094
May 1, 2021	11.2023	8.0726	5.5870	4.2403	2.9747	2.1643	1.3422	0.9277	0.6769	0.5054	0.2788
May 1, 2022	11.2023	7.5896	4.8704	3.4807	2.2700	1.5685	0.9378	0.6507	0.4824	0.3674	0.2142
May 1, 2023	11.2023	6.8796	3.7293	2.3067	1.2735	0.8028	0.4712	0.3378	0.2576	0.2005	0.1222
May 1, 2024	11.2023	6.1370	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date is between two Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is greater than $100.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $20.60 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per $1,000 principal amount of Notes exceed 48.5436 shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

(f) Nothing in this Section 14.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.04 in respect of a Make-Whole Fundamental Change.

Section 14.04. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

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

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;
CR_1	=	the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date; and
OS_1	=	the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants entitling them, for a period of not more than 60 calendar days after the

declaration date for such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;
CR_1	=	the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;
X	=	the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
Y	=	the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for the issuance of such rights, options or warrants.

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued or if no such rights, options or warrants are exercised prior to their expiration, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 14.04(b) and for the purpose of Section 14.01(b)(ii)(A), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the declaration date for such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount

payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants (other than in connection with a stockholder rights plan prior to separation of the relevant rights) to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 14.04(a) or Section 14.04(b), (ii) dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 14.04(d) shall apply, (iii) distributions of Reference Property in exchange for, or upon conversion of, Common Stock in a Merger Event, (iv) except as otherwise provided in Section 14.11, rights issued pursuant to a stockholder rights plan adopted by the Company and (v) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the "Distributed Property"), then the Conversion Rate shall be increased based on the following formula:

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

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
CR_1	=	the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
SP_0	=	the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
FMV	=	the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this Section 14.04(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made or, in the case of a distribution of rights, options or warrants, such rights, options or warrants are not exercised prior to their expiration, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of

shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution. If the Board of Directors determines the "FMV" (as defined above) of any distribution for purposes of this Section 14.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

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

where,

CR_0	=	the Conversion Rate in effect immediately prior to the end of the Valuation Period;
CR_1	=	the Conversion Rate in effect immediately after the end of the Valuation Period;
FMV_0	=	the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "Valuation Period"); and
MP_0	=	the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the Valuation Period, references in the portion of this Section 14.04(c) related to Spin-Offs with respect to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and the Conversion Date in determining the Conversion Rate, and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the Valuation Period, the reference to "10" in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date for such Spin-Off and such Trading Day in determining the Conversion Rate as of such Trading Day. In addition, if

the Ex-Dividend Date for such Spin-Off is after the 10th Trading Day immediately preceding, and including, the end of any Observation Period in respect of a conversion of Notes, references in the preceding paragraph to 10 Trading Days will be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for the Spin-Off to, and including, the last Trading Day of such Observation Period.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 14.04(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the "**Clause B Distribution**"),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date" within the meaning of Section 14.04(a) or "outstanding immediately prior to the open of business on such Ex-Dividend Date" within the meaning of Section 14.04(b).

(d) If any cash dividend or distribution is made to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

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

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;
CR_1	=	the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;
SP_0	=	the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and
C	=	the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if

such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

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

where,

CR_0	=	the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
CR_1	=	the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
AC	=	the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
OS_1	=	the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
SP_1	=	the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next

succeeding the expiration date of any tender or exchange offer, references to “10” or “10th” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between the expiration date of such tender or exchange offer and such Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references in this Section 14.04(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the date that such tender or exchange offer expires and such Trading Day in determining the Conversion Rate as of such Trading Day. In addition, if the Trading Day next succeeding the date such tender or exchange offer expires is after the 10th Trading Day immediately preceding, and including, the end of any Observation Period in respect of a conversion of Notes, references in the preceding paragraph to 10 Trading Days shall be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the date such tender or exchange offer expires to, and including, the last Trading Day of such Observation Period. If the Company is obligated to purchase shares of the Common Stock pursuant to any such tender or exchange offer described in this Section 14.04(e) but is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the applicable Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

(f) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 14.02(i) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.04, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules and/or listing standards of any exchange on which any of the Company’s securities are then listed and The NASDAQ Global Market, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company’s best interest. In addition, to the extent permitted by applicable law and subject to the applicable rules and/or listing standards of any exchange on which any of the Company’s securities are then listed and The NASDAQ

Global Market, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall deliver to the Holder of each Note a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(i) Notwithstanding anything to the contrary in this Article 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

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

(iv) upon the repurchase of any shares of the Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described in Section 14.04(e);

(v) solely for a change in the par value of the Common Stock; or

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

(j) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. The Company shall not adjust the Conversion Rate pursuant to clause (a), (b), (c), (d) or (e) of this Section 14.04 unless the adjustment would result in a change of at least 1% in the then-effective Conversion Rate. However, the Company shall carry forward any adjustment to the Conversion Rate that is less than 1% of the then-effective Conversion Rate and take that adjustment into account in any subsequent adjustment. Notwithstanding the foregoing, all such carried-forward adjustments shall be made (i) in connection with any subsequent adjustment to the Conversion Rate of at least 1%, (ii) on the Conversion Date for any Notes (in the case of Physical Settlement), (iii) on each Trading Day of any Observation Period (in the case of Cash Settlement or Combination Settlement) and (iv) on the Effective Date of any Make-Whole Fundamental Change, in each case, unless the adjustment has already been made.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 14.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 14.05. *Adjustments of Prices*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including an Observation Period and the period for determining the Stock Price for purposes of a Make-Whole Fundamental Change or Optional Redemption), the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated.

Section 14.06. *Shares to Be Fully Paid.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming delivery of the maximum number of Additional Shares pursuant to Section 14.03 and that at the time of computation of such number of shares, all such Notes would be converted by a single Holder and that Physical Settlement were applicable).

Section 14.07. *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.*

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination),

(ii) any consolidation, merger, combination or similar transaction involving the Company,

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**"), then, at and after the effective time of such Merger Event, the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Merger Event and, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(i) providing for such change in the right to convert each $1,000 principal amount of Notes; *provided*, *however*, that at and after the effective time of the Merger Event (A) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 14.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Merger Event and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property.

If the Merger Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be (x) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (y) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders of the Common Stock receive only cash in such Merger Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Merger Event (A) the consideration due upon conversion of each $1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 14.03), *multiplied by* the price paid per share of Common Stock in such Merger Event and (B) the Company shall satisfy the Conversion Obligation by paying cash to converting Holders on the third Business Day immediately following the relevant Conversion Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

If the Reference Property in respect of any such Merger Event includes shares of common equity, such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Article 14. If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (other than cash and/or cash equivalents) of a Person other than the Company or the successor or purchasing corporation, as the case may be, then, if such Person is an Affiliate of the Company or an Affiliate of the successor or purchasing corporation, such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Company shall reasonably consider necessary or appropriate.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 14.07, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Merger Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in Section 14.01 and Section 14.02, prior to the effective date of such Merger Event.

(d) The above provisions of this Section shall similarly apply to successive Merger Events.

Section 14.08. *Certain Covenants*. (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 14.09. *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 14.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 14.01(b) with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 14.01(b).

Section 14.10. *Notice to Holders Prior to Certain Actions*. In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;

(b) Merger Event; or

(c) voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be delivered to each Holder, as promptly as possible but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the

holders of Common Stock of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Merger Event, dissolution, liquidation or winding-up.

Section 14.11. *Stockholder Rights Plans.* If the Company has a stockholder rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12. *[Intentionally Omitted]*

Section 14.13. *Exchange in Lieu of Conversion.* Notwithstanding anything herein to the contrary, when a Holder surrenders Notes for conversion, the Company may, at its election (an "**Exchange Election**"), direct the Conversion Agent to surrender, on or prior to the second Trading Day following the Conversion Date, such Notes to one or more financial institutions designated by the Company for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the designated financial institution(s) must agree to timely pay and/or deliver, in exchange for such Notes, the cash, shares of Common Stock or combination thereof due upon conversion, all as provided in this Article 14. If the Company makes an Exchange Election, by the close of business on the second Trading Day following the relevant Conversion Date, (i) the Company shall notify the Holder surrendering Notes for conversion that the Company has made the Exchange Election and shall notify the designated financial institution(s) of the Settlement Method the Company has elected with respect to such conversion and the relevant deadline for payment and/or delivery of the cash, shares of Common Stock or combination thereof due upon conversion, and (ii) such designated financial institution(s) shall notify the Conversion Agent whether it will pay and/or deliver the consideration due upon conversion upon exchange.

If the designated financial institution(s) accepts any such Notes, it (or they) shall pay and/or deliver the cash, shares of Common Stock or combination thereof due upon conversion to the Conversion Agent and the Conversion Agent shall pay and/or deliver such cash, shares of Common Stock or combination thereof to the relevant Holder. Any Notes exchanged by the designated financial institution(s) shall remain outstanding, subject to the Applicable Procedures. If the designated financial institution(s) agrees to accept any Notes for exchange but does not timely pay and/or deliver the cash, shares of Common Stock or combination thereof due upon

conversion, or if such designated financial institution(s) does not accept the Notes for exchange, the Company shall pay and/or deliver the cash, shares of Common Stock or combination thereof due upon conversion to the converting Holder at the time and in the manner provided in this Article 14 as if the Company had not made an Exchange Election.

The Company's designation of a financial institution(s) to which Notes may be submitted for exchange does not require the financial institution(s) to accept any Notes. The Company may, but is not obligated to, pay any consideration to, or otherwise enter into any agreement with, any designated financial institution(s) for or with respect to such designation.

ARTICLE 15
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01. *[Intentionally Omitted]*.

Section 15.02. *Repurchase at Option of Holders Upon a Fundamental Change.* (a) If a Fundamental Change occurs at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof that is equal to $1,000 or an integral multiple of $1,000, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 15.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Applicable Procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office of the Paying Agent, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the Applicable Procedures, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

(i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

(ii) the portion of the principal amount of Notes to be repurchased, which must be $1,000 or an integral multiple thereof; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, *however*, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with the Applicable Procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 15.03.

The Paying Agent (if other than the Company) shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes and the Trustee, the Conversion Agent (if other than the Trustee) and the Paying Agent (in the case of a Paying Agent other than the Trustee) a written notice (the "**Fundamental Change Company Notice**") of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the Applicable Procedures. Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

(vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;

(vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;

(viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the Applicable Procedures shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 15.03. *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Paying Agent in accordance with this Section 15.03 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,

(ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of $1,000 or an integral multiple of $1,000;

provided, *however*, that if the Notes are Global Notes, the notice must comply with Applicable Procedures.

Section 15.04. *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided*, *however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price and, if applicable, accrued and unpaid interest).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unrepurchased portion of the Note surrendered.

Section 15.05. *Covenant to Comply with Applicable Laws Upon Repurchase of Notes.* In connection with any repurchase offer upon a Fundamental Change pursuant to this Article 15, the Company will, if required:

(a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable;

(b) file a Schedule TO or any other required schedule under the Exchange Act; and

(c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15.

ARTICLE 16
OPTIONAL REDEMPTION

Section 16.01. *Optional Redemption*. No sinking fund is provided for the Notes. The Notes shall not be redeemable by the Company prior to May 6, 2020. On or after May 6, 2020, the Company may redeem (an "**Optional Redemption**"), for cash, all or any portion of the Notes, at the Redemption Price, if the Last Reported Sale Price of the Common Stock has been at least 130% of the Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive), including the Trading Day immediately preceding the date on which the Company provides the Notice of Redemption in accordance with Section 16.02, during any 30 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date on which the Company provides the Notice of Redemption in accordance with Section 16.02.

Section 16.02. *Notice of Optional Redemption; Selection of Notes*. (a) In case the Company exercises its Optional Redemption right to redeem all or, as the case may be, any part of the Notes pursuant to Section 16.01, it shall fix a date for redemption (each, a "**Redemption Date**") and it shall deliver or cause to be delivered a notice of such Optional Redemption (a "**Notice of Redemption**") not less than 50 nor more than 60 Scheduled Trading Days prior to the Redemption Date to the Trustee, the Paying Agent (if other than the Trustee) and each Holder of Notes. The Redemption Date must be a Business Day. The Company shall not specify a Redemption Date that falls on or after the 42nd Scheduled Trading Day immediately preceding the Maturity Date.

(b) Each Notice of Redemption shall identify the provision of this Indenture permitting redemption and shall specify:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date unless the Company defaults in the payment of the Redemption Price;

(iv) the place or places where such Notes are to be surrendered for payment of the Redemption Price;

(v) that Holders may surrender their Notes for conversion at any time prior to the close of business on the Business Day immediately preceding the Redemption Date (unless the Company fails to pay the Redemption Price, in which case a Holder may convert such Notes until the Business Day immediately preceding the date on which the Redemption Price has been paid or duly provided for);

(vi) the procedures a converting Holder must follow to convert its Notes and the Settlement Method and Specified Cash Amount, if applicable;

(vii) the Conversion Rate and, if applicable, the number of Additional Shares added to the Conversion Rate in accordance with Section 14.03;

(viii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes and that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number listed in such notice or printed on the Notes; and

(ix) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed and on and after the Redemption Date, and that upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

A Notice of Redemption shall be irrevocable. At the Company's prior written request, the Trustee shall give the Notice of Redemption in the Company's name and at its expense; provided, however, that the Company shall have delivered to the Trustee not later than the close of business the Business Day prior to the date the Notice of Redemption is to be sent (unless a shorter period shall be satisfactory to the Trustee), an Officer's Certificate and a Company Order requesting that the Trustee give such Notice of Redemption together with the Notice of Redemption to be given setting forth the information to be stated therein as provided in the preceding paragraph. The Notice of Redemption, if given in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Notice of Redemption or any defect in the Notice of Redemption to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the Optional Redemption of any other Note.

(c) If fewer than all of the outstanding Notes are to be redeemed, (i) if the Notes to be redeemed are Physical Notes, the Trustee shall select the Notes or portions thereof to be redeemed (in principal amounts of $1,000 or integral multiples of $1,000 in excess thereof) by a method the Trustee considers to be fair, and (ii) if the Notes to be redeemed are Global Notes, the Notes to be redeemed will be selected in accordance with the Applicable Procedures. If any Note selected for partial redemption is submitted for conversion in part after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption.

Section 16.03. *Payment of Notes Called for Redemption*. (a) If any Notice of Redemption has been given in respect of the Notes in accordance with Section 16.02, the Notes shall become due and payable on the Redemption Date at the place or places stated in the Notice of Redemption and at the applicable Redemption Price. On presentation and surrender of the

Notes at the place or places stated in the Notice of Redemption, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price.

(b) Prior to 11:00 a.m., New York City time, on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company or a Subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 7.05 an amount of cash (in immediately available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

Section 16.04. *Restrictions on Redemption*. The Company may not redeem any Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Notes).

ARTICLE 17
MISCELLANEOUS PROVISIONS

Section 17.01. *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03. *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by overnight courier or by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Flexion Therapeutics, Inc., 10 Mall Road, Suite 301, Burlington, MA 01803, Attention: General Counsel. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office or sent electronically in PDF format.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications. The Trustee shall have the right, but shall not be required, to rely upon and comply with instructions and directions sent by e-mail, facsimile

and other similar unsecured electronic methods by persons believed by the Trustee to be authorized to give instructions and directions on behalf of the Company or any Person. The Trustee shall have no duty or obligation to verify or confirm that the Person who sent such instructions or directions is, in fact, a Person authorized to give instructions or directions on behalf of the Company; and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Company as a result of such reliance upon or compliance with such instructions or directions. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the Applicable Procedures and shall be sufficiently given to it if so delivered within the time prescribed. Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any Notice of Redemption or Fundamental Change Company Notice) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with Applicable Procedures.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered, as the case may be, in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 17.04. *Governing Law; Jurisdiction.* THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF).

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally

and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05. *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee*. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such action is permitted by the terms of this Indenture; provided that no Opinion of Counsel shall be required to be delivered in connection with (x) the original issuance of Notes on the date hereof under this Indenture or (y) an Optional Redemption pursuant to Article 16.

Each Officer's Certificate and Opinion of Counsel provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officer's Certificates provided for in Section 4.08) shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and all conditions precedent have been complied with.

Section 17.06. *Legal Holidays*. In any case where any Interest Payment Date, any Redemption Date, any Fundamental Change Repurchase Date or the Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 17.07. *No Security Interest Created*. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.08. *Benefits of Indenture*. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.09. *Table of Contents, Headings, Etc*. The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.10. *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 15.04 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 17.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall deliver notice of such appointment to all Holders.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 17.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 17.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

_____,
as Authenticating Agent, certifies that this is one of the Notes described in the within-named Indenture.

By: _____
Authorized Signatory

Section 17.11. *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 17.12. *Severability.* In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.13. *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.14. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or other unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15. *Calculations*. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Trading Price of the Notes, determinations of whether the Notes are convertible and determinations of the Last Reported Sale Prices of the Common Stock, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, accrued interest payable on the Notes and the Conversion Rate of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's

calculations to any Holder of Notes upon the written request of that Holder at the sole cost and expense of the Company. The Trustee (including in its capacities as Note Registrar, Paying Agent and Conversion Agent, as the case may be) shall have no responsibility to determine the sale price of the Notes, Trading Price of the Notes, any Settlement Amount, any adjustment or increase to the Conversion Rate or any circumstance under which any adjustment to the Conversion Rate is required, whether any Fundamental Change has occurred, or whether the Notes are convertible pursuant to Article 14.

Section 17.16. *USA PATRIOT Act.* The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

FLEXION THERAPEUTICS, INC.

By: /s/ Michael D. Clayman, M.D.

Name: Michael D. Clayman, M.D.

Title: Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: /s/ Maddy Hughes

Name: Maddy Hughes

Title: Vice President

EXHIBIT A

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF FLEXION THERAPEUTICS, INC. (THE "COMPANY") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

FLEXION THERAPEUTICS, INC.

3.375% Convertible Senior Note due 2024

No. [ ] [Initially][1] $[ ]

CUSIP No. [ ]

Flexion Therapeutics, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (the "**Company**," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.][2] [ ][3], or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto][4] [of $[ ]][5], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed $201,250,000 in aggregate at any time, in accordance with the rules and procedures of the Depositary, on May 1, 2024, and interest thereon as set forth below.

This Note shall bear interest at the rate of 3.375% per year from May 2, 2017, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until May 1, 2024. Interest is payable semi-annually in arrears on each May 1 and November 1, commencing on November 1, 2017, to Holders of record at the close of business on the preceding April 15 and October 15 (whether or not such day is a Business Day), respectively. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month. Additional Interest will be payable as set forth in Section 4.06(d), Section 4.06(e) and Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of such Section 4.06(d), Section 4.06(e) or Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company in accordance with Section 2.03(c) of the Indenture.

The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are

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1 Include if a global note.

2 Include if a global note.

3 Include if a physical note.

4 Include if a global note.

5 Include if a physical note.

Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent, Note Registrar, Custodian and Conversion Agent in respect of the Notes and its agency in the continental United States of America as a place where Notes may be presented for payment or for registration of transfer and exchange.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

FLEXION THERAPEUTICS, INC.

By: _____

Name:

Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WELLS FARGO BANK, NATIONAL ASSOCIATION as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

By: _____

Authorized Signatory

[FORM OF REVERSE OF NOTE]

FLEXION THERAPEUTICS, INC.
3.375% Convertible Senior Note due 2024

This Note is one of a duly authorized issue of Notes of the Company, designated as its 3.375% Convertible Senior Notes due 2024 (the "**Notes**"), limited to the aggregate principal amount of $201,250,000 all issued or to be issued under and pursuant to an Indenture dated as of May 2, 2017 (the "**Indenture**"), between the Company and Wells Fargo Bank, National Association (the "**Trustee**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date (if applicable), the Redemption Price on any Redemption Date (if applicable) and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee, in certain circumstances without the consent of the Holders of the Notes, and in certain other circumstances with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money and/or shares of Common Stock, as the case may be, herein prescribed.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes are not subject to redemption prior to May 6, 2020. The Notes shall be redeemable at the Company's option on or after May 6, 2020 in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is $1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

The Company shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to: Flexion Therapeutics, Inc., 10 Mall Road, Suite 301, Burlington, MA 01803, Attention: General Counsel.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

SCHEDULE A[6]

SCHEDULE OF EXCHANGES OF NOTES

FLEXION THERAPEUTICS, INC.
3.375% Convertible Senior Notes due 2024

The initial principal amount of this Global Note is DOLLARS ($[ ]). The following increases or decreases in this Global Note have been made:

Date of exchange	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

6 Include if a global note.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

FLEXION THERAPEUTICS, INC.
3.375% Convertible Senior Notes due 2024

To: Wells Fargo Corporate Trust-DAPS Reorg

600 Fourth Street South, 7th Floor

MAC N9300-070

Minneapolis, MN 55415

Phone: 1-800-344-5128

Fax: 1-866-969-1290

Email: dapsreorg@wellsfargo.com

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____ _____

_____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all): $,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer Identification Number

ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

FLEXION THERAPEUTICS, INC.
3.375% Convertible Senior Notes due 2024

To: Wells Fargo Corporate Trust-DAPS Reorg

600 Fourth Street South, 7th Floor

MAC N9300-070

Minneapolis, MN 55415

Phone: 1-800-344-5128

Fax: 1-866-969-1290

Email: dapsreorg@wellsfargo.com

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Flexion Therapeutics, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

_____
Signature(s)

_____
Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all): $,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ATTACHMENT 3

[FORM OF ASSIGNMENT AND TRANSFER]

FLEXION THERAPEUTICS, INC.
3.375% Convertible Senior Notes due 2024

For value received hereby sell(s), assign(s) and transfer(s) unto (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

☐ To Flexion Therapeutics, Inc. or a subsidiary thereof; or

☐ Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

Dated: _____

_____

_____

Signature(s)

_____

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Exhibit 4.5

FLEXION THERAPEUTICS, INC.
AND
WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee
FIRST SUPPLEMENTAL INDENTURE
Dated as of November 19, 2021
3.375% Convertible Senior Notes due 2024

FIRST SUPPLEMENTAL INDENTURE, dated as of November 19, 2021 (this "**Supplemental Indenture**"), between Flexion Therapeutics, Inc., a Delaware corporation (the "**Company**"), as issuer, and Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States of America, as trustee (the "**Trustee**"), to the Indenture, dated as of May 2, 2017 (as supplemented or otherwise modified prior to the date hereof, the "**Indenture**"), between the Company and the Trustee.

WHEREAS, the Company has heretofore executed and delivered the Indenture, pursuant to which the Company issued its 3.375% Convertible Senior Notes due 2024 (the "**Notes**") in the original aggregate principal amount of $201,250,000;

WHEREAS, the Company has entered into an Agreement and Plan of Merger, dated as of October 11, 2021 (as amended, supplemented, restated, or otherwise modified, the "**Merger Agreement**"), by and among the Company; Pacira BioSciences, Inc., a Delaware corporation (the "**Parent**"); and Oyster Acquisition Company Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("**Merger Sub**");

WHEREAS, pursuant to the terms of the Merger Agreement, Merger Sub will merge with and into the Company (the "**Merger**") on the date hereof, with the Company as the surviving entity in the Merger, becoming a wholly owned subsidiary of Parent as of the date hereof;

WHEREAS, the Merger constitutes a Merger Event under the Indenture;

WHEREAS, Section 14.07(a) of the Indenture provides that prior to or at the effective time of any Merger Event, the Company shall execute with the Trustee a supplemental indenture permitted under Section 10.01(i) of the Indenture providing for the right to convert each $1,000 principal amount of Notes into the kind and amount of shares of stock, other securities, or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**") upon such Merger Event;

WHEREAS, in connection with the Merger, each outstanding share of Common Stock prior to the effective time (other than certain shares of Common Stock as set forth in the Merger Agreement) shall be converted into the right to receive: (a) an amount in cash equal to $8.50 per share, in cash, net of applicable withholding taxes and without interest, plus (b) one non-transferable contingent value right per share (a "**CVR**"), which will represent the right to receive one or more contingent payments up to $8.00 per share in the aggregate, in cash, if the specified milestones are achieved on or prior to December 31, 2030, pursuant to the terms of the Contingent Value Right Agreement, dated as of November 19, 2021 (the "**CVR Agreement**"), by and between Parent and American Stock Transfer & Trust Company, LLC, as rights agent, in accordance with the terms of the Merger Agreement;

WHEREAS, Section 10.01 of the Indenture provides that the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental thereto without the consent of any Holder to, among other things, (i) provide that the Notes are convertible into Reference Property in connection with any Merger Event, subject to the provisions of Section 14.02 of the Indenture, and make such related changes to the terms of the Notes in accordance with Section 14.07 of the Indenture; or (ii) make any change that does not adversely affect the rights of any Holder;

WHEREAS, in connection with the execution and delivery of this Supplemental Indenture, the Trustee has received an Officer's Certificate and an Opinion of Counsel as contemplated by Sections 10.05 and 17.05 of the Indenture; and

WHEREAS, the Company has requested that the Trustee execute and deliver this Supplemental Indenture and has satisfied all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms.

WITNESSETH:

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company covenants and agrees with the Trustee as follows for the equal and ratable benefit of the Holders:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions in the Supplemental Indenture*. Unless otherwise specified herein or the context otherwise requires:

(a) a term defined in the Indenture has the same meaning when used in this Supplemental Indenture unless the definition of such term is amended or supplemented pursuant to this Supplemental Indenture;

(b) the terms defined in this Supplemental Indenture include the plural as well as the singular; and

(c) unless otherwise stated, a reference to a Section or Article is to a Section or Article of this Supplemental Indenture.

ARTICLE 2
EFFECT OF MERGER ON CONVERSION

Section 2.01. *Conversion Right*. In accordance with and subject to Section 14.07 of the Indenture, at and after the effective time of the Merger, (a) the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the number of units of Reference Property that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive upon such Merger, and (b) a "unit of Reference Property" shall mean $8.50 in cash, plus one (1) CVR, plus:

(i) if the Milestone 1 Amount (as defined in the CVR Agreement) has been paid to the Rights Agent pursuant to the terms of the CVR Agreement prior to the applicable Conversion Date, $1.00, plus

(ii) if the Milestone 2 Amount (as defined in the CVR Agreement) has been paid to the Rights Agent pursuant to the terms of the CVR Agreement prior to the applicable Conversion Date, $2.00, plus

(iii) if the Milestone 3 Amount (as defined in the CVR Agreement) has been paid to the Rights Agent pursuant to the terms of the CVR Agreement prior to the applicable Conversion Date, $3.00, plus

(iv) if the Milestone 4 Amount (as defined in the CVR Agreement) has been paid to the Rights Agent pursuant to the terms of the CVR Agreement prior to the applicable Conversion Date, $1.00, plus

(v) if the Milestone 5 Amount (as defined in the CVR Agreement) has been paid to the Rights Agent pursuant to the terms of the CVR Agreement prior to the applicable Conversion Date, $1.00.

ARTICLE 3
MISCELLANEOUS

Section 3.01. *Ratification of Indenture*. The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 3.02. *Trustee Not Responsible for Recitals*. The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to and shall not be responsible for the validity or sufficiency of this Supplemental Indenture, the Merger, or the Reference Property. All of the provisions contained in the Indenture in respect of the rights, privileges, immunities, powers, and duties of the Trustee shall be applicable in respect of the Supplemental Indenture as fully and with like force and effect as though set forth in full herein.

Section 3.03 *Successors*. All agreements of the Company and the Trustee in this Supplemental Indenture will bind their respective successors.

Section 3.04. *Governing Law*. THIS SUPPLEMENTAL INDENTURE AND ANY CLAIM, CONTROVERSY, OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 3.05. *Headings, Etc.* The titles and headings of the articles and sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 3.06. *Execution in Counterparts; Electronic Signatures*. This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. This Supplemental Indenture and any certificate, agreement, or other document to be signed in connection with this Indenture shall be valid, binding, and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature; or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including any relevant provisions of the UCC (collectively, "Signature Law"), in each case to the extent applicable. Each faxed, scanned, or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm, or otherwise verify the validity or authenticity thereof. For the avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the UCC or other Signature Law due to the character or intended character of the writings.

Section 3.07. *Severability*. In the event that any provision of this Supplemental Indenture shall be invalid, illegal, or unenforceable, then (to the extent permitted by law) the validity, legality, or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 3.08. *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 3.09. *Effectiveness*. This Supplemental Indenture shall become effective upon, without further action by the parties hereto, the effective time of the Merger.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

FLEXION THERAPEUTICS, INC.
By: /s/ Michael D. Clayman, MD
Name: Michael D. Clayman, MD
Title: President and Chief Executive Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee
By: Computershare Trust Company, N.A., as attorney-in-fact
By: /s/ Scott Little
Name: Scott Little
Title: Vice President

PACIRA BIOSCIENCES, INC.
Nonstatutory Stock Option Agreement
Granted Under Amended and Restated 2011 Stock Incentive Plan

1. Grant of Option.

This agreement evidences the grant by Pacira BioSciences, Inc., a Delaware corporation (the "**Company**"), on [GRANT DATE] (the "**Grant Date**") to [PARTICIPANT NAME], (the "**Participant**"), of an option to purchase, in whole or in part, on the terms provided herein and in the Company's Amended and Restated 2011 Stock Incentive Plan (the "**Plan**"), a total of [NUMBER OF AWARDS GRANTED] shares (the "**Shares**") of common stock, $0.001 par value per share, of the Company ("**Common Stock**") at $[GRANT PRICE] per Share. Unless earlier terminated, this option shall expire at 5:00 p.m., Pacific time, on [EXPIRATION DATE] (the "**Final Exercise Date**").

It is intended that the option evidenced by this agreement shall not be an incentive stock option as defined in Section 422 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder (the "**Code**"). Except as otherwise indicated by the context, the term "Participant", as used in this option, shall be deemed to include any person who acquires the right to exercise this option validly under its terms.

2. Vesting Schedule.

The option shares vest as follows: 25% of the option shares vest upon the one-year anniversary of the "**Vesting Commencement Date**" and 6.25% of the option shares vest every three-months thereafter.

The right of exercise shall be cumulative so that to the extent the option is not exercised in any period to the maximum extent permissible it shall continue to be exercisable, in whole or in part, with respect to all Shares for which it is vested until the earlier of the Final Exercise Date or the termination of this option under Section 3 hereof or the Plan.

3. Exercise of Option.

(a) Form of Exercise. Each election to exercise this option shall be in writing, signed by the Participant, and received by the Company at its principal office, accompanied by this agreement, and payment in full in the manner provided in the Plan. The Participant may purchase less than the number of Shares covered hereby, provided that no partial exercise of this option may be for any fractional share or for the lesser of (i) fifty (50) whole shares or (ii) the amount of unexercised option shares remaining under this option.

(b) Continuous Relationship with the Company Required. Except as otherwise provided in this Section 3, this option may not be exercised unless the Participant, at the time he or she exercises this option, is, and has been at all times since the Grant Date, an employee, officer or director of, or consultant or advisor to, the Company or any other entity the employees, officers, directors, consultants, or advisors of which are eligible to receive option grants under the Plan (an "**Eligible Participant**").

(c) Termination of Relationship with the Company. If the Participant ceases to be an Eligible Participant for any reason, then, except as provided in paragraphs (d) and (e) below, the right to exercise this option shall terminate three months after such cessation (but in no event after the Final Exercise Date), provided that this option shall be exercisable only to the extent that the Participant was entitled to exercise this option on the date of such cessation. Notwithstanding the foregoing, if the Participant, prior to the Final Exercise Date, violates the non-competition or confidentiality provisions of any employment contract, confidentiality and nondisclosure agreement or other agreement between the Participant and the Company, the right to exercise this option shall terminate immediately upon such violation.

(d) Exercise Period Upon Death or Disability. If the Participant dies or becomes disabled (within the meaning of Section 22(e)(3) of the Code) prior to the Final Exercise Date while he or she is an Eligible Participant and the Company has not terminated such relationship for "cause" as specified in paragraph (e) below, this option shall be exercisable, within the period of three years following the date of death or disability of the Participant, by the Participant (or in the case of death by an authorized transferee), provided that this option shall be exercisable only to the extent that this option was exercisable by the Participant on the date of his or her death or disability, and further provided that this option shall not be exercisable after the Final Exercise Date.

(e) Termination for Cause. If, prior to the Final Exercise Date, the Participant's employment or other relationship with the Company is terminated by the Company for Cause (as defined below), the right to exercise this option shall terminate immediately upon the effective date of such termination of employment or other relationship. If, prior to the Final Exercise Date, the Participant is given notice by the Company of the termination of his or her employment or other relationship by the Company for Cause, and the effective date of such employment or other termination is subsequent to the date of the delivery of such notice, the right to exercise this option shall be suspended from the time of the delivery of such notice until the earlier of (i) such time as it is determined or otherwise agreed that the Participant's employment or other relationship shall not be terminated for Cause as provided in such notice or (ii) the effective date of such termination of employment or other relationship (in which case the right to exercise this option shall, pursuant to the preceding sentence, terminate upon the effective date of such termination of employment or other relationship). If the Participant is party to an employment, consulting or severance agreement with the Company that contains a definition of "cause" for termination of employment or other relationship, "Cause" shall have the meaning ascribed to such term in such agreement. Otherwise, "**Cause**" shall mean willful misconduct by the Participant or willful failure by the Participant to perform his or her responsibilities to the Company (including, without limitation, breach by the Participant of any provision of any employment, consulting, advisory, nondisclosure or other similar agreement between the Participant and the Company), as determined by the Company, which determination shall be conclusive. The Participant's employment or other relationship shall be considered to have been terminated for "Cause" if the Company determines, within 30 days after the Participant's resignation, that termination for Cause was warranted.

4. Withholding.

No Shares will be issued pursuant to the exercise of this option unless and until the Participant pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, state or local withholding taxes required by law to be withheld in respect of this option.

5. Transfer Restrictions.

This option may not be sold, assigned, transferred, pledged or otherwise encumbered by the Participant, either voluntarily or by operation of law, except by will or the laws of descent and distribution, and, during the lifetime of the Participant, this option shall be exercisable only by the Participant; provided, however, that the Participant may transfer this option gratuitously to or for the benefit of any immediate family member of the Participant, family trust or other entity established for the benefit of the Participant and/or an immediate family member of the Participant if the Company would be eligible to use a Form S-8 under the Securities Act for the registration of the sale of the Shares to such proposed transferee; provided further, that the Company will not be required to recognize any such permitted transfer until such time as such permitted transferee, as a condition to such transfer, delivers to the Company a written instrument in form and substance satisfactory to the Company confirming that such transferee will be bound by all the terms and conditions of this option.

6. Provisions of the Plan.

This option is subject to the provisions of the Plan (including the provisions relating to amendments to the Plan), a copy of which is furnished to the Participant with this option.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this option to be executed under its corporate seal by its duly authorized officer. This option shall take effect as a sealed instrument.

PACIRA BIOSCIENCES, INC.

By: _____

Name: _____

Title: _____

The undersigned hereby accepts the foregoing option and agrees to the terms and conditions thereof. The undersigned hereby acknowledges receipt of a copy of the Company's Amended and Restated 2011 Stock Incentive Plan.

PARTICIPANT:

By: _____

Name: _____

PACIRA BIOSCIENCES, INC.
Nonstatutory Stock Option Agreement for Non-Employee Directors
Granted Under Amended and Restated 2011 Stock Incentive Plan

1. Grant of Option.

This agreement evidences the grant by Pacira BioSciences, Inc., a Delaware corporation (the "**Company**"), on [GRANT DATE] (the "**Grant Date**") to [PARTICIPANT NAME], (the "**Participant**"), of an option to purchase, in whole or in part, on the terms provided herein and in the Company's Amended and Restated 2011 Stock Incentive Plan (the "**Plan**"), a total of [NUMBER OF AWARDS GRANTED] shares (the "**Shares**") of common stock, $0.001 par value per share, of the Company ("**Common Stock**") at $[GRANT PRICE] per Share. Unless earlier terminated, this option shall expire at 5:00 p.m., Pacific time, on [EXPIRATION DATE] (the "**Final Exercise Date**").

It is intended that the option evidenced by this agreement shall not be an incentive stock option as defined in Section 422 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder (the "**Code**"). Except as otherwise indicated by the context, the term "Participant", as used in this option, shall be deemed to include any person who acquires the right to exercise this option validly under its terms.

2. Vesting Schedule.

The option shares vest as follows: 25% of the option shares vest upon the one-year anniversary of the "**Vesting Commencement Date**" and 6.25% of the option shares vest every three-months thereafter.

The right of exercise shall be cumulative so that to the extent the option is not exercised in any period to the maximum extent permissible it shall continue to be exercisable, in whole or in part, with respect to all Shares for which it is vested until the earlier of the Final Exercise Date or the termination of this option under Section 3 hereof or the Plan.

3. Exercise of Option.

(a) Form of Exercise. Each election to exercise this option shall be in writing, signed by the Participant, and received by the Company at its principal office, accompanied by this agreement, and payment in full in the manner provided in the Plan. The Participant may purchase less than the number of Shares covered hereby, provided that no partial exercise of this option may be for any fractional share or for the lesser of (i) fifty (50) whole shares or (ii) the amount of unexercised option shares remaining under this option.

(b) Continuous Relationship with the Company Required. Except as otherwise provided in this Section 3, this option may not be exercised unless the Participant, at the time he or she exercises this option, is, and has been at all times since the Grant Date, an employee, officer or director of, or consultant or advisor to, the Company or any other entity the employees, officers, directors, consultants, or advisors of which are eligible to receive option grants under the Plan (an "**Eligible Participant**").

(c) Termination of Relationship with the Company. If the Participant ceases to be an Eligible Participant for any reason, then, except as provided in paragraphs (d) and (e) below, the right to exercise this option shall terminate three months after such cessation (but in no event after the Final Exercise Date), provided that this option shall be exercisable only to the extent that the Participant was entitled to exercise this option on the date of such cessation. Notwithstanding the foregoing, if the Participant, prior to the Final Exercise Date, violates the non-competition or confidentiality provisions of any employment contract, confidentiality and nondisclosure agreement or other agreement between the Participant and the Company, the right to exercise this option shall terminate immediately upon such violation.

(d) Exercise Period Upon Death or Disability. If the Participant dies or becomes disabled (within the meaning of Section 22(e)(3) of the Code) prior to the Final Exercise Date while he or she is an Eligible Participant and the Company has not terminated such relationship for "cause" as specified in paragraph (e) below, this option shall be exercisable, within the period of three years following the date of death or disability of the Participant, by the Participant (or in the case of death by an authorized transferee), provided that this option shall be exercisable only to the extent that this option was exercisable by the Participant on the date of his or her death or disability, and further provided that this option shall not be exercisable after the Final Exercise Date.

(e) Termination of Relationship After Five Years of Service on the Board. If the Participant ceases to be an Eligible Participant after completing five years of service on the Board (measured from the Participant's date of commencement as a director on the Board), the right to exercise this option shall terminate three years after such cessation (but in no event after the Final Exercise Date), provided that this option shall be exercisable only to the extent that the Participant was entitled to exercise this option on the date of such cessation. Notwithstanding the foregoing, if the Participant, prior to the Final Exercise Date, violates the non-competition or confidentiality provisions of any confidentiality and nondisclosure agreement or other agreement between the Participant and the Company, the right to exercise this option shall terminate immediately upon such violation.

(f) Termination for Cause. If, prior to the Final Exercise Date, the Participant's employment or other relationship with the Company is terminated by the Company for Cause (as defined below), the right to exercise this option shall terminate immediately upon the effective date of such termination of employment or other relationship. If, prior to the Final Exercise Date, the Participant is given notice by the Company of the termination of his or her employment or other relationship by the Company for Cause, and the effective date of such employment or other termination is subsequent to the date of the delivery of such notice, the right to exercise this option shall be suspended from the time of the delivery of such notice until the earlier of (i) such time as it is determined or otherwise agreed that the Participant's employment or other relationship shall not be terminated for Cause as provided in such notice or (ii) the effective date of such termination of employment or other relationship (in which case the right to exercise this option shall, pursuant to the preceding sentence, terminate upon the effective date of such termination of employment or other relationship). If the Participant is party to an employment, consulting or severance agreement with the Company that contains a definition of "cause" for termination of employment or other relationship, "Cause" shall have the meaning ascribed to such term in such agreement. Otherwise, "**Cause**" shall mean willful misconduct by the

Participant or willful failure by the Participant to perform his or her responsibilities to the Company (including, without limitation, breach by the Participant of any provision of any employment, consulting, advisory, nondisclosure or other similar agreement between the Participant and the Company), as determined by the Company, which determination shall be conclusive. The Participant's employment or other relationship shall be considered to have been terminated for "Cause" if the Company determines, within 30 days after the Participant's resignation, that termination for Cause was warranted.

4. Withholding.

No Shares will be issued pursuant to the exercise of this option unless and until the Participant pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, state or local withholding taxes required by law to be withheld in respect of this option.

5. Transfer Restrictions.

This option may not be sold, assigned, transferred, pledged or otherwise encumbered by the Participant, either voluntarily or by operation of law, except by will or the laws of descent and distribution, and, during the lifetime of the Participant, this option shall be exercisable only by the Participant; provided, however, that the Participant may transfer this option gratuitously to or for the benefit of any immediate family member of the Participant, family trust or other entity established for the benefit of the Participant and/or an immediate family member of the Participant if the Company would be eligible to use a Form S-8 under the Securities Act for the registration of the sale of the Shares to such proposed transferee; provided further, that the Company will not be required to recognize any such permitted transfer until such time as such permitted transferee, as a condition to such transfer, delivers to the Company a written instrument in form and substance satisfactory to the Company confirming that such transferee will be bound by all the terms and conditions of this option.

6. Provisions of the Plan.

This option is subject to the provisions of the Plan (including the provisions relating to amendments to the Plan), a copy of which is furnished to the Participant with this option.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this option to be executed under its corporate seal by its duly authorized officer. This option shall take effect as a sealed instrument.

PACIRA BIOSCIENCES, INC.

By: _____

Name: _____

Title: _____

The undersigned hereby accepts the foregoing option and agrees to the terms and conditions thereof. The undersigned hereby acknowledges receipt of a copy of the Company's Amended and Restated 2011 Stock Incentive Plan.

PARTICIPANT:

By: _____

Name: _____

EXHIBIT 10.36

MANUFACTURING AND SUPPLY AGREEMENT

*****Text Omitted and Filed Separately with the Securities and Exchange Commission. Confidential Treatment Requested Under 17 C.F.R. Sections 200.80(b)(4) and 240.24b-2.**

MANUFACTURING AND SUPPLY AGREEMENT

This **MANUFACTURING AND SUPPLY AGREEMENT** (this "Agreement") dated as of July 31, 2015 (the "Effective Date") is made by and between Flexion Therapeutics, Inc., a Delaware corporation having its principal place of business at 10 Mall Road, Suite 301, Burlington, Massachusetts, United States ("Flexion") and Patheon UK Limited, a company incorporated in England and Wales having its principal place of business at Kingfisher Drive, Covingham, Swindon, SN35BZ, United Kingdom ("Patheon"). Flexion, and Patheon are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Flexion has a commercial interest in the Manufacture (as defined herein) and commercialization of FX006 drug product, an extended-release formulation of triamcinolone acetonide (TCA) which is manufactured using the Flexion Manufacturing Process (the "Product");

WHEREAS, Patheon has expertise and experience in manufacturing and packaging pharmaceutical products and is interested in providing Manufacturing services to Flexion in connection with the Product;

WHEREAS, in anticipation of this Agreement and the goods and services that Patheon will supply hereunder, the Parties are executing an agreement pursuant to which Patheon would undertake certain technical transfer and construction services in order to validate and scale up Flexion's technology package and prepare Patheon's facilities for the Manufacture of the Product (the "Technical Transfer Agreement"); and

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants of the Parties contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I. DEFINITIONS

The following terms shall have the meanings set forth below. Unless the context indicates otherwise, the singular shall include the plural and the plural shall include the singular. Any term not defined hereunder shall have the meaning ascribed to such term in the Technical Transfer Agreement.

1.1 "Additional Services" means any services requested and approved by Flexion that supplement Patheon's regular performance of the Services, as described in Schedule 2.1(a).

1.2 "Affiliate(s)" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this Section 1.2 only, a Person will be regarded as in control of another Person if such Person owns, or directly or indirectly controls, more than 50% of the voting securities (or comparable equity interests) or other ownership interests of the other Person, or if such Person directly or indirectly possesses the power to direct or cause the direction of the management or policies of the other Person, whether through the ownership of voting securities, by contract, or any other means whatsoever.

1.3 "Agreed Delivery Date" has the meaning set forth in Section 2.3(d).

1.4 "Agreement" has the meaning set forth in the Preamble hereto.

1.5 "API" means the active pharmaceutical ingredient Triamcinolone Acetonide, Micronised.

1.6 “Applicable Law” means applicable United States, Canadian, English and other foreign federal, state, and local laws, orders, rules, regulations, guidelines, standards, customs and ordinances, including, without limitation, those (to the extent they are applicable) of the FDA, Health Canada, the Medicines and Healthcare Products Regulatory Agency in the United Kingdom and other comparable foreign Regulatory Authorities, including the FDA Act.

1.7 “Base Fee” means the monthly fee paid by Flexion in consideration for the Services, as more specifically set forth in Schedule 2.1(a) of this Agreement. For the avoidance of doubt, Base Fees do not include Capital Expenditures (as defined in the Technical Transfer Agreement), Product Fees, Material Costs, or charges for Bill Back Items or Additional Services.

1.8 “Bill Back Items” means the items and services set forth in Schedule 2.1(a) that are used or necessary in connection with the Manufacture of the Products and which result in a nominal cost to Flexion.

1.8a “Certificate of Analysis” means a certificate evidencing the analytical tests conducted on a specific batch of Product or Material and setting forth, *inter alia*, the items tested, specifications, and test results.

1.9 “Certificate of Compliance” means a certificate stating that a specific batch of Product complies with the warranty set forth in Section 6.3.

1.11 “Change of Control” has the meaning set forth in Section 10.5A.

1.12 “Claim” has the meaning set forth in Section 9.3(a).

1.13 “Control” or “Controlled” means ownership or the right by a Party to assign or grant a license or sublicense under intellectual property rights to the other Party of the scope set forth herein, without breaching the terms of any agreement with a Third Party.

1.14 “Diligent and Reasonable Steps” has the meaning set forth in Section 6.4(a).

1.15 “Deficiency Notice” has the meaning set forth in Section 2.8(a).

1.16 “Disclosing Party” has the meaning set forth in Section 1.90.

1.17 “Discretionary Manufacturing Changes” has the meaning set forth in Section 2.9(c).

1.18 “Effective Date” has the meaning set forth in the Preamble hereto

1.19 “EMA” means the European Medicines Agency.

1.20 “Equipment” means any equipment used in the Manufacture of the Product as more fully set forth in Section 2.9 herein.

1.21 “Existing Flexion Intellectual Property” has the meaning set forth in Section 5.1(a).

1.22 “Existing Patheon Intellectual Property” has the meaning set forth in Section 5.1(b).

1.23 “Expected Yield Rate” has the meaning set forth in Section 2.8(f).

1.24 “Expert” has the meaning set forth in Section 2.8(e).

1.25 “Exploit” means to make, have made, import, use, sell, offer for sale, receive or otherwise dispose of a product or process, including the research, development (including the conduct of clinical trials), registration, modification, enhancement, improvement, Manufacture, storage, formulation, optimization, export, transport, distribution, promotion, or marketing of a product or process.

1.26 “Facility” means the facility of Patheon located at Kingfisher Drive, Swindon, Wiltshire SN3 5BZ, United Kingdom, or such other facility approved in accordance with Section 3.3(a).

1.27 “FDA” means the United States Food and Drug Administration and any successor organization thereto and all agencies under its direct control.

1.28 “FDA Act” means the Federal Food, Drug, and Cosmetic Act, as amended.

1.29 “FDA Approval Date” means the date of receipt of FDA approval allowing for Patheon’s manufacturing, testing, and packaging for the Product from the Phase I Filling Space and Phase II Manufacturing Space.

1.30 “Filing Party” has the meaning set forth in Section 3.15(a).

1.31 “Flexion” has the meaning set forth in the Preamble hereto.

1.32 “Flexion Assignors” has the meaning set forth in Section 5.1(m).

1.33 “Flexion Improvements” has the meaning set forth in Section 5.1(e)(ii).

1.34 “Flexion Indemnified Parties” has the meaning set forth in Section 9.2.

1.35 “Flexion Manufacturing Equipment” has the meaning set forth in Section 2.9(a).

1.36 “Flexion Manufacturing Equipment Improvements” has the meaning set forth in Section 5.1(e)(i).

1.37 “Flexion’s Manufacturing Process” means the proprietary process owned or Controlled by Flexion for Manufacturing the Product, as disclosed by Flexion to Patheon, and each intermediate of the Product, as established as of the Effective Date, including without limitation, as set forth in the investigational new drug application filed with the FDA, and, when applicable, as set forth in the NDA as may be filed with, and approved by, the FDA.

1.38 “Flexion’s Manufacturing Process Improvements” has the meaning set forth in Section 5.1(e)(i).

1.39 “Flexion On Site Representative” has the meaning set forth in Section 3.4.

1.40 “Flexion Product Improvements” has the meaning set forth in Section 5.1(e)(i).

1.41 “Flexion Specification Improvements” has the meaning set forth in Section 5.1(e)(i).

1.41a “Flexion Specific Improvements” has the meaning set forth in Section 5.1(e)(i)

1.42 “Flexion-Supplied Materials” has the meaning set forth in Section 2.2(a).

1.43 “Forecast” has the meaning set forth in Section 2.3(a).

1.44 “GMP” means the current good manufacturing practices applicable from time to time to the Manufacturing of the Product, or any intermediate of the Product, pursuant to Applicable Law, including those promulgated under the FDA Act at 21 C.F.R. (chapters 210 and 211), and those promulgated under EC Directive 2003/94/EC, together with the latest FDA and EMA guidance documents pertaining to manufacturing and quality control practice, all as updated, amended and revised from time to time.

1.45 “Indemnification Claim Notice” has the meaning set forth in Section 9.3(a).

1.46 “Indemnified Party” has the meaning set forth in Section 9.3(a).

1.47 “Indemnifying Party” has the meaning set forth in Section 9.3(a).

1.48 “Initial Draft” has the meaning set forth in Section 3.15(b).

1.49 “Initial Term” has the meaning set forth in Section 8.1.

1.50 “Key Personnel” has the meaning set forth in Section 2.1(f).

1.51 “Late Product” has the meaning set forth in Section 2.7(b).

1.52 “Letter Agreement” means the Letter Agreement between the Parties dated 1 May 2015.

1.53 “Long Term Forecast” has the meaning set forth in Section 2.3(b).

1.54 “Loss” means any claims, lawsuits, losses, damages, liabilities, penalties, costs, and expenses (including reasonable attorneys’ fees and disbursements).

1.55 “Maintenance” means the maintenance of Equipment and Facilities in satisfactory operating condition, including the performance of systematic inspection and service of Equipment pursuant to the applicable Standard Operating Procedures of Patheon, as reviewed and agreed to by Flexion (the “Equipment Standard Operating Procedures”), or the manufacturer’s terms of operation and recommended procedures.

1.56 “Make Good Costs” has the meaning set forth in Section 8.3(e).

1.57 “Manufacture” and “Manufacturing Services” means the manufacturing, processing, formulating, filling, sterilization, packaging, labelling, storage, handling, and quality control testing of Materials or of the Product.

1.58 “Manufacturing Suite IOQ” means the completion of the Phase I Filling Space and Phase II Manufacturing Space, including without limitation, the installation, qualification and operational qualification of the Equipment in each of the Phase I Filling Space and the Phase II Manufacturing Space, including the computer systems, utilities and manufacturing area enabling the initiations of technical transfer activities, as agreed to by the Parties and indicated by the delivery by Patheon to Flexion of the interim IOQ report for the Phase I Filling Space and Phase II Manufacturing Space.

1.59 “Manufacturing Services Termination Costs” has the meaning set forth in Section 8.3(g).

1.60 “Manufacturing Suite” means the manufacturing suite at the Facility capable of Manufacturing the Product pursuant to Flexion’s Manufacturing Process, whose footprint is set forth in Schedule 1.60, together with the areas identified in the plan attached as Schedule 1.60 as the areas for the bulk powder Manufacture and bulk vial filling, and, pursuant to the terms of Section 2.10, the Phase I Filling Space. The footprint of the Manufacturing Suite is diagrammatic in nature and is intended to generally depict the location

and approximate size of current and future spaces allocated to Flexion. Such footprint may be amended during the Term of and pursuant to the Technical Transfer Agreement to be specifically adapted to the Manufacture of the Product, and the Parties shall agree upon the definitive footprint, taking into account parameters such as the exact design of the space, space classifications, code requirements, equipment, material, personnel, waste stream process flows, equipment sizing and utility requirements. For purposes of clarity, prior to the Phase III Manufacturing Suite Clearance Date (as defined in Section 2.10 herein), the definition of Manufacturing Suite shall include the Phase I Filling Space.

1.61 "Marketing Authorization" means an approved New Drug Application as defined in the FDA Act and the regulations promulgated thereunder, or any corresponding foreign application, registration, or certification, necessary or reasonably useful to market any Product in a country or regulatory jurisdiction other than the United States, including applicable pricing and reimbursement approvals, and all supplements and amendments thereto.

1.62 "Materials" means all API, excipients and processing aids, and processing, filling and packaging components, used in connection with the Manufacture of the Product and listed in Schedule 1.62, as amended prior to Product launch, based on the Parties' most recent usage experience rate, and to reflect changes to the Specifications.

1.64 "Material Costs" has the meaning set forth in Section 2.2(a).

1.65 "Maximum Manufacturing Services Termination Costs" has the meaning set forth in Section 8.3(g).

1.66 Not used.

1.67 "NDA" means the new drug application for a product, including the Product, requesting permission to place a drug on the market in accordance with 21 C.F.R. Part 314, and all supplements filed pursuant to the requirements of the FDA, including all documents, data, and other information filed concerning such product that are necessary for FDA approval to market such product in the Territory.

1.68 "Non-Conforming Product" means (a) a batch of Product that fails, or is aborted during processing; or (b) a Product Manufactured by Patheon that fails to […***…].

1.69 "Non-Filing Party" has the meaning set forth in Section 3.15(a).

1.69a "Non-Specific Improvement" has the meaning set forth in Section 5.1(e)(ii)

1.70 "PAI" has the meaning set forth in Section 3.8.

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1.71 “Party” and “Parties” have the meanings set forth in the Preamble hereto.

1.72 “Patheon” has the meaning set forth in the Preamble hereto.

1.73 “Patheon Assignors” has the meaning set forth in Section 5.1(l).

1.74 “Patheon Improvements” has the meaning set forth in Section 5.1(f)(ii).

1.75 “Patheon Indemnified Parties” has the meaning set forth in Section 9.1.

1.76 “Patheon Independent Manufacturing Equipment Improvements” has the meaning set forth in Section 5.1(f)(i).

1.77 “Patheon Manufacturing Equipment” has the meaning set forth in Section 2.9(a)(ii).

1.78 “Patheon Non-Applicable Inventions” has the meaning set forth in Section 5.1(f)(ii).

1.79 “Patheon Nonconformance” has the meaning set forth in Section 2.8(c).

1.80 “Patheon-Supplied Materials” has the meaning set forth in Section 2.2(a).

1.81 Not used.

1.82 “Person” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other similar entity or organization, including a government or political subdivision, department, or agency of a government.

1.83 “Phase I Filling Space”, “Phase II Manufacturing Space” and “Phase III Manufacturing Suite” shall each be as represented in Schedule 1.60. After the Phase III Manufacturing Suite Clearance Date, the Phase II Manufacturing Space shall be incorporate into the Phase III Manufacturing Suite.

1.84 “Phase I Filling Space Fee” has the meaning set forth in Schedule 2.1(a) at section II.

1.85 “Phase III Manufacturing Suite Clearance Date” has the meaning set forth in section 2.10(d).

1.86 “Phase III Option” has the meaning set forth in section 2.10 (b).

1.87 "Product" has the meaning set forth in the Recitals hereto in finished, unpackaged form, according to the Specifications, as the same may be amended from time to time.

1.88 "Product Fee" has the meaning set forth in Section 2.4.

1.89 "Project Manager" and "Project Managers" have the meaning set forth in Section 3.4.

1.90 "Proprietary Information" means any information disclosed hereunder by one Party (the "Disclosing Party") to another Party (the "Receiving Party") (whether disclosed in oral, written, electronic or visual form) that is non-public, confidential or proprietary including, without limitation, information relating to the Disclosing Party's patent and trademark applications, process designs, process models, drawings, plans, designs, data, databases and extracts therefrom, formulae, methods, know-how and other intellectual property, its clients or client confidential information, finances, marketing, products and processes and all price quotations, manufacturing or professional service proposals and information relating to composition and proprietary technology. In addition, all analyses, compilations, studies, reports or other documents prepared by any Party's directors, officers, employees, advisers, agents, consultants, subcontractors, service partners, professional advisors, or representatives (collectively, "Representatives") containing the Proprietary Information will be deemed to be Proprietary Information.

1.91 "Purchase Order" means a written purchase order that sets forth (a) the quantities of each presentation of Product to be delivered by Patheon to Flexion, (b) the requested delivery dates therefor, and (c) the size of the vials and bulk packaging to be used for such Product.

1.92 "Quality Agreement" has the meaning set forth in Section 3.1.

1.94 "Receiving Party" has the meaning set forth in Section 1.90.

1.95 "Regulatory Approval" means any and all approvals (including pricing and reimbursement approvals), licenses, registrations, or authorizations of any Regulatory Authority necessary to Exploit the Product in any country in the Territory, including any (a) approval of a Product, Marketing Authorization and supplements and amendments thereto; (b) pre- and post-approval marketing authorizations (including any prerequisite Manufacturing approval or authorization related thereto); (c) labelling approval; and (d) technical, medical, and scientific licenses.

1.96 "Regulatory Authority" means any applicable supra-national, federal, national, regional, state, provincial, or local regulatory agencies, departments, bureaus, commissions, councils, or other government entities regulating or otherwise exercising authority with respect to the Exploitation of a Product in the Territory.

1.97 "Regulatory Filings" has the meaning set forth in Section 3.15.

1.98 “Regulatory Obligations” has the meaning set forth in Section 3.15.

1.99 “Remediation Period” has the meaning set forth in Section 8.2(a)(iii).

1.100 “Replacement Entity” has the meaning set forth in Section 8.3(f).

1.101 “Reports” has the meaning set forth in Section 3.11.

1.102 “Required Manufacturing Changes” has the meaning set forth in Section 2.9(b).

1.103 “Scheduled Production Date” has the meaning set forth in Section 2.3(d).

1.104 “Services” means the (a) Manufacturing Services performed by Patheon under this Agreement and (b) the Transfer Services performed by Patheon pursuant to the Technical Transfer Agreement.

1.105 “Shipment Costs” has the meaning set forth in Section 2.8(c).

1.106 “Specifications” means the specifications for each presentation of Product (*i.e.*, the dosage forms in Schedule 1.82) given by Flexion to Patheon relating to the specifications of the Materials; the manufacturing specifications, directions and processes; the storage requirements; all environmental, health and safety information for the Product including material safety data sheets and the finished Product specifications, specifications for bulk and primary packaging and shipping requirements for the Product, as amended, modified, or supplemented from time to time.

1.107 “Steering Committee” has the meaning set forth in the Technical Transfer Agreement.

1.108 “Supplies” means various consumables / disposables used in small quantities for gowning, cleaning of Equipment and Manufacturing Suite, and in quality control testing of Materials and Product.

1.109 “Taxes” means all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholding or liabilities wherever chargeable and whether of the United Kingdom or any other jurisdiction (including for the avoidance of doubt, national insurance contributions in the United Kingdom) and any penalty, fine, surcharge, interest, charge, charges or costs thereto.

1.110 “Technical Transfer Agreement” has the meaning set forth in the Recitals.

1.111 “Term” has the meaning set forth in Section 8.1.

1.112 "Territory" means […***…] and other territories agreed by the Parties pursuant to Section 2.2(h) from time to time.

1.113 "Third Party" means a Person who is neither a Party nor an Affiliate of a Party.

1.114 "Third Party Losses" means Losses incurred as a result of claims brought by Third Parties.

1.115 "Transfer Services" has the meaning set forth in Section 1.64 of the Technical Transfer Agreement.

1.116 "TUPE" has the meaning set forth in Section 8.3(f).

1.117 "VAT" has the meaning set forth in Section 4.4(c).

1.118 "Yield" has the meaning set forth in Section 2.8(f).

1.119 "Yield Reimbursement Payment" has the meaning set forth in Section 2.8(f).

ARTICLE II. MANUFACTURING SERVICES

2.1 Supply Obligations.

(a) Subject to the terms and conditions hereof and in consideration for the payments set forth in Schedule 2.1(a), Patheon shall provide the Manufacturing Services and shall supply the Product […***…] to Flexion. Flexion agrees to purchase from Patheon such quantities of Product as Flexion may order, in its discretion, in accordance with the terms herein during the Term.

(b) Pursuant to the Technical Transfer Agreement, Flexion will develop and Patheon will confirm Flexion's Manufacturing Process. Flexion's Manufacturing Process is the Proprietary Information of Flexion, as further clarified in Article V.

(c) Patheon shall Manufacture all Products delivered hereunder (i) in accordance with the Specifications, this Agreement, the Quality Agreement, and (ii) in compliance with GMP and all other Applicable Law.

(d) Patheon shall ensure that sufficient numbers of adequately educated and experienced staff are retained at the Facility in order to Manufacture evenly throughout the year the volumes of Product set out in the Forecast. Patheon shall perform all activities necessary to maintain a GMP compliant status of the

manufacturing lines and areas of the Facility applicable to the Manufacture of the Product.

(e) Flexion reserves the right to request replacement of any personnel assigned by Patheon to perform the Services hereunder. If Patheon disagrees with such request and the Parties cannot reach resolution on Flexion's request for replacement, such request will be discussed by the Steering Committee pursuant to the procedures set forth in Exhibit 2.7 of the Technology Transfer and Services Agreement.

(f) Patheon shall perform the Services under the direction of key personnel of Patheon to a project for the duration of the project ("Key Personnel"). Key Personnel include the Project Manager, Operational Manager, Quality Manager or other personnel reasonably agreed-to by the Parties. Patheon shall provide information on the qualifications and background of all proposed Key Personnel prior to such Key Personnel's commencement of activities under this Agreement on Patheon's behalf. Patheon will not remove Key Personnel without Flexion's prior written consent (not to be unreasonably withheld, conditioned or delayed) except in the event of such Key Personnel's promotion, resignation, incapacity or death, or termination for cause. Patheon will use commercially reasonable efforts to minimize turnover in Key Personnel, and will provide […***…] business days' notice to Flexion, whenever practical, of any changes to the Key Personnel, at which point, both Parties shall discuss and reasonable agree on a suitable replacement.

2.2 Materials, Bill Back Items and Additional Services.

(a) All Materials necessary for the Manufacture of the Product are set forth in Schedule 1.62. Patheon shall source all of the Materials set forth on Schedule 1.62 under the heading "Patheon Supplied Materials ("Patheon-Supplied Materials"), and such Materials will be invoiced to Flexion monthly at the time of purchase by Patheon, at cost plus an […***…]% handling fee, in accordance with the invoicing procedure set forth in ARTICLE IV ("Material Costs"). Flexion will purchase, and ship to Patheon in accordance with Schedule 1.62 under the heading "Flexion Supplied Materials" (the "Flexion-Supplied Materials") unless otherwise agreed to by the Parties. Patheon shall store, handle, and protect the Materials with a reasonable level of care, which shall include taking all reasonable precautions to ensure that the Materials are not subject to contamination, deterioration, destruction, or theft. Patheon shall keep adequate records of its usage of the Materials during the Term.

(b) Flexion acknowledges that Patheon is required under GMP to follow certain verification and approval processes for all vendors used by

Patheon in the procurement of Materials. In the event that Flexion requests Patheon to procure Materials from a vendor that is not currently verified by Patheon, Flexion will be liable for Patheon's fees for the performance of the initial audit and verification activities by Patheon under this Section 2.2(b) as an Additional Service.

(c) Flexion will, at its sole cost and expense, deliver to Patheon the Flexion-Supplied Materials to the Facility DDP (Incoterms 2010) at no cost to Patheon at least […***…] days before the Scheduled Production Date, in sufficient quantities for Patheon to Manufacture the desired quantities of Product and to ship Product by the Agreed Delivery Date. If the Flexion-Supplied Materials are not received […***…] days before the Scheduled Production Date, Patheon may delay the shipment of Product for a period of time proportionate to such delay. All shipments of Flexion-Supplied Materials, if required, will be accompanied by Certificate(s) of Analysis from the Material manufacturer or Flexion, confirming its compliance with the Material's specifications. Flexion will obtain the proper release of the Flexion-Supplied Materials from the applicable customs agency and/or Regulatory Authority. Flexion or Flexion's designated broker will be the "Importer of Record" for Flexion-Supplied Materials imported to the Facility. Flexion-Supplied Materials will be held by Patheon on behalf of Flexion as set forth in this Agreement. Title to Flexion-Supplied Materials will at all times remain the property of Flexion. Any Flexion-Supplied Materials received by Patheon will only be used by Patheon to perform the Manufacturing Services or associated activities necessary to perform the Manufacturing Services (e.g. media fills or validation runs).

(d) Flexion and Patheon will agree upon a minimum inventory level of Patheon-Supplied Materials required to support the Manufacture of the Product based on the last Forecast received by Patheon from Flexion. Patheon will keep on hand all Materials necessary to support the Manufacture of the Product based on such agreed-upon minimum inventory levels.

(e) Patheon will provide sufficient storage capacity to support storage of the required quantity of Materials pursuant to Section 2.2 of this Agreement for up to the longer of […***…] or the amount of time set forth next to the applicable Material on Schedule 1.62 herein. Patheon will also provide sufficient storage capacity to support storage of Product for up to […***…] post Manufacture […***…]. Any additional storage, or storage of Materials (either Flexion-Supplied Materials or Patheon-Supplied Materials) or Product beyond the applicable period stated herein, will be subject to the mutual agreement of the Parties. For any such additional storage, Flexion will pay Patheon £[…***…] per pallet, per month for storing any Materials or Product. Storage of Materials or Product that contain controlled substances or require refrigeration will be charged at £[…***…] per pallet per month. Storage fees are subject to a one pallet minimum

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charge per month. […***…] will be liable for all risk or loss of damage to stored Materials or Product to the extent such damage was caused by […***…]'s, or its subcontractor's or vendors', […***…]. Patheon shall store the Product according to GMP, any applicable storage guidelines stipulated by Flexion and agreed by Patheon and the provisions under the Quality Agreement.

(f) Bill Back Items will be charged to Flexion at Patheon's cost plus a […***…]% handling fee. Patheon shall invoice Flexion monthly for any Bill Back Items used in connection with the Manufacture of the Products during the preceding month in accordance with ARTICLE IV. Patheon may only invoice Bill Back Items that have been quoted to and approved in writing by Flexion's Project Manager, or otherwise mutually agreed to by the Parties in advance.

(g) If Flexion is interested in having Patheon perform Additional Services, Flexion will provide Patheon with a written request containing sufficient detail to enable Patheon to provide Flexion with a quote and proposal to provide such Additional Services. Patheon may only invoice for Additional Services that have been quoted to and approved in writing by an authorized person of Flexion and that have been agreed in writing by the Parties in a Change of Scope Agreement. Where a rate for Additional Services has been specified in Schedule 2.1 (a), such rates are calculated as at 1st January, 2015. These fees will be adjusted on 1st January of each year (first review […***…]) to reflect any increase in the UK Consumer Price Index: All Items Index published by the Office for National Statistics (as published at www.ons.gov.uk, specific details are located at http://www.ons.gov.uk/ons/rel/cpi/consumer-price-indices during the previous 12 months (based on the average of the monthly changes over the 12-month period). Patheon shall invoice Flexion monthly for any Additional Services performed by Patheon during the preceding month in accordance with ARTICLE IV.

(h) If Flexion decides to have Patheon perform Manufacturing Services for the Product for a Territory outside the […***…], then Flexion will inform Patheon of the additional requirements for each new country and Patheon will prepare a quotation for consideration by Flexion of any additional costs for the Product destined for each new country. The agreed additional requirements and change over fees will be set out in a written amendment to this Agreement.

(i) Patheon-Supplied Materials.

(i) Patheon will purchase all Patheon-Supplied Materials. Flexion understands and acknowledges that Patheon will rely on Flexion's Purchase Orders and Forecasts in ordering the Patheon-Supplied Materials required to meet the Purchase Orders. In addition, Flexion understands that to ensure an orderly

supply of Patheon-Supplied Materials, Patheon may want to purchase Patheon-Supplied Materials in sufficient volumes to meet the production requirements for Products during part or all of the Forecast or to meet the production requirements of any longer period agreed to by Patheon and Flexion. Accordingly, Flexion authorizes Patheon to purchase Patheon-Supplied Materials to satisfy the Manufacturing Services requirements for Products for the first […***…] contemplated in the most recent Forecast. Patheon may make other purchases of Patheon-Supplied Materials to meet Manufacturing Services requirements for longer periods if agreed to in writing by the Parties. Flexion will give Patheon written authorization to order Patheon Supplied Materials for any launch quantities of Product request by Flexion which will be considered a Purchase Order when accepted by Patheon. Flexion will reimburse Patheon for any destruction costs, as mutually agreed to in good faith, of any Patheon-Supplied Material ordered by Patheon under Purchase Orders or under Section 2.2(i) that are not included in finished Products Manufactured for Flexion within […***…] after the forecasted month for which the purchases have been made (or for a longer period as the Parties may agree). If any non-expired Patheon-Supplied Materials are used in Products subsequently manufactured for Flexion, Flexion will receive credit for any costs of those Patheon-Supplied Materials previously paid to Patheon by Flexion.

2.3 Forecasting, Order, and Delivery of Products.

(a) No later than […***…] prior to the anticipated FDA Approval Date and thereafter at least […***…] prior to the […***…] of each […***…] during the Term, Flexion shall deliver to Patheon a written good faith […***…] month forecast, calculated by month, estimating the quantities of each presentation of Product that Flexion expects to purchase from Patheon during such period (each, a "Forecast"). If Patheon is unable to accommodate any portion of the Forecast, it will notify Flexion and the Parties will agree on any revisions to the Forecast. Flexion shall update the Forecast on or before the […***…] of each […***…] on a rolling forward basis. Flexion shall use commercially reasonable efforts to also update the Forecast prior to the next […***…] deadline if it determines that the volumes estimated in the most recent Forecast have changed by more than […***…] percent […***…]%). The most recent Forecast will prevail. Except as set forth in Section 2.3(c) below, each Forecast shall be non-binding and shall be used by Patheon for planning purposes only.

(b) Commencing on […***…], Flexion will give Patheon a written non-binding […***…]-year forecast for strategic purposes, of the volume of Product Flexion then anticipates to purchase from Patheon for each year during such period (the "Long Term Forecast"). The Long Term Forecast will thereafter be updated every six months (as of June 1 and December 1) during the

Term. If Patheon is unable to accommodate any portion of the Long Term Forecast, it will notify Flexion and the Parties will agree on any revisions to the Long Term Forecast.

(c) […***…]. Flexion will issue Purchase Order(s) to purchase and, when accepted by Patheon, for Patheon to Manufacture and deliver the forecasted quantity or a quantity greater than the forecasted quantity of the Product for each such […***…] period, provided that the delivery lead time must be at least […***…] days from the date of Patheon's acceptance of the Purchase Order pursuant to clause (d) below. The quantities of Products ordered in Purchase Orders will be firm and binding on Flexion and may not be reduced by Flexion. Unless otherwise stated herein, expedited Purchase Orders will be subject to additional fees.

(d) Patheon shall accept all Purchase Orders for Product that are issued consistent with the terms of this Agreement. Patheon shall accept in writing any Purchase Order by sending an acknowledgement to Flexion within […***…] business days of its receipt of the Purchase Order. The acknowledgement will include, subject to confirmation from Flexion, the delivery date for the Product ordered which shall be approximately […***…] days from the date of Patheon's acceptance of the Purchase Order ("Agreed Delivery Date") and the scheduled date of production for such Products ("Scheduled Production Date") for the purposes of Section 2.2(c). The Agreed Delivery Date may be amended by agreement of the Parties or as set forth in Section 2.2(c). If Patheon fails to acknowledge receipt of a Purchase Order within the […***…] business day period, the Purchase Order will be deemed to have been accepted by Patheon.

(e) Patheon shall deliver Product to Flexion […***…] the Facility (as defined in Incoterms 2010) by the Agreed Delivery Date. All Product shall be packed for shipping in accordance with the Specifications. Title and risk of loss to Product shall pass to Flexion (or a designated Flexion Affiliate) […***…]. Each delivery of Product shall be accompanied by a Certificate of Analysis and a Certificate of Compliance and such other documents as may be required pursuant to the Quality Agreement. The costs of all freight, insurance, handling fees, taxes, and other costs associated with the shipment of Product, as well as export licenses, import license, and customs formalities for the import and export of goods will be borne by […***…]. Patheon shall endeavour to make all deliveries of Product hereunder utilizing stock rotation based on expiration dating, with Product expiring earliest delivered first, save that a failure to comply with this requirement shall not be grounds for Flexion to reject any Product. Flexion shall collect shipments reasonably promptly from the Facility following notification of availability for

delivery from Patheon. Storage of Product will be as described in Section 2.2(e). Patheon will, in accordance with Flexion's instructions and as agent for Flexion, at Flexion's risk, arrange for shipping to be paid by Flexion. Flexion will arrange for insurance and will select the freight carrier used by Patheon to ship Products and may monitor Patheon's shipping and freight practices as they pertain to this Agreement.

(f) If Flexion cancels any Purchase Order after receipt thereof by Patheon, Flexion will pay Patheon […***…]% of the Product Fee for the Purchase Order.

2.4 Product Fees. The purchase price for all Products Manufactured hereunder (the "Product Fee") shall be as set forth on Schedule 2.1(a). Patheon shall invoice Flexion for all quantities of Product Manufactured and ready for collection by Flexion not previously invoiced in accordance with Purchase Orders. All Product Fees will be due and payable in accordance with the invoicing procedures set forth in ARTICLE IV.

2.5 Base Fees. Patheon will invoice Flexion monthly in advance for the Base Fee and any Phase I Filling Space Fee set forth Schedule 2.1(a). All Base Fees and Phase I Filling Space Fees will be due and payable in accordance with the invoicing procedures set forth in ARTICLE IV.

2.6 Product Fee Adjustment. The Parties shall use commercially reasonable efforts to reduce, through operating efficiencies, the cost of Manufacture of the Products during the Term and the benefits of such reduction in costs shall be shared equally by the Parties. The Product Fee stated herein is calculated as at the 1st January 2015. Starting on the […***…], the Product Fee shall be adjusted annually to reflect any increase in the UK Consumer Price Index: All Items Index published by the Office for National Statistics (as published at www.ons.gov.uk, specific details are located at http://www.ons.gov.uk/ons/rel/cpi/consumer-price-indices/) during the preceding twelve (12) months (based on the average of the monthly changes over the 12-month period). Schedule 2.1(a) shall be deemed amended pursuant to the terms hereof. The Product Fee is subject to adjustment if, after […***…] from the FDA Approval Date, (i) Flexion does not submit Purchase Orders for at least […***…] vials of Product per calendar year, in which case the Product Fee may increase by an amount reasonably sufficient for Patheon to absorb its increased costs, and (ii) Flexion submits Purchase Orders for more than […***…] vials of Product per calendar year, in which case the Product Fee may decrease for the volumes of Product exceeding […***…] vials per calendar year as reasonably agreed-on by the Parties in order to adjust for additional volume discounts and economies of scale.

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2.7 Failure or Inability to Supply Product.

(a) Patheon shall ensure that Product is Manufactured and delivered to Flexion on a timely basis consistent with the terms of this Agreement (including the Forecast and Purchase Order procedures set forth in Section 2.3). In the event that Patheon, at any time during the Term, shall have reason to believe that it will be unable to supply Flexion with the full quantity of Product forecasted to be ordered or actually ordered by Flexion in a timely manner and in conformity with the warranty set forth in Section 6.3 (whether by reason of force majeure or otherwise), Patheon shall notify Flexion thereof within […***…] business days. Promptly thereafter, the Parties shall meet to discuss how Flexion shall obtain such full quantity of conforming Product. Compliance by Patheon with this Section 2.7(a) shall not relieve Patheon of any other obligation or liability under this Agreement, including any obligation or liability under clause (b) below. If Patheon's inability is partial, Patheon shall fulfill Purchase Orders with such quantities of Product as are available. In the event Patheon's inability to meet Purchase Orders or forecasts is due to a shortage of production capacity in the Manufacturing Suite, Patheon shall in addition to the foregoing requirements, promptly notify Flexion of such shortage of production capacity and the estimated date such shortage of production capacity is to end.

(b) If Patheon fails to Manufacture the full quantity of Product specified in a Purchase Order by the Agreed Delivery Date and in conformity with the warranty set forth in Section 6.3 (and such failure is directly due to the acts or omissions of Patheon where such acts or omission does not constitute a force majeure event pursuant to the terms of Section 10.2) ("Late Product"), and Patheon is unable to cure such failure within […***…] days, in full and final settlement of such failure, Flexion, at its option, may (i) cancel the unfulfilled portion of such Purchase Order, in which event Flexion shall have no liability with respect to the portion of such Purchase Order so cancelled, or (ii) accept late delivery of all or any portion of the Product specified in such Purchase Order, in which event (A) Patheon shall pay all reasonable documented shipping costs for the expedited shipment of Product that are required in addition to the shipping costs for a non-expedited shipment (which shall be the responsibility of Flexion), and (B) the Product Fee otherwise payable by Flexion with respect to all Product delivered late but accepted by Flexion under such Purchase Order shall be reduced by […***…]% per day for each day of delay after such Agreed Delivery Date, but not to exceed in aggregate an amount equal to […***…]% of the Product Fees of the Product delivered late (i.e., […***…] days) per Purchase Order; provided that, sub-Section (ii) shall only apply after the Manufacture and delivery of the first […***…] batches of commercial Product (including validation batches) pursuant to this Agreement, following which, if the Parties agree that the Manufacturing process is sufficiently robust to allow the Product to be delivered in a timely manner, this sub-Section (ii)

shall be implemented. Any Product which is delivered to Flexion with less than […***…] of expiry, assuming a product shelf life of […***…], shall be considered Non-Conforming Product subject the provisions of Section 2.8(c); provided that, if the Product shelf life is not […***…] (as set forth in the FDA approved label for the Product), the Parties shall mutually agree in good faith on the reasonably appropriate minimum amount of expiry a Product should have when delivered.

2.7 A. Batch Numbering and Expiration Dates: Each batch of the Product manufactured by Patheon will bear a unique lot number using Patheon batch numbering system. This number will be printed on the aluminium cap of the vial and will appear on all documents relating to the particular batch of Product and shall identify the date of manufacture for the batch of Product. Patheon will calculate the expiration date for the Product for each batch by adding the expiration period of the Product supplied by Flexion to the date of manufacture of each batch.

2.8 Non-Conforming Product.

(a) In the event Patheon discovers a potential Non-Conforming Product prior to delivery of such Product to Flexion, Patheon shall provide written notice to Flexion as soon as practicable describing in detail the Non-Conforming Product and the potential cause of such Non-Conforming Product. Flexion (or its shipping carrier) will perform a customary inspection of the Products Manufactured by Patheon on receipt. For the avoidance of doubt, such inspection will be limited to a visual inspection of the shipment-ready packaged Products (and associated shipping documentation) and Flexion will not be obliged to perform any testing of the Product. Flexion shall within (i) […***…] days after delivery thereof by Patheon or (ii) within […***…] days after Flexion discovers or is informed of a discovery of nonconformity that could not reasonably have been detected by the customary inspection on delivery (but not after the expiration date of the Product), give Patheon notice of any Non-Conforming Product (including a sample of such Non-Conforming Product, if applicable) (a "Deficiency Notice"). Subject to Flexion's rights under 3.10 and 3.12, should Flexion fail to give Patheon the Deficiency Notice within the applicable […***…] day period, then the delivery will be deemed to have been accepted by Flexion on the […***…] day after delivery or discovery, as applicable. Patheon shall have no liability under this Section 2.8 for Nonconforming Product for which it has not received a Deficiency Notice within such applicable […***…] day period.

(b) Patheon shall conduct a root-cause analysis to verify whether a Product constitutes a Non-Conforming Product and, if found, to determine the cause of such Non-Conforming Product (including by undertaking an appropriate evaluation of a Non-Conforming Product sample, as applicable).

Flexion shall provide reasonable cooperation to Patheon in connection with any such root-cause analysis. Patheon shall notify Flexion in writing of its determination regarding whether the Product constitutes a Non-Conforming Product within […***…] days after either discovery of the Non-Conforming Product or receipt of such Deficiency Notice from Flexion, as applicable. Such notification shall include Patheon's good faith determination of the cause of the Non-Conforming Product.

(c) "Patheon Nonconformance" shall mean (i) Patheon's failure to perform […***…] pursuant to Section […***…], and (ii) Patheon's failure to provide the […***…] in accordance with the […***…]. In the event of a Non-Conforming Product caused by a Patheon Nonconformance, Patheon, at Flexion's option, promptly shall (x) supply Flexion with a conforming quantity of Product at Patheon's expense (subject to Flexion supplying Patheon with Flexion-Supplied Materials and Patheon reimbursing Flexion for the actual costs of […***…]) and reimburse Flexion for any incurred shipment costs in the event that the Non-Conforming Product was shipped from the Facility at the time of the discovery of the Patheon Nonconformance ("Shipment Costs")); or (y) reimburse Flexion for the applicable Product Fee (including the cost of any Patheon-Supplied Materials), the actual costs of the […***…] and Shipment Costs with respect to such Non-Conforming Product (in each case, to the extent already paid by Flexion). For each of (x) and (y) above, Patheon's obligation to reimburse […***…] shall be subject to the limitation of liability in Section 9.5(a) herein but Section 9.5(a) (1) shall not apply in relation to the internal expenses incurred by Patheon to supply conforming Product to Flexion pursuant to (x), including the cost of any Patheon-Supplied Materials or any Shipment Costs, and (2) shall not apply to the reimbursement of the Product Fee pursuant to (y). For the avoidance of doubt, Flexion will not be liable for Product Fees for Non-Conforming Product caused by a Patheon Nonconformance.

(d) If the Non-Conforming Product was caused by any reason other than a Patheon Nonconformance or the cause of such non-conformance is not due to Patheon Nonconformance (where applicable, as may be determined by an Expert in accordance with 2.8(e), Flexion shall be liable for all expected Product Fees for such Non-Conforming Product, to the extent not already paid.

(e) If, following the root-cause analysis described in Section 2.8(b), Patheon notifies Flexion that it does not believe the Product is a Non-Conforming Product, or if the Parties disagree as to the cause of a Non-Conforming Product, the Parties shall first submit such dispute to the Project Managers for prompt resolution. If the Project Managers cannot resolve the dispute, the Parties

shall submit the dispute to an independent expert or (if mutually agreed to by the Parties) a testing lab, each as agreed by the Parties (a "Expert") for evaluation, provided that both Parties shall be entitled to observe and obtain copies of all results of such evaluation. The Expert shall determine (i) whether the Product is a Non-Conforming Product and (ii) the cause of the Non-Conforming Product; provided that, if the cause of the Non-Conforming Product is undeterminable the Expert shall give an opinion as to the likely cause. Both Parties shall cooperate with the Expert's reasonable requests for assistance in connection with its evaluation hereunder. The findings of the Expert shall be binding on the Parties, absent fraud or manifest error. The expenses of the Expert shall be borne (x) by Patheon if the testing confirms the Non-Conforming Product and the cause or likely cause is found to be a Patheon Nonconformance; (y) by Flexion if the testing confirms the Non-Conforming Product and the cause or likely cause is found not to be a Patheon Nonconformance or the cause or likely cause of such non-conformance is not identifiable; and (z) by the Party stating the Product was Non-Conforming in the event the testing concludes that the Product meets the warranty set forth in Section 6.3. Costs of dealing with Product Complaints and Inquiries will be dealt with in accordance with Section 3.10. Costs of recalls will be dealt with in accordance with Section 3.12. Patheon shall have no liability for any Non-conforming Product unless such Non-conforming Product is identified as being due to a Patheon Nonconformance (where applicable, as may be determined by an Expert in accordance with 2.8(e).

(f) During its performance of the Manufacturing Services, Patheon is expected to produce a certain percentage of saleable batches of Product (the "Yield"). For the avoidance of doubt, Nonconforming Product arising from anything other than a Patheon Nonconformance is treated as good and saleable Product for the purposes of this Section 2.8(f). The Parties shall calculate and mutually agree on the expected Yield after each anniversary of the initial batch of commercial Manufacture of Product and based on at least […***…] batches of Product (the "Expected Yield Rate"). In the event the actual Yield in any calendar year is more than […***…]% lower than the then-current Expected Yield Rate for such calendar year, (i) Patheon and Flexion will engage in good faith discussions to agree to a remediation plan describing the steps to be taken to achieve the then-current Expected Yield Rate and (ii) Patheon will reimburse Flexion for […***…] used by Patheon as a result of Patheon's failure to meet the Expected Yield Rate in such batches (i.e., a pro-rated refund of […***…] paid by Flexion and/or reimbursement to Flexion for the costs of any […***…]) subject to the limitation of liability in Section 9.5(a) (the "Yield Reimbursement Payment"). In the event the actual Yield in any calendar year is more than […***…]% greater than the then-current Expected Yield Rate for such calendar year, Patheon shall be entitled to reduce any Yield Reimbursement Payment to be made in the next calendar year by an amount equal to the excess Materials that would have been

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used by Patheon if the Yield for such calendar year was equal to the then-current Expected Yield Rate in such batches.

2.9 Equipment and Amendment of Product Specifications, Manufacturing Process, Equipment and Formulation.

(a) Equipment.

(i) "Flexion Manufacturing Equipment" shall mean process equipment necessary to Manufacture the bulk Product and shall consist of equipment for the bulk Manufacturing, vial preparation, fill/finish, and in-process control testing of the Product and its intermediates as more fully set forth on Schedule 2.9 attached hereto which must comply with all EU mandatory requirements including without limitation, Supply of Machinery (Safety) Regulations 2008 (UK Regulations, Secondary UK Legislation), Electrical equipment of machines (General requirements BS EN 60204-1:2006+A1:2009) (British Product Standards), Machinery Directive 2006/42/EC (European Union Directive), Low Voltage Directive (LVD) 2006/95/EC (European Union Directive), and Electromagnetic Compatibility (EMC) Directive 2004/108/EC (European Union Directive).

(ii) "Patheon Manufacturing Equipment" shall mean any equipment, other than the Flexion Manufacturing Equipment, necessary to Manufacture the Product including as more fully set forth in Schedule 2.9 attached hereto, waste handling systems and all building infrastructure and any and all improvements or additions made thereto, as approved in writing by Flexion.

(iii) Patheon, acting as Flexion's agent, shall purchase the Flexion Manufacturing Equipment on Flexion's behalf and pursuant to Flexion's written instruction. The inclusion of items of Flexion Manufacturing Equipment in Schedule 2.9, as may be amended by agreement from time to time, shall constitute written instruction to purchase. Title to all Flexion Manufacturing Equipment will be held by Flexion unless otherwise set forth in Schedule 2.9. Title to all Patheon Manufacturing Equipment will be held by Patheon.

(iv) Patheon is authorized to use the Flexion Manufacturing Equipment solely for the purposes of performing the Manufacturing Services for Flexion.

(v) During the Term, Flexion shall be responsible for additions and replacement cost of any Flexion Manufacturing Equipment and Patheon Manufacturing Equipment.

(vi) During the Term, Patheon shall, at its sole cost and expense, subject to this subsection (vi), provide all Maintenance for the Equipment and Facilities. Notwithstanding the foregoing, with respect to the Flexion Manufacturing Equipment and Patheon Manufacturing Equipment, Maintenance does not include (A) the cost of spare parts, (B) Equipment breakdowns caused by any reason outside of Patheon's reasonable control (other than breakdowns caused

by Patheon's negligence or failure to maintain the Equipment in accordance with the applicable Equipment Standard Operating Procedures of Patheon or the manufacturer's terms of operation and recommended procedures), or (C) specialized maintenance services not within Patheon's technical expertise or that requires specialist equipment, in each case where Patheon is required to utilize a Third Party contractor. Patheon's costs associated with such spare parts and Third Party contractors will be reimbursed by Flexion as a Bill Back Item. Patheon shall not be liable for ordinary wear and tear of the Flexion Manufacturing Equipment or Patheon Manufacturing Equipment; Patheon shall only be liable for the repair or replacement of any damage caused to such Equipment where such damage arises due to its negligence or willful misconduct or its failure to maintain Equipment pursuant the applicable Equipment Standard Operating Procedures of Patheon or the manufacturer's terms of operation and recommended procedures. Throughout the Term of this Agreement, Patheon shall maintain property insurance on Flexion Manufacturing Equipment in the amount equal to the replacement value of such Equipment.

(b) For changes to the Specifications, Quality Agreement, Flexion's Manufacturing Process, the Equipment, the Services to be provided pursuant hereto or the formulation of the Product that are required by Applicable Law (collectively, "Required Manufacturing Changes"), Patheon and Flexion shall cooperate to promptly make such changes within the required timeline.

(c) For changes to the Specifications, Quality Agreement, Flexion's Manufacturing Process, the Equipment, the Services to be provided hereto or the formulation of the Product that are not Required Manufacturing Changes (collectively, "Discretionary Manufacturing Changes"), Patheon and Flexion must each agree to any Discretionary Manufacturing Changes and shall cooperate in making such changes, and each agrees that it shall not unreasonably withhold, condition or delay its consent to such Discretionary Manufacturing Changes.

(d) Notwithstanding the foregoing, all internal and external costs, including, without limitation, costs of obsolete Materials, work-in-process and Product (i) associated with Required Manufacturing Changes shall be borne by Flexion, and (ii) all such costs associated with Discretionary Manufacturing Changes shall be agreed between the Parties; provided that, in each case, all such costs shall be commensurate with costs common in the industry for the types of changes being made.

(e) In the event that Flexion changes the Specifications, Quality Agreement, Flexion's Manufacturing Process, the Equipment, the Services to be provided hereto or the formulation of the Product, or consents to any change by Patheon, Patheon shall provide to Flexion at Flexion's cost as an Additional Service any such documentation or other information with respect thereto as they relate to the Manufacturing Services as Flexion may reasonably request in order to obtain or maintain any Regulatory Approval or comply with GMP or other Applicable Law.

2.10 Phase I Filling Space Option.

(a) Prior to the Phase III Manufacturing Suite Clearance Date, Patheon shall provide the Manufacturing Services utilizing the Phase I Filling Space and Phase II Manufacturing Space. During this period, the Phase I Filling Space Fee set forth in Schedule 2.1(a) shall be payable if a period of […***…] has elapsed after the date on which Flexion submitted for approval to the FDA or other applicable Regulatory Authority for the Manufacture of Product in the Phase III Manufacturing Suite for commercial sale in the Territory. The Phase I Filling Space Fee shall cease to be payable on the Phase III Manufacturing Suite Clearance Date unless Flexion exercises the Phase I Option.

(b) After the Phase III Manufacturing Suite Clearance Date, (1) Patheon will provide the Manufacturing Services set forth herein utilizing the Phase II Manufacturing Space and Phase III Manufacturing Suite and (2) Flexion shall have the option to elect to have Patheon continue to provide the Manufacturing Services utilizing the Phase I Filling Space for all or any portion of the remaining Term (the "Phase I Option"), provided that, (i) Flexion pays the Phase I Filling Space Fee set forth in Schedule 2.1(a) commencing after election of the Phase I Option, and (ii) the Phase I Option shall cease to be applicable if Flexion does not exercise the Phase I Option within […***…] from Patheon's notice to Flexion that […***…]. After the Phase III Manufacturing Suite Clearance Date, Patheon shall have no obligation to provide the Manufacturing Services utilizing the Phase I Filling Space unless Flexion has exercised the Phase I Option in accordance with this Section 2.10(b).

(c) The extent of the use of the Phase I Filling Space for the Manufacturing Services shall be at Flexion's sole discretion both prior to and after the Phase III Manufacturing Suite Clearance Date except that the Parties acknowledge that the Phase I Filling Space will […***…] after the Phase III Manufacturing Suite Clearance Date. The Parties shall discuss and agree […***…] in good faith but any associated costs or fees would be payable by […***…].

(d) For purposes of this Section 2.10, the "Phase III Manufacturing Suite Clearance Date" shall mean the date upon which, in Flexion's sole discretion, the FDA or other applicable Regulatory Authority, has approved or will allow the Product to be Manufactured in the Phase III Manufacturing Suite for commercial sale in the applicable Territory.

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ARTICLE III. REGULATORY, ACCESS, AND OTHER MATTERS

3.1 Quality Agreement. Within […***…] of the Effective Date, the Parties shall enter into a mutually agreed upon quality agreement ("Quality Agreement"). If the is any inconsistency between this Agreement and the Quality Agreement, the terms of the Quality Agreement shall control solely with respect to quality issues, and this Agreement shall control with respect to all other issues.

3.2 Release. All Product shall be released in accordance with the terms of the Quality Agreement.

3.3 Maintenance of Facility.

(a) Patheon shall Manufacture the Product […***…] at the Facility, unless Flexion has granted prior written consent to Manufacture the Product at any other facility, such consent to be granted by Flexion in its sole discretion.

(b) Subject to Section 2.9(b)-(d), Patheon shall ensure that any and all necessary licenses, registrations, and Regulatory Authority approvals have been obtained in connection with the Facility and Equipment used in connection with the Manufacture of the Product by Patheon.

(c) Subject to Section 2.9, Patheon shall maintain the Facility and Equipment in a state of repair and operating efficiency consistent with the requirements of the Specifications, the Regulatory Approvals, Flexion's Manufacturing Process, GMP, and all other Applicable Law. Prior to each use of Equipment in Manufacturing the Product, Patheon shall ensure that such Equipment is cleaned and consistent with any procedures reasonably established by Flexion and notified to Patheon, the Specifications, the Regulatory Approvals, Flexion's Manufacturing Process, GMP, and all other Applicable Law. Without limitation of the foregoing, Patheon agrees to implement, in connection with the Manufacture of the Product, quality assurance and quality control procedures, including validation protocols and process change procedures that are reasonably satisfactory to Flexion.

(d) Patheon shall maintain in the Facility an adequate GMP and temperature controlled area for the Product, all intermediates thereof, and Materials used in Manufacturing the Product in accordance with the Specifications, the Regulatory Approvals, Flexion's Manufacturing Process, any risk mitigation plan, the Quality Agreement, GMP, and all Applicable Law. All Product, intermediates and Materials (as applicable) shall be held by Patheon in a GMP and temperature controlled area (on a separate pallet and SAP reference from other products) until delivery to Flexion.

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(e) Patheon shall only use qualified disposal services or sites that have appropriate environmental and operating permits and are in compliance with the Quality Agreement and Applicable Law.

3.4 Flexion On Site Representatives; Project Managers. For so long as Patheon is obliged to Manufacture and supply the Products for Flexion, Flexion shall have the right at all times throughout the Term to have […***…] representatives present (or other number as reasonably requested by Flexion after discussion by the members of the Steering Committee) (each, a "Flexion On Site Representative") in that portion of Patheon's Manufacturing facilities that is being used to Manufacture the Product or store Materials to observe the procedures and processes used to Manufacture the Product. Subject to the following sentence, such representatives shall have full access to the Manufacturing Suite and to all non-financial records that relate to the Product, the Materials and Bill Back Items. Patheon shall provide reasonable (semi-permanent) on-site accommodations at the Facility for the Flexion On Site Representatives (*e.g.*, office space). For the avoidance of doubt, the term "non-financial records" as used in this Agreement does not include the Reports (defined in Section 3.11 below). Flexion On Site Representatives shall be appropriately trained by Flexion (e.g. GMP training) and shall observe at all times Patheon's policies and procedures (as amended from time-to-time) as they pertain to the Facility, including policies relating to health and safety and compliance with GMP, and comply with all reasonable directions of Patheon in relation to the same; provided that Flexion is given notice of such policies and given a reasonable period of time to review and implement such policies. Patheon may refuse or limit in its sole discretion at any time admission to the Facility by any Flexion On Site Representative who fails to observe such policies or comply with such reasonable directions. For the avoidance of doubt, Flexion On Site Representatives shall have (i) no management authority over any Patheon employee and (ii) no authority to conclude contracts on behalf of Flexion. Patheon and Flexion will each appoint a project manager (each, a "Project Manager" and, together, the "Project Managers"), who will meet as needed to resolve any issues or problems arising in the performance of this Agreement. Flexion's Project Manager may be one of the Flexion On Site Representatives.

3.5 Notification of Regulatory Inspections. Patheon shall notify Flexion by telephone within […***…], and in writing within […***…], after learning of any proposed or unannounced visit or inspection of any part of the Facility by any Regulatory Authority, including the Occupational Safety and Health Administration or any equivalent governmental agencies of the country of Manufacture, and shall permit Flexion or its agents to be present at the Facility to support Patheon during such visit or inspection if it, directly or indirectly relates to the Product or Manufacturing Suite or may reasonably be expected to adversely affect the Product or the Manufacturing Suite. For the avoidance of doubt the responsibility for conducting the inspection rests with Patheon. Flexion personnel will be permitted to take part in the inspection where this participation is directly requested either by the authorized agent of the Regulatory Authority or by Patheon. Patheon shall provide to Flexion in so far as it, directly or indirectly, affects the Product or the Manufacturing Suite or may reasonably be expected to adversely affect the Product or the

Manufacturing Suite, either a copy of any report and other written communications received from such Regulatory Authority in connection with any visit or inspection, including the Form 483 observations and responses or any equivalent form under Applicable Law. Such copy or summary shall be provided to Flexion within […***…] business days of Patheon's receipt thereof (and may be redacted as Patheon acting reasonably deems necessary to protect the confidentiality of matters not affecting, or not reasonably likely to affect, the Product or the Manufacturing Suite which are confidential to Patheon or to other clients of Patheon). Flexion shall have the right to review and comment on any communications with such Regulatory Authority pertaining to such inspection as set forth in Section 3.15.

3.6 Manufacturing Records. Patheon shall maintain, or cause to be maintained, (a) all records necessary to comply with GMP and all other Applicable Law relating to the Manufacture of Product, (b) all Manufacturing records, standard operating procedures, equipment log books, batch records, laboratory notebooks, and all raw data relating to the Manufacturing of the Product, and (c) such other records as Flexion may reasonably require in order to ensure compliance by Patheon with the terms of this Agreement. The template, form and style of all records referred to herein are the exclusive property of Patheon; Flexion Proprietary Information and all Product-specific related information contained in these records shall be deemed Proprietary Information of Flexion and be retained for such period as may be required by GMP and all other Applicable Law or for such longer period as Flexion may reasonably require.

3.7 Compliance with Applicable Laws. Patheon shall comply and shall cause each of subcontractors and its Materials and Bill Back Items suppliers to comply with the Quality Agreement, GMP and Applicable Law in carrying out the Manufacturing of the Product and its other duties and obligations under this Agreement. Should during the Term of this Agreement a change or changes in Applicable Law lead to Patheon (a) providing services not originally contemplated by Patheon, or (b) incurring increased costs in order to comply with said change or changes, any such services or costs (to the extent pertaining to the Product or related to Flexion's Manufacturing Process or Flexion Manufacturing Equipment) shall constitute an Additional Service subject to mutual written agreement of the Parties.

3.8 Compliance Audits. Flexion and its designated representatives shall have the right to audit all applicable non-financial records of Patheon for the purpose of determining Patheon's compliance with the obligations set forth in this Agreement and the Technical Transfer Agreement, including Sections 2.2(a) and 6.2 of this Agreement, and the terms of any Purchase Order. Such audit right shall include the right to inspect: (a) the Materials used in the Manufacture of the Product, (b) the holding facilities for such Materials and Product, (c) the Equipment used in the Manufacture of the Product, (d) all non-financial records relating to the Manufacturing Suite and the Manufacturing of the Product (subject to any other restrictions set forth in this Agreement) and (e) all other documentation set forth in the Quality Agreement. Flexion shall provide Patheon with reasonable prior advance notice of its intention to conduct such audit and the Parties will determine a mutually agreeable date for such audit.

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Flexion shall include no more than […***…] of Flexion's representatives in each such audit, with each such audit lasting no more than […***…] days without Patheon's prior written consent. Flexion may exercise its audit rights under this Section 3.8 no more than […***…] per calendar year; provided that, in the event any of the following circumstances arise, Flexion may elect and Patheon shall permit Flexion to conduct additional audits in a timely manner: (i) where there is the occurrence of a condition or event relating to the Materials or any Product which constitutes a serious health risk; (ii) where either Party has received correspondence or a report from a Regulatory Authority pointing out a deficiency in the Product by or on behalf of Patheon; (iii) where the Specifications have not been complied with or there is otherwise evidence that compliance with the Specifications is at risk; or (iv) in the event of a recall related to the Product. The Steering Committee will discuss the findings of any audit conducted by Flexion under this Section 3.8 and shall mutually agree upon a plan to remedy any issues identified by Flexion in such audit and Patheon shall use commercially reasonable efforts to implement such plan in a timely manner. Patheon will support the first Product approval, including its inspection if required, of the FDA or equivalent regulatory launch for other jurisdictions (where applicable) (a "PAI") (including one mock-readiness review and efforts conducted with Flexion representatives in advance of such inspection). Patheon will be prepared for the successful completion of the PAI with respect to the Manufacturing of the Product at the Facility a minimum of […***…] in advance of the anticipated date of the PAI and Patheon will cooperate with Flexion to prepare for and to complete the PAI in accordance with guidelines and requirements set forth by the applicable Regulatory Authority. Additional support (including, without limitation, subsequent regulatory launches or Product approval inspections/resulting reports for other jurisdictions) will be subject to additional fees.

3.9 Inventory Reviews. Without limiting the foregoing, Flexion shall have the right, with Patheon's assistance, to conduct an annual inventory count of the Materials and of the Products. Following an audit or inventory, Flexion may discuss its observations and conclusions with Patheon, and Patheon shall promptly implement such corrective actions after notification thereof by Flexion. In the event the Parties are unable to agree upon whether or not corrective actions are necessary, such dispute shall be resolved pursuant to the terms of Section 10.9.

3.10 Product Inquiries and Complaints.

(a) With respect to Products Manufactured by Patheon, each Party will promptly (as may be further defined in the Quality Agreement) submit to the other Party any Product safety and efficacy inquiries, Product quality complaints, and adverse drug event reports received by such Party, together with all available evidence and other information relating thereto, in accordance with procedures to be agreed upon by the Parties. Except as otherwise required by, or to comply with, Applicable Law or the terms of this Agreement, Flexion, as the Party holding the applicable Regulatory Approval, will be responsible for investigating

and responding to all such inquiries, complaints, and adverse events regarding the Product, and reporting to the FDA or any other Regulatory Authority.

(b) Pursuant to a reported complaint or adverse drug event pertaining to the Products Manufactured by Patheon, if the nature of the reported complaint or adverse drug event requires testing, Patheon will, upon Flexion's request and approval, perform analytical testing of corresponding Product complaint or retention samples and provide the results thereto to Flexion as soon as reasonably practicable, but no later than […***…] days after Flexion's request. Such testing shall be performed using approved testing procedures as set forth in the applicable Regulatory Approval or the Quality Agreement. If such analytical testing concludes that the reported complaint or adverse drug event was the result of a Patheon Nonconformance, Patheon shall reimburse Flexion for […***…] associated with such complaint or adverse drug event and incurred by Flexion with respect to such nonconforming Product, including […***…]. Costs of recalls will be dealt with in accordance with Section 3.12. If such analytical testing concludes that the reported complaint or adverse drug event was not the result of a Patheon Nonconformance, Flexion shall compensate Patheon for all costs associated with such complaint or adverse drug event and incurred by Patheon with respect to such nonconforming Product, including costs of recalls, market withdrawals, returns, and destruction.

(c) If the Parties disagree as to which Party is responsible, Patheon and Flexion representatives shall attempt to resolve such dispute. If the representatives cannot resolve such dispute within […***…] days, the retention samples shall be submitted by Patheon and Flexion to an Expert and Section 2.8 shall apply.

3.11 Reports. Prior to the start of Patheon's commercial Manufacture of the Product (or as reasonably requested by Flexion prior to such date), Patheon and Flexion will work together in good faith to develop and agree upon Patheon's ordinary course reporting obligations. Such reports ("Reports") will include those reports as necessary for Flexion to (a) manage Product inventory; (b) manage its financial close and reporting; (c) monitor on-going Product and process performance for its internal analysis and reporting; and (d) comply with Applicable Law. Patheon will deliver such reports via electronic delivery methods, including by utilizing Patheon's existing IT systems as practicable.

3.12 Product Recalls.

(a) In the event (i) any Regulatory Authority issues a request, directive, or order that Product be recalled, (ii) a court of competent jurisdiction orders such a recall, or (iii) Flexion as holder of the applicable Regulatory Approval shall reasonably determine that Product should be recalled, withdrawn, or a field

correction issued, the Parties shall take all appropriate corrective actions, and shall cooperate in the investigations surrounding the recall. In the event that Flexion determines that Product should be recalled, to the extent reasonably possible, Flexion shall consult with Patheon prior to taking any corrective actions. In the event of any Product recall, withdrawal, or field correction resulting from a Patheon Nonconformance, Patheon shall bear […***…] associated with such recall, withdrawal, or field correction, which shall include […***…] of the recalled Product and all other […***…] incurred in connection with such recall, plus […***…] incurred by Flexion with respect to such Product. In all other circumstances, all costs associated with any Product recall, withdrawal, or field correction shall be borne by Flexion.

(b) If there is any dispute concerning which Party's acts or omissions gave rise to such recall of Product, Patheon and Flexion representatives shall attempt to resolve such dispute. If the representatives cannot resolve such dispute within […***…] days, the matter shall be submitted by Patheon and Flexion to an Expert and Section 2.8 shall apply.

3.13 Payment Audits.

(a) Upon […***…] days' prior written notice, Flexion may audit any Third Party invoices subsequently invoiced to Flexion pertaining to Patheon's provision of Equipment, Materials, Bill Back Items and Additional Services hereunder; provided, however, that Flexion will not be entitled to more than one audit during any […***…] period. Such audits will be conducted during normal business hours, without undue disruption to Patheon's business, and may be conducted by Flexion, or by an independent public accounting firm designated by Flexion who is bound by confidentiality obligations at least as stringent as those set forth in the Confidentiality Agreement. Except as hereinafter set forth, Flexion will bear the full cost of the performance of any such audit.

(b) If, as a result of any audit described in Section 3.13(a), it is shown that the payments or credits from one Party to the other under this Agreement with respect to the period of time audited were less than or more than the amount that should have been paid or credited, then the Parties will reconcile the amounts owed by each Party to the other. In addition, if such audit demonstrates that Patheon has overcharged Flexion hereunder by more than […***…]% for the period audited, then Patheon will also reimburse Flexion for its documented reasonable out-of-pocket costs and expenses incurred in connection with the audit.

3.14 Subcontractors. Prior to subcontracting any of Patheon's obligations hereunder, Patheon will notify Flexion (1) in advance of engaging a proposed subcontractor that directly relates to the Manufacture of the Product and will obtain Flexion's prior written approval of each such subcontractor, and (2) within six (6) months, of all other subcontractors so engaged. The terms of any subcontract directly relating to the Manufacture of the Product will be in writing and will be consistent with this Agreement, including (i) the confidentiality obligations set forth in Article VII, (ii) the representations and warranties of Patheon in Section 6.3, and (iii) compliance with Applicable Law as required hereunder. No subcontracting will release Patheon from its responsibility for its obligations under this Agreement and Patheon will be responsible for the work and activities of each such subcontractor as they relate to performance of Patheon's obligations under this Agreement, including compliance with the terms of this Agreement.

3.15 Regulatory Filing Obligations. Except as otherwise set forth in this Agreement or the Technical Transfer Agreement, each Party will be responsible for all routine filings and communications with Regulatory Authorities ("Regulatory Filings") required with respect to such Party's Regulatory Obligations hereunder. "Regulatory Obligations" shall mean: (i) with respect to Flexion, any Regulatory Filings pertaining to the Product, Flexion's Manufacturing Process, and filling and packaging processes and procedures; and (ii) with respect to Patheon, any Regulatory Filings pertaining to the Facility, including in connection with a Facility inspection by a Regulatory Authority (*e.g.*, those described in Section 3.5). For the avoidance of doubt, Flexion shall have the sole responsibility and Regulatory Obligation for the filing of all documents with all applicable Regulatory Authorities, and to take any other actions that may be required, for the receipt of Regulatory Approval for the development or commercial manufacture of the Product. Flexion shall provide Patheon with a copy of any Regulatory Approval directly relevant to this Agreement on request including any Regulatory Approval required for the storage, receipt or distribution of the Product by Flexion or its designee.

(a) Cooperation. Each Party ("Non-Filing Party") will provide reasonable assistance and cooperation to the other Party ("Filing Party") in the connection with the Filing Party's Regulatory Obligations consistent with the terms of this Section 3.15 and the Non-Filing Party's obligations under this Agreement. The Filing Party shall notify the Non-Filing Party in writing of any written communications received by the Filing Party from a Regulatory Authority related to the other Party's Regulatory Obligations within […***…] business days after receipt thereof. The Filing Party shall consult with the Non-Filing Party concerning the response of the Filing Party to each such communication, unless such filing is not relevant to the Non-Filing Party's Regulatory Obligations.

(b) Verification of Data. Prior to filing any documents or communications with a Regulatory Authority that incorporate or uses data generated by the Non-Filing Party or otherwise relate to the Non-Filing Party's Regulatory Obligations, the Filing Party will give the Non-Filing Party a draft of

such document or communication ("Initial Draft") to give the Non-Filing Party the opportunity to verify the accuracy and regulatory validity of such Initial Draft. The Non-Filing Party shall be given a minimum of […***…] calendar days to review the Initial Draft, but the Parties may mutually agree to a different time for the review as needed under the circumstances. The Initial Draft may be redacted by the Filing Party as reasonably deems necessary to protect the confidentiality of matters not affecting the Non-Filing Party or which are confidential to the Filing Party or to other clients or customers of the Non-Filing Party. The Parties agree that in reviewing the Initial Draft, the Non-Filing Party's role will be limited to verifying the accuracy of the description of its Regulatory Filing Obligations or accuracy of its data or information in the Initial Draft. Notwithstanding the forgoing, nothing in this Section 3.15(b) shall be deemed to limit a Party's ability to make any filing with, or otherwise communicate with, any Regulatory Authority if such Party reasonably determines that such filing or communication is legally required and must be made in an expedited manner and consultation with the other Party as provided herein is not reasonably possible.

(c) Inaccuracies. If the Non-Filing Party determines that any of its data or information in the Initial Draft is inaccurate or any other errors relating to the Non-Filing Party's Regulatory Obligations, the Non-Filing Party will notify Filing Party in writing of such inaccuracy and provide a recommendation to remediate the Initial Draft. Such notice shall also include documentation and data sufficient to substantiate the Non-Filing Party's claim that the Initial Draft is inaccurate to the Filing Party's reasonable satisfaction. The Non-Filing Party shall provide comments to the Initial Draft no later than […***…] days prior to the required filing date with the applicable Regulatory Authority. If the Non-Filing Party does not provide comments or notify the Filing Party of inaccuracies within such […***…] day period, the Non-Filing Party will be deemed to have approved any data or language related to its Regulatory Obligations in the Initial Draft. The Filing Party shall be required to incorporate the Non-Filing Party's recommendations to the extent they directly relate to an error in the Non-Filing Party's data or information or the Non-Filing Party's Regulatory Filing Obligations. The Parties will work together in good faith to resolve any inaccuracies contained in the Initial Draft as soon as practicable under the circumstances to prevent a delay or postponement of such filing (or any related inspections by such Regulatory Authority to which the filing relates). Any on-going disagreement regarding the Deficiencies shall be escalated to the Steering Committee for resolution on an expedited basis.

(d) Responsibilities. Patheon shall deliver a copy of the final version of the filing to Flexion at least […***…] days prior to the required filing date. Flexion shall deliver a copy of the final version of the filing to Patheon promptly after the required filing date. Subject to the foregoing, the Non-Filing

Party will not assume any responsibility for the accuracy of any other materials submitted by the Filing Party to a Regulatory Authority in connection with this Agreement. Except as otherwise set forth in this Agreement or the Technical Transfer Agreement, the Filing Party is solely responsible for the preparation and filing of any materials required by a Regulatory Authority with respect to such Party's Regulatory Filing Obligations hereunder and any relevant costs will be borne by the Filing Party.

ARTICLE IV. FEES AND INVOICING

4.1 General. (a) Patheon shall invoice Flexion for all applicable fees and charges incurred by Patheon as set out in this Agreement or the Technical Transfer Agreement. (b) All invoices shall be sent electronically to […***…]. Payment shall be due thirty (30) days after receipt by Flexion of an undisputed invoice. All payments from Flexion to Patheon hereunder shall be in British Pounds (GBP).

4.2 Late Fees. In relation to all invoices issued by Patheon pursuant to this Agreement, if Flexion fails to make any payment due to Patheon by the due date for payment, then, without limiting Patheon's remedies under ARTICLE VIII or at law, Patheon may charge interest on past due accounts at […***…]% per month which is equal to an annual rate of […***…]%.

4.3 Disputed Invoices. If Flexion disputes any portion of an invoice, (a) Flexion shall provide Patheon with written notice of the disputed portion within […***…] business days of receipt by Flexion of Patheon's invoice and its reasons therefor and shall not be obliged to pay such disputed portion unless and until such disputed portion is determined to be due and owing, and (b) Patheon shall cancel such invoice and issue a new invoice reflecting the undisputed invoiced amount, which shall be paid by Flexion within […***…] days. The Parties shall use good faith efforts to resolve the dispute regarding the disputed amount promptly, and if the Parties agree that a balance is due, Patheon shall issue an invoice for such balance, and payment shall be due […***…] days after receipt of such invoice. In the event of any inconsistency between an invoice and this Agreement, the terms of this Agreement shall control.

4.4 Taxes.

(a) Subject to (b) and (c) below, Patheon will bear all Taxes however designated as a result of the provision of the Services under this Agreement.

(b) Flexion acknowledges that it will be responsible for all Taxes that arise in respect of the following:

(i) The acquisition of the Flexion-Supplied Materials.

(ii) The acquisition of the Flexion Manufacturing Equipment.

(c) Any payment due under this Agreement for the provision of Services to Flexion by Patheon is exclusive of value added or equivalent tax in any other jurisdiction, including any related interest and penalties (hereinafter all referred to as "VAT"). If any VAT is payable on a Service supplied by Patheon to Flexion under this Agreement, this VAT will be added to the invoice amount and will be for the account of (and reimbursable to Patheon by) Flexion. Where applicable, Patheon will use its reasonable commercial efforts to ensure that its invoices to Flexion are issued in such a way that these invoices meet the requirements for deduction of input VAT by Flexion, to the extent permitted by law to do so.

(d) Flexion acknowledges that all amounts due in respect of any fees payable by Flexion under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding in respect of any Tax liabilities.

ARTICLE V. INTELLECTUAL PROPERTY

5.1 Ownership.

(a) Flexion shall maintain ownership and Control of all of its technology and intellectual property rights existing prior to the Effective Date ("Existing Flexion Intellectual Property").

(b) Patheon shall maintain ownership and Control of all of its technology and intellectual property rights existing prior to the Effective Date ("Existing Patheon Intellectual Property").

(c) Existing Flexion Intellectual Property shall include and Flexion shall own all right, title, and interest in and to (i) the Product, (ii) the Specifications, and (iii) Flexion's Manufacturing Process.

(d) Existing Patheon Intellectual Property shall include and Patheon shall own all right, title, and interest in and to the Patheon Manufacturing Equipment as of the Effective Date.

(e) Flexion shall own all right, title, and interest in and to, all intellectual property (specifically including inventions and patents and patent applications therefor) with respect to, and any data with respect to:

(i) (A) any improvement of, modification of, change of, enhancement of, new indication for, new formula for, new formulation for, new ingredients for, new dosage for, new dosage strength for, new means of delivery for, or new labelling or packaging for, the Product ("Flexion Product Improvements"); (B) any improvement of, modification of, change of, or enhancement of the Specifications ("Flexion Specification Improvements"); (C) any improvement of, modification of, change of, enhancement of, new process for, new procedure for, or new step related to Flexion's Manufacturing Process ("Flexion Manufacturing Process Improvements"); and (D) any improvements of, modification of, change

of or enhancement of Flexion Manufacturing Equipment (the "Flexion Manufacturing Equipment Improvements") in each of case (A), (B), (C) and (D) , (1) that is developed, conceived, or created after the Effective Date specifically as a result of or in connection with this Agreement, including Patheon's Manufacturing of the Product hereunder, (2) whether or not patentable, (3) whether developed, conceived, or created by employees of, or consultants to, Flexion or Patheon, alone or jointly with each other or with permitted Third Parties (including permitted sublicensees and subcontractors), and (4) that has specific applicability, meaning it does not have applicability to products other than the Product, to the Product, Specifications, Flexion's Manufacturing Process or the Flexion Manufacturing Equipment as applicable (together the Flexion Specification Improvements, Flexion Product Improvements, Flexion's Manufacturing Process Improvements and the Flexion Manufacturing Equipment Improvements shall be referred to as the "Flexion Specific Improvements");

(ii) any improvement of, modification of, change of, enhancement of manufacturing, processing, formulating, filling, labelling or packaging technology or equipment which is (x) developed, conceived, created, generated or derived after the Effective Date by Patheon, alone or jointly with Flexion or other permitted Third Parties (including permitted sublicensees) specifically as a result of or in connection with this Agreement, and (y) of generic application to the Product, meaning it has application to or utility in relation to a range of products which includes the Product ("Non-Specific Improvement")(the Flexion Specific Improvements and the Non-Specific Improvements are together "Flexion Improvements"); and

(iii) any inventions, know how or other intellectual property developed, conceived, or created by Flexion, alone or jointly with Third Parties (other than Patheon or its Affiliates, or their respective employees and consultants), in the course of conducting activities outside the scope of this Agreement and without any use of any Existing Patheon Intellectual Property, Patheon Independent Manufacturing Equipment Improvements and/or Patheon Non-Applicable Inventions (as defined hereunder).

(f) Patheon shall own all right, title, and interest in and to, all intellectual property (specifically including inventions and patents and patent applications therefor) with respect to, and any data with respect to:

(i) any improvement of, modification of, change of, enhancement of Patheon's Manufacturing Equipment, (1) that is developed, conceived, or created as a result of or in connection with this Agreement, including Patheon's Manufacturing of the Product hereunder, (2) whether or not patentable, (3) whether developed, conceived, or created by employees of, or consultants to, Flexion or Patheon, alone or jointly with each other or with permitted Third Parties (including permitted sublicensees), and (4) that is of generic application rather than a specific solution that only has applicability to the Product, ("Patheon Independent Manufacturing Equipment Improvements");

(ii) any inventions, know how or other intellectual property developed, conceived, or created by Patheon, alone or jointly with Flexion or other permitted Third Parties (including permitted sub-licensees), in the course of conducting activities under the scope of this Agreement where such inventions know how or other intellectual property have no applicability to the Product, the Specifications, Flexion's Manufacturing Process or the Flexion Manufacturing Equipment ("Patheon Non-Applicable Inventions") (together the Patheon Independent Manufacturing Equipment Improvements and the Patheon Non-Applicable Inventions are together "Patheon Improvements"); and

(iii) any inventions, know how or other intellectual property developed, conceived, or created by Patheon, alone or jointly with Third Parties, in the course of conducting activities outside the scope of this Agreement and without any use of any Existing Flexion Intellectual Property or Flexion Specific Improvements.

(g) Patheon shall, and shall cause its Affiliates to, promptly disclose in writing and in reasonable detail to Flexion any Flexion Improvements developed, conceived, or created by employees, consultants, or subcontractors of Patheon or its Affiliates, alone or jointly with employees, consultants or subcontractors of Flexion or its Affiliates. Such written notice will be treated as the Proprietary Information of Flexion hereunder.

(h) Flexion shall, and shall cause its Affiliates to promptly disclose in writing and in reasonable detail to Patheon any potential Patheon Improvement and any Flexion Non-Specific Improvements developed, conceived, or created by employees, consultants, or subcontractors of Flexion or its Affiliates, alone or jointly with employees, consultants, or subcontractors of Patheon or its Affiliates. Such written notice in relation to Patheon Improvements will be treated as the Proprietary Information of Patheon hereunder.

(i) The Specifications, Flexion's Manufacturing Process, and any and all information or material related to the Existing Flexion Intellectual Property, and Flexion Improvements shall constitute Proprietary Information of Flexion, which shall be deemed the disclosing Party with respect to such Proprietary Information and shall be subject to the provisions of Article VII of this Agreement.

(j) Patheon's Manufacturing Equipment and any and all information or material related to the Existing Patheon Intellectual Property and Patheon Improvements shall constitute Proprietary Information of Patheon, which shall be deemed the disclosing Party with respect to such Proprietary Information.

(k) Patheon shall, and shall cause its Affiliates, to disclose in writing and in reasonable detail to Flexion prior to the implementation of any such Patheon Improvement or Non-Specific Improvement into the Manufacturing Services or any potential Patheon Improvements or Non-Specific Improvements and Flexion shall, in its sole discretion, decide whether such improvement shall be

used in the Manufacture of the Product. Such written notice will be treated as the Proprietary Information of Patheon hereunder.

(l) Patheon agrees to, and hereby does, and shall cause each of its employees, consultants, and Affiliates (collectively with Patheon, the "Patheon Assignors") to assign to Flexion all right, title and interest in and to the Flexion Improvements developed, conceived or created by such Patheon Assignors, alone or jointly with others including all intellectual property rights associated therewith. Upon Flexion's request and at Flexion's sole expense, Patheon shall, and shall use commercially reasonable efforts to cause each Patheon Assignor to, assist Flexion or anyone Flexion reasonably designates in preparing, filing, prosecuting, obtaining, enforcing or defending patent, copyright or other intellectual property application or grant of right issuing therefrom in any and all countries in the world.

(m) Flexion agrees to, and hereby does, and shall cause each of its employees, consultants, and Affiliates (collectively with Flexion, the "Flexion Assignors") to assign to Patheon all right, title and interest in and to the Patheon Improvements developed, conceived or created by such Flexion Assignors, alone or jointly with others including all intellectual property rights associated therewith. Upon Patheon's request and at Patheon's sole expense, Flexion shall, and shall use commercially reasonable efforts to cause each Flexion Assignor to, assist Patheon or anyone Patheon reason ably designates in preparing, filing, prosecuting, obtaining, enforcing or defending patent, copyright or other intellectual property application or grant of right issuing therefrom in any and all countries in the world.

5.2 Licenses.

(a) Flexion hereby grants to Patheon a fully paid-up worldwide, non-exclusive license, under Flexion's entire right, title, and interest in and to the Existing Flexion Intellectual Property for Patheon to Manufacture the Products solely pursuant to the terms of this Agreement.

(b) Flexion hereby grants to Patheon a fully paid-up worldwide, non-exclusive license, under Flexion's entire right, title, and interest in and to the Flexion Improvements, in each case to make Products solely pursuant to the terms of this Agreement.

(c) Flexion hereby grants to Patheon a perpetual, irrevocable, fully paid-up worldwide, exclusive license, with the right to grant sub-licences, under Flexion's entire right, title, and interest in and to the Non-Specific Improvements for the manufacture, use, sale or supply of any and all products, except Excluded Products or any and all products which, at any time, are owned by or exclusively licensed to Flexion.

In addition, Flexion grants to Patheon a perpetual, irrevocable, fully paid-up worldwide, co-exclusive license, with the right to grant sub-licences, under Flexion's entire right, title, and interest in and to the Non-Specific Improvements

for the manufacture, use, sale or supply of any and all products which, at any time, are owned by or exclusively licensed (in terms of the right of Flexion to sell such products) to Flexion except Excluded Products.

Accordingly, notwithstanding anything to the contrary herein, Flexion retains:

(i) co-exclusively with Patheon, rights to the Non-Specific Improvements for the manufacture, use, sale or supply of any and all products which, at any time, are owned by or exclusively licensed (in terms of the right of Flexion to sell such products) to Flexion, and

(ii) exclusively, any and all rights to the Non-Specific Improvements for the manufacture, use, sale or supply of Excluded Products;

provided that, in either case (i) or (ii),

(1) Flexion may only sublicense its rights to Non-Specific Improvements to a Third Party in conjunction with the license or assignment by Flexion of rights to manufacture, use, sell or supply a therapeutic product that is, or were prior to the assignment, owned by or exclusively license (in terms of the right of Flexion to sell such products) to Flexion; and

(2) other than with respect to permitted assignments of this Agreement under Section 10.5A herein Flexion shall not assign or otherwise transfer its right to Non-Specific Improvements without the prior written consent of Patheon. In the event that Flexion wishes to assign any Non-Specific Improvement(s) to an Affiliate, Patheon and Flexion shall enter into a novation agreement with that Flexion Affiliate, to novate the rights and obligations hereunder in respect of such Non-Specific Improvement(s) only.

For the purposes of this Section 5.2(c), "Excluded Products" means any product which comprises as its active agent […***…]. For the avoidance of doubt, co-exclusive means that only Patheon (and its authorised sub-licensees) and Flexion (and its authorised sub-licensees) has rights in relation to the Non-Specific Improvements, such rights and the scope and nature of authorised sub-licensees being as expressly set out in this clause 5.2(c) and no wider.

***Confidential Treatment Requested

5.3 Technology Transfer. Upon the request of Flexion at any time during the […***…] period prior to expiry of this Agreement, Patheon shall, at Flexion's cost (i) promptly disclose to Flexion or its designee any Patheon Improvement, (ii) have its representatives meet with representatives of Flexion or its designee to enable Flexion or such designee to Manufacture the Product, and (iii) provide such other assistance as Flexion may reasonably request to enable Flexion or such designee to Manufacture the Product. Flexion shall reimburse Patheon for its fees and all documented out-of-pocket expenses reasonably incurred by Patheon in connection with such technology transfer. Patheon will provide a quotation for the services which Flexion requires pursuant to this Section 5.3 as Additional Services and on acceptance by Flexion of the same, Patheon will provide the services stated therein.

5.4 Third Party Litigation. In the event that, during the Term, any Third Party institutes against Patheon any action that alleges that the Manufacture of the Product hereunder in accordance with the terms hereof infringes the intellectual property rights held by such Third Party, then, as between Patheon and Flexion, and subject to Flexion indemnifying and defending and holding harmless Patheon in relation to such action pursuant Section 9.1(a)(iv) herein, Flexion, at its sole expense, shall have the sole obligation to contest and assume discretion and control of the defense of such action, including the right to settle such action on terms determined by Flexion; provided, however, that in no event may Flexion agree to the entry of any equitable or injunctive relief that is binding on Patheon and its Affiliates without Patheon's prior written consent, not to be unreasonably withheld or delayed. Patheon, at Flexion's expense, shall use all commercially reasonable efforts to assist and cooperate with Flexion as reasonably request by Flexion in such action.

5.5 Licenses of Rights to Intellectual Property. The licenses granted by the Parties hereunder shall be deemed to be licenses of rights to "intellectual property" as defined Section 101 of the United States Bankruptcy Code and, in connection therewith, each Party shall have the rights set forth in Section 365(n) of the United States Bankruptcy Code in the event of any rejection or proposed rejection of this Agreement in any bankruptcy proceeding.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of Each Party. Each Party hereby represents and warrants to the other Party as follows:

(a) Such Party (i) is duly formed and in good standing under the laws of the jurisdiction of its formation, (ii) has the power and authority and the legal right to enter into this Agreement and perform its obligations hereunder, and (iii) has taken all necessary action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such Party and constitutes a legal, valid, and binding obligation of such Party and is enforceable against it in accordance with its terms, subject to the effects of bankruptcy,

insolvency, or other similar laws of general application affecting the enforcement of creditor rights and judicial principles affecting the availability of specific performance and general principles of equity, whether enforceability is considered a proceeding at law or equity.

(b) Except for the FDA's approval of Patheon's manufacturing, testing, and packaging for the Product from the Manufacturing Suite, all necessary consents, approvals, and authorizations of all Regulatory Authorities, other governmental authorities, and other Persons required to be obtained by such Party in connection with the execution and delivery of this Agreement and the performance of its obligations hereunder have been obtained.

(c) The execution and delivery of this Agreement and the performance of such Party's obligations hereunder (i) do not and will not conflict with or violate any requirement of Applicable Law or any provision of the articles of incorporation, bylaws limited partnership agreement, or other constituent document of such Party and (ii) do not and will not conflict with, violate, or breach, or constitute a default or require any consent under, any contractual obligation or court or administrative order by which such Party is bound.

6.2 Additional Representations, Warranties and Covenants, of Patheon. Patheon warrants, represents and covenants, that:

(a) (i) it has facilities, personnel, experience, and expertise sufficient in quality and quantity to perform the obligations hereunder, (ii) it shall perform its obligations in conformity with GMPs where applicable, (iii) it will comply with the Quality Agreement and comply with all agreed upon quality assurance, quality controls, and review procedures in the performance of its obligations hereunder and (iv) during the Term, the Facility will remain operational and qualified for the purpose of the Manufacture of Product under the terms of this Agreement;

(b) it has, as of the Effective Date observed and complied, and shall, during the Term and at its cost (subject to Sections 2.9(b)-(d) and Section 3.7), observe and comply, with all then-current Applicable Laws, including federal, state, and local laws, orders, regulations, rules, customs, and ordinances now in force or that may hereafter be in force, pertaining to the Facility and the performance of the Manufacturing Services and including, without limitation, (i) labor laws, orders, regulations, rules, customs, and ordinances of the country of Manufacture and (ii) those issued by the FDA pertaining to the Manufacturing Services and the Facility (but not those pertaining solely to non-Manufacturing matters relating to the Product, compliance with which shall be the responsibility of Flexion), and any laws, orders, regulations, rules, or ordinances issued in addition to, as a supplement to or as a replacement of Applicable Laws;

(c) none of it, its Affiliates, nor any Person under its direction or control, has ever been, nor will it engage suppliers which have to its actual

knowledge, after due inquiry, been, (i) debarred or convicted of a crime for which a person can be debarred, under Section 335(a) or 335(b) of the FDA Act, or any equivalent Applicable Law of the country of Manufacture, (ii) threatened to be debarred under the FDA Act or any equivalent Applicable Law of the country of Manufacture or (iii) indicted for a crime or otherwise (to its actual knowledge after due inquiry) engaged in conduct for which a person can be debarred under the FDA or any equivalent Applicable Law of the country of Manufacture, and Patheon agrees that it will, within […***…], notify Flexion in the event it receives notification of any such debarment, conviction, threat or indictment. Should Patheon become aware of any actual or suspected noncompliance with the foregoing, Patheon will notify Flexion in writing of such issue within […***…]. For the purpose of this Section 6.2, suppliers and subcontractors engaged by Patheon to undertake the Manufacture of the Product shall be deemed to be under Patheon's direction or control;

(d) none of it, its Affiliates, nor any Person under its direction or control is currently excluded from a federal or state health care program under Sections 1128 or 1156 of the Social Security Act, 42 U.S.C. §§ 1320a-7, 1320c-5 or any equivalent Applicable Law of the country of Manufacture, as may be amended or supplemented;

(e) none of it, its Affiliates, nor any Person under its direction or control is otherwise currently excluded from contracting with the U.S. federal government or the government of the country of Manufacture;

(f) none of it, its Affiliates, nor any Person under its direction or control is otherwise currently excluded, suspended, or debarred from any U.S. or foreign governmental program;

(g) it shall immediately notify Flexion if, at any time during the Term, Patheon, its Affiliates, or any Person under its direction or control is convicted of an offense that would subject it or Flexion to exclusion, suspension, or debarment from any U.S. or foreign governmental program; and

(h) agrees to keep the Equipment free form all liens and encumbrances.

(i) it will not enter into any agreement or arrangement with any other Person that would prevent its ability to perform its obligations hereunder.

6.3 Warranty. Patheon warrants that, at the time of delivery of Product to Flexion: (a) such Product will have been Manufactured in accordance with the […***…]; (b) such Product will be in conformity with the

[…***…] in accordance with the […***…] set out therein and will conform with the […***…] therefor provided pursuant to Section […***…]; (c) title to such Product will pass to Flexion as provided herein free and clear of any security interest, lien, or other encumbrance; (d) such Product will not be adulterated or misbranded within the meaning of the FDA Act *as* a result of a Patheon Nonconformance; and (e) such Product will not be articles that, under the provisions of the FDA Act, may not be introduced into interstate commerce as a result of a Patheon Nonconformance.

6.4 Additional Representations and Warranties of Flexion. Flexion warrants and represents that:

(a) Non-Infringement.

(i) (1) as of the Effective Date, it or its Affiliates Control all issued patents and pending patent applications set forth on Schedule 6.4(a), which patents and applications are necessary for performance of the Manufacturing Services; and (2) it has the right to authorize Patheon to use and exploit such issued patents and pending patent applications to perform the Manufacturing Services in accordance with the terms and conditions hereof;

(ii) as of the Effective Date, to the actual knowledge of Flexion's management team, having taken all Diligent and Reasonable Steps to ascertain the same, that there are no facts or circumstances that would cause Flexion to conclude that the performance of the Manufacturing Services, in accordance with the terms and conditions hereof and using Flexion's Manufacturing Process, or the manufacture, use, supply or other disposition of the Product by Patheon as may be required to perform its obligations under this Agreement, will result, in the infringement or misappropriation of any Third Party's intellectual property rights;

(iii) as of the Effective Date, Flexion or its Affiliates Control and have the right to lawfully disclose the Specifications to Patheon and to authorize Patheon to use the Specification to perform the Manufacturing Services;

(iv) as of the Effective Date, there are no actions or other legal proceedings pending against Flexion and/or its Affiliates concerning the infringement of Third Party intellectual property rights related to any of the Specifications, Flexion's Manufacturing Process, any of the Materials, or the sale, use, or other disposition by Flexion of any Product made in accordance with the Specifications.

For the purposes of part (ii) above, "Diligent and Reasonable Steps" means such steps as would normally be taken by a company of the same size and nature as Flexion for a product of

similar market potential at a similar stage of its product life, when utilizing sound and reasonable business practice.

(b) Quality and Compliance.

(i) during the Term, the Specifications for all Products conform to all applicable GMPs and Applicable Laws;

(ii) during the Term, the Products, if labelled and manufactured in accordance with the Specifications and in compliance with the Quality Agreement, applicable GMPs and Applicable Laws may be lawfully sold and distributed in every jurisdiction in which Flexion markets the Products; and

(iii) during the Term, on the date of shipment to Patheon, any Flexion-Supplied Materials will conform to the specifications for the Flexion-Supplied Materials that Flexion has given to Patheon and the Flexion-Supplied Materials will be adequately contained, packaged, and labelled and will conform to the affirmations of fact on the container.

(c) Flexion agrees that, as a pre-condition to the adding of any country to the Territory pursuant to section 2.2(h), Flexion shall repeat the warranties above as at the date on which the country is added to the Territory.

6.5 **DISCLAIMER. THE FOREGOING EXPRESS WARRANTIES SET FORTH IN THIS ARTICLE VI ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY EACH PARTY.**

6.6 Legal Compliance.

(a) Patheon confirms that all licences, registrations and Regulatory Authority approvals to be obtained by Patheon pursuant to this Agreement and the Technical Transfer Agreement shall be obtained in a lawful and ethical manner.

(b) Patheon has not and shall not cause Flexion or its subsidiaries or affiliates to be in violation of any applicable U.S. export or import control or customs law or regulation, U.S. sanctions or embargoes, the U.S. Foreign Corrupt Practices Act of 1977 (as amended) (“FCPA”), the U.S. Travel Act, the UK Bribery Act of 2010 (the “UK Bribery Act”), anti-corruption and anti-kickback laws and regulations, any applicable anti-corruption laws or regulations of another country, or any other applicable law or regulation. In relation to Flexion’s business, Patheon has not and shall not directly or indirectly offer, pay, solicit, or accept any bribes, kickbacks, or other improper payments/benefits to or from any party, including, but not limited to, any employee, representative, or official of the Flexion, any government, or any state-affiliated entity. Patheon has not and shall not offer, pay, solicit, or accept any rebates or refunds in connection with the Product

or Flexion's business without informing and obtaining the written approval of Flexion in advance and ensuring that such rebate/refund is compliant with all applicable laws and regulations. Patheon has in good faith provided to Flexion accurate and complete due diligence information and materials regarding Patheon and its employees and Affiliates in response to requests by Flexion. In relation to the performance of this Agreement, Patheon shall fully cooperate with Flexion in ensuring compliance with the FCPA, the UK Bribery Act and all other applicable laws and regulations.

(c) Flexion may suspend its performance under this Agreement if Flexion reasonably suspects that Patheon has or will violate the FCPA, the UK Bribery Act or any other applicable law or regulation. Patheon shall reasonably cooperate with Flexion with any audit or questioning related thereto.

(d) Patheon understands and acknowledges that a violation of the FCPA, the UK Bribery Act or any of the terms of this Section 6.6 by Patheon or its employees, agents, or contractors shall constitute a […***…] for the purpose of Section […***…] of this Agreement.

ARTICLE VII. CONFIDENTIALITY

7.1 Confidentiality Obligations.

(a) Subject to the provisions of clauses (b), (c) and (d) below, at all times during the Term and for seven (7) years following the expiration or termination thereof, the Receiving Party (i) shall keep completely confidential and shall not publish or otherwise disclose any Proprietary Information furnished to it by the Disclosing Party, except to those of the Receiving Party's Representatives or Affiliates to perform such Party's obligations hereunder (and who shall be advised of the Receiving Party's obligations hereunder and who are bound by confidentiality obligations with respect to such Proprietary Information no less onerous than those set forth in this Agreement) and (ii) shall not use Proprietary Information of the Disclosing Party directly or indirectly for any purpose other than performing its obligations or exercising its rights hereunder. The Receiving Party shall be jointly and severally liable for any breach by any of its Representatives of the restrictions set forth in this Agreement.

(b) The Receiving Party's obligations set forth in this Agreement shall not extend to any Proprietary Information of the Disclosing Party:

(i) that is or hereafter becomes part of the public domain by public use, publication, general knowledge or the like through no wrongful act, fault or negligence on the part of a Receiving Party or its Representatives or Affiliates;

(ii) that is received from a Third Party without restriction and without breach of any agreement between such Third Party and the Disclosing Party;

(iii) that the Receiving Party can demonstrate by competent evidence was already in its possession without any limitation on use or disclosure prior to its receipt from the Disclosing Party;

(iv) that is generally made available to Third Parties by the Disclosing Party without restriction on disclosure; or

(v) that the Receiving Party can demonstrate by competent evidence was independently developed by the Receiving Party without reference to the Proprietary Information of the Disclosing Party.

(c) Each Party may disclose Proprietary Information to the extent that such disclosure is:

(i) made in response to a valid order of a court of competent jurisdiction or other governmental body of a country or any political subdivision thereof of competent jurisdiction; provided, however, that the Receiving Party shall first have given notice to the Disclosing Party and given the Disclosing Party a reasonable opportunity to quash such order and to obtain a protective order requiring that the Proprietary Information and/or documents that are the subject of such order be held in confidence by such court or governmental body or, if disclosed, be used only for the purposes for which the order was issued; and provided further that if a disclosure order is not quashed or a protective order is not obtained, the Proprietary Information disclosed in response to such court or governmental order shall be limited to that information which is legally required to be disclosed in such response to such court or governmental order;

(ii) otherwise required by law or regulation, including the rules and regulations of any securities authority or stock exchange on which such Party's or its Affiliate's securities are traded, as determined in good faith by counsel for the Receiving Party and acting in accordance with Section 10.10;

(iii) made in connection with the filing or prosecution of patent rights as permitted by this Agreement;

(iv) made in connection with the enforcement of such Party's rights under this Agreement and in performing its obligations under this Agreement;

(v) made in connection with the prosecution or defense of litigation as permitted by this Agreement;

(vi) made to Affiliates, actual and potential licensees and sublicensees, employees, consultants or agents of the Receiving Party who have a need to know such information in order for the Receiving Party to exercise its rights or fulfill its obligations under this Agreement, provided, in each case, that any such Affiliate, actual or potential licensee or sublicensee, employee, consultant or agent agrees to be bound by terms of confidentiality and non-use comparable in scope to those set forth herein; and

(vii) made to Third Parties in connection with due diligence or similar investigations by such Third Parties, and disclosure to potential Third Party investors in confidential financing documents, provided, in each case, that any such Third Party agrees to be bound by reasonable obligations of confidentiality and non-use; and

(viii) with respect to disclosure by Flexion, made to Regulatory Authorities in connection with obtaining and maintaining any Marketing Authorization.

(d) The Parties rights and obligations regarding the filing of this Agreement with any securities authority or with any stock exchange on which securities issued by a Party or its Affiliate are traded are set forth in Section 10.10.

(e) Subject to Patheon's obligations with any Regulatory Authority, upon expiration or termination of this Agreement, each Party, at the request of the other, shall return all data, files, records and other materials in its possession or control containing or comprising the other Party's Proprietary Information; provided that each Party may retain a copy of any Proprietary Information of the other Party required in order to permit a Party to exercise its rights pursuant to clause (c) above.

7.2 Injunctive Relief. Each Party acknowledges that a breach by either Party of the this ARTICLE VII may not reasonably or adequately be compensated in damages in an action at law and that such a breach may cause the other Party irreparable injury and damage. By reason thereof, each Party agrees that the other Party may be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to apply for preliminary and permanent injunctive and other equitable relief to prevent or curtail any breach of this ARTICLE VII; provided, however, that no specification in this Agreement of a specific legal or equitable remedy will be construed as a waiver or prohibition against the pursuing of other legal or equitable remedies in the event of such a breach. Each Party agrees that the existence of any claim, demand, or cause of action of it against the other Party, whether predicated upon this Agreement, or otherwise, will not constitute a defense to the enforcement by the other Party, or its successors or assigns, of the covenants contained in this ARTICLE VII.

ARTICLE VIII. TERM AND TERMINATION

8.1 Term. This Agreement shall commence as of the Effective Date and, unless earlier terminated in accordance with the terms hereof, shall expire on the tenth (10th) anniversary of the FDA Approval Date (the "Initial Term"). Notwithstanding, by mutual agreement the Parties may commence discussions three (3) years prior to the end of the Initial Term with a view to extending the Initial Term for such period or periods as may be agreed (collectively, the Initial Term and any extensions thereof, the "Term").

8.2 Termination. In addition to any other provision of this Agreement expressly providing for termination of this Agreement, this Agreement may be terminated as follows:

(a) Flexion may terminate this Agreement:

(i) at any time by giving Patheon one (1) month prior written notice in the event that for efficacy or safety reasons the Product is withdrawn permanently or, if not yet approved, the Product is barred from further development (in either case for reasons outside of the reasonable control of Flexion) in the United States or any other market in a country or countries of the Territory that represent eighty percent (80%) or more of Flexion's overall Product sales including without limitation: (A) if any Regulatory Authority causes the clinical hold or permanent withdrawal of the Product, (B) failure to receive Marketing Authorization in the United States, (C) failure of the Product to achieve its primary endpoint or key secondary endpoints with respect to either of the ongoing (as of the Effective Date) Phase 2(b) and Phase 3 clinical trials, or (D) safety data which Flexion determines may have a materially adverse impact on use of the Product.

(ii) for convenience, at any time (x) prior to the FDA Approval Date, with three (3) months written notice to Patheon, and (y) after the FDA Approval Date, by giving twenty four (24) months prior written notice to Patheon; or

(iii) at any time upon written notice in the event of any material default by Patheon in the performance of any of its obligations hereunder, which material default has not been cured by Patheon within ninety (90) days after receiving written notice thereof ("Remediation Period"), provided that Patheon shall continue performing hereunder pursuant to the terms of Section 8.4 below. Flexion's right to terminate this Agreement for a particular breach under this Section 8.2(a)(iii) may only be exercised for a period of one hundred twenty (120) days following the expiry of the Remediation Period (where the breach has not been remedied) and, if the termination right is not exercised during this period, then Flexion will be deemed to have waived its right to terminate this Agreement for such breach. For purposes of clarity, the Parties agree that a "material default" of Patheon shall have occurred if (A) Patheon shall have delivered Non-Conforming Product caused by Patheon Nonconformance with respect to three (3) batches in any one calendar year, or (B) the Facility and/or the Manufacturing

Suite violates GMP or other Applicable Law preventing the ability to continue the Manufacturing of Product for at least six (6) months.

(b) Patheon may terminate this Agreement at any time upon written notice in the event of (i) any material default by Flexion in the performance of any of its obligations hereunder, which default has not been cured by Flexion within ninety (90) days after receiving written notice thereof; or (ii) Flexion's default of its payment obligations in accordance with ARTICLE IV which default has not been cured by Flexion within fifteen (15) days after receiving written notice thereof; provided, however, that, if Flexion fails to cure such payment default, Patheon may not terminate without first providing a second notice to the attention of Flexion's Chief Executive Officer and an additional fifteen (15) day cure period.

(c) This Agreement may be terminated at any time by either Party immediately upon written notice to the other Party (A) pursuant to Section 10.2 in the event of a force majeure that remains uncured for the period provided in Section 10.2, or (B) if the other Party shall file in any court or agency, pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for arrangement or for the appointment of a receiver or trustee of the other Party or of its assets, or if the other Party proposes a written agreement of composition of its debts, or if the other Party shall be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition is consented to by such Party or is not dismissed within sixty (60) days after the filing thereof, or if the other Party shall propose or be a Party to any dissolution or liquidation, or if the other Party shall make an assignment for the benefit of its creditors.

(d) Either Party may terminate this Agreement by giving three (3) months' notice to the other Party if a permanent injunction is granted pursuant to a Third Party claim for intellectual property infringement in either the United Kingdom and/or the United States preventing the further sale, promotion or marketing of the Product in such country as applicable.

(e) This Agreement will automatically terminate should either Flexion or Patheon exercise its right to terminate the Technical Transfer Agreement (but not in the event of an expiration of such agreement as set forth in Section 8.2 thereof) prior to the FDA Approval Date, in which case, any payment to Patheon will be made in accordance with the Technical Transfer Agreement.

8.3 Effect of Termination.

(a) The expiration or termination of this Agreement shall be without prejudice to any rights or obligations of the Parties that may have accrued prior to such termination, and the provisions of Sections 2.8 (in respect of Product on the market at the date of termination of this Agreement), 3.5, 3.6, 3.8, 3.10, 3.12, 3.13, 5.1, 5.2(c), 5.5, 6.3, 6.5, 8.3 and 8.4 and ARTICLE I (to the extent definitions are used in other surviving sections pursuant to this Section 8.3(a)), ARTICLE IV,

ARTICLE VII, ARTICLE IX, and ARTICLE X; provided that, Section 3.8 shall only survive for a period of […***…] days after expiration or termination of this Agreement in respect of deviations that occurred before termination or expiration and continue to be relevant shall survive the expiration or termination of this Agreement. Except as otherwise expressly provided herein, termination of this Agreement in accordance with the provisions hereof shall not limit remedies that may otherwise be available in law or equity.

(b) Upon expiration or termination of this Agreement, subject to the Parties' obligations under Section 8.4 below, each Party, at the request of the other, shall return all data, files, records, and other materials in its possession or control containing or comprising the other Party's Proprietary Information.

(c) Upon expiration or termination of this Agreement for any reason, subject to the Parties' obligations under Section 8.4 below, (i) all submitted but unfilled Purchase Orders with respect to which Patheon has (1) not begun Manufacture of Product shall be cancelled, or (2) begun Manufacture of the Product shall be completed, unless otherwise agreed (ii) Flexion shall remove all Flexion Manufacturing Equipment and Materials from the Facility within […***…] days of such termination under all sections other than Section 8.2(a)(iii) and within […***…] days […***…] of a termination by Flexion pursuant to Section 8.2(a)(iii) that is not reasonably disputed by Patheon, failing which Flexion will pay a fee equivalent to the aggregate monthly Base Fee for the Manufacturing Suite for each month or part month the Flexion Manufacturing Equipment or Materials remain at the Facility after […***…] days or […***…] days, as applicable, from such termination.

(d) Upon expiration or termination of this Agreement, subject to the Parties' obligations under Section 8.4 below, (i) Flexion shall purchase from Patheon at Patheon's cost, all unpaid Material Costs and Bill Back Items which were ordered, purchased, produced or maintained by Patheon in contemplation of the Manufacture of the Product in accordance with Section 2.2; (ii) Flexion shall pay Patheon any earned but unpaid Product Fees, including those under any outstanding Purchase Order as described in Section 8.3(c); (iii) Flexion shall pay for any earned (through the month of such expiration or termination) but undisputed and unpaid Base Fees, Phase I Filling Space Fees or Additional Services; and (iv) Flexion shall pay all due and outstanding invoices under ARTICLE IV.

(e) Upon expiration or termination of this Agreement for any reason other than by […***…] pursuant to Section […***…] that is not reasonably disputed by […***…], subject to the Parties' obligations under Section 8.4 below, Flexion shall pay to Patheon all and any removal and Make Good Costs associated with the removal of the Flexion Manufacturing Equipment

from the Facility as agreed to in good faith by the Parties. "Make Good Costs" means the reasonable costs required to repair the Facility and return it to a clean, safe and useable area based on the repair of damage caused by the installation or removal of Flexion Manufacturing Equipment. In relation to termination of this Agreement by […***…] pursuant to Section […***…], Flexion shall pay any Make Good Costs that are required in relation to and to the extent that any damage that is caused to the Facility as a result of the negligence of Flexion or its agent or a failure to materially comply with the reasonable written instructions of Patheon in the removal of Flexion Manufacturing Equipment.

(f) The Parties understand and believe that the expiration or termination of this Agreement for any reason shall not constitute a "relevant transfer" as defined by and pursuant to Regulation 3(1)(b) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). If, contrary to the Parties' understanding and belief, TUPE does apply on the expiration or termination of this Agreement to the transfer of any employee or subcontractor of Patheon to Flexion or to any person who, after expiration or termination of this Agreement, provides to Flexion services similar to the Manufacturing Services and/or the Additional Services ("Replacement Entity") then:

(i) without prejudice to Flexion's obligations under Section 8.3(g) below, following termination or expiry of this Agreement other than by […***…] pursuant to Section […***…], Flexion shall indemnify Patheon for and against all claims, costs, expenses or liabilities arising, incurred or suffered by Patheon in relation to any claim made by or in respect of any person employed or formerly employed by Patheon for which it is alleged Flexion and/or any Replacement Entity may be liable by virtue of TUPE, provided that this indemnity shall not apply if and to the extent that, (A) the aggregate amount payable by Flexion pursuant to this Section 8.3(f)(i) and Section 8.3(g) exceeds the Maximum Manufacturing Services Termination Costs; or (B) any such claim, cost, expense or liability arises as a result of a failure by Patheon to comply with its applicable obligations under TUPE.

(ii) if (A) this Agreement has been terminated by […***…] pursuant to Section […***…], or (B) this Agreement terminates or expires under any other circumstances and the aggregate amount payable by Flexion pursuant to Section 8.3(f)(i) and Section 8.3(g) exceeds the Maximum Manufacturing Services Termination Costs, Patheon shall indemnify Flexion for and against all claims, costs, expenses or liabilities arising, incurred or suffered by Flexion and/or any Replacement Entity in relation to any claim

made by or in respect of any person employed or formerly employed by Patheon for which it is alleged Flexion and/or any Replacement Entity may be liable by virtue of TUPE provided that this indemnity shall not apply if and to the extent that any such claim, cost, expense or liability arises as a result of a failure by Flexion or the Replacement Entity to comply with its applicable obligations under TUPE.

(g) Subject to the Parties' obligations under Section 8.4 below, Flexion shall pay to Patheon the following costs ("Manufacturing Services Termination Costs"): (i) upon expiration or termination of this Agreement, all reasonable actual costs incurred by Patheon to complete activities associated with such completion, expiry or termination including, without limitation, disposal fees that may be payable for any Materials and supplies owned by Flexion to be disposed of by Patheon; and (ii) upon expiration or termination of this Agreement other than by […***…] pursuant to Section […***…], all and any direct costs and expenses or termination or cancellation fees payable by Patheon as a consequence of or arising from the termination of this Agreement, to include but not limited to, all and any reasonable redundancy costs of employees employed by Patheon to work solely or mainly in providing the Services and/or Manufacturing the Product, all and any termination costs in relation to subcontractors and agency staff working solely or mainly in providing the Services and/or Manufacturing the Product and any termination or cancellation fees payable to Third Party suppliers. Patheon will use commercially reasonable efforts to mitigate the Manufacturing Services Termination Costs and reallocate available resources. Patheon will further provide Flexion with documentation in order to substantiate the Manufacturing Services Termination Costs. Notwithstanding anything in this Section 8.3(g), Flexion's aggregate liability for the Manufacturing Services Termination Costs (under both this Agreement and the Technical Transfer Agreement combined) shall be limited to the payment to Patheon of the first £[…***…] (the "Maximum Manufacturing Services Termination Costs").

(h) Flexion acknowledges that no Patheon Competitor (being a Person that derives greater than […***…]% of its revenues from performing contract pharmaceutical or biopharmaceutical development or commercial manufacturing services) will be permitted access to the Facility.

(i) In relation to any representatives of Flexion that are permitted access to the Facility pursuant to Section 8.3 or 8.4, Flexion shall ensure that such representatives are appropriately trained by Flexion (e.g. GMP training) and shall

observe at all times Patheon's policies and procedures (as amended from time-to-time) as they pertain to the Facility, including policies relating to health and safety and compliance with GMP, and comply with all reasonable directions of Patheon in relation to the same; provided that Flexion is given notice of such policies and given a reasonable period of time to review and implement such policies. Patheon may refuse or limit in its sole discretion at any time admission to the Facility by any of Flexion's representatives who fail to observe such policies or comply with such reasonable directions.

(j) The Parties agree that if any fees or charges are duplicated under Section 8.11 of the Technical Transfer Agreement, Flexion shall only be obligated to make such payment once.

8.4 Transition Assistance.

(a) Upon the delivery by either Party of a notice of termination of this Agreement for any reason, upon the request of Flexion, and subject to terms set forth in this Agreement including this Section 8.4(a), (i) Patheon shall provide Flexion with the reasonable assistance of its staff and reasonable access to its other internal resources to provide Flexion with a reasonable level of technical assistance and consultation to transfer the Manufacture and the regulatory qualification of the Product to a supplier of Flexion's election, provided that Flexion will reimburse Patheon for its fees and all documented costs and out-of-pocket expenses incurred in connection with such assistance (Patheon would provide a quotation for the services which Flexion requires pursuant to this Section 8.4 as Additional Services and on acceptance by Flexion of the same, Patheon will provide the services stated therein) and (ii) Patheon will provide the deliverables set forth on Schedule 8.4(a) hereto subject to payment of the fees and costs to be paid by Flexion as described above.

(b) Upon the delivery by […***…] of a notice of termination of this Agreement pursuant to Section […***…] (but not including the giving of notice of termination following an extension to this Agreement pursuant to this Section 8.4(b)), if requested by Flexion in writing given at the same time as the giving of such notice of termination including the term of such additional supply, Patheon shall supply the Products pursuant to the terms of this Agreement for a period not to exceed a maximum of […***…] from the delivery of a notice of termination. For the avoidance of doubt, the termination date of this Agreement shall be deemed the date upon which the Parties have completed their obligations under this Section 8.4. Flexion acknowledges that, during such transition assistance period, no Patheon Competitor (being a Person that derives greater than […***…]% of its revenues from performing contract pharmaceutical or biopharmaceutical development or commercial manufacturing services) will be permitted access to portions of the Facility other than those dedicated to the Manufacture of the Product.

ARTICLE IX. INDEMNIFICATION

9.1 Flexion Indemnification Obligations. Flexion shall indemnify Patheon, its Affiliates, and their respective directors, officers, employees, and agents (the "Patheon Indemnified Parties"), and defend and save each of them harmless, from and against any and all (a) Third Party Losses incurred by any of them in connection with, arising from, or occurring as a result of (i) the breach by Flexion of any of its obligations under this Agreement; (ii) the breach or inaccuracy of any representation or warranty made by Flexion in this Agreement, (iii) any negligence or willful misconduct by Flexion or any of its Affiliates, (iv) any claim made by any Person that the Manufacture and supply of the Product in accordance with the terms hereof infringes or misappropriates the patent, trademark, or other intellectual property rights of such Person, and (v) any product liability claim made by any Person with respect to any Product Manufactured in accordance with the terms hereof, except to the extent liability is based on a Patheon Nonconformance or (b) any Loss incurred by any of them as a direct result of and to the extent of the negligence or willful misconduct of the Flexion On Site Representatives at the Facility except, in each case, for those Losses for which Patheon has an obligation to indemnify the Flexion Indemnified Parties pursuant to Section 9.2, as to which Losses each Party shall indemnify the other to the extent of their respective liability for such Losses and provided, however, that Flexion will not be required to indemnify the Patheon Indemnified Parties with respect to any such Loss hereunder to the extent the same is caused by any breach of contract, negligent act or omission, or intentional misconduct by any Patheon Indemnified Parties. For the avoidance of doubt, the parties acknowledge that Patheon has not and will not conduct any freedom to operate searches in relation to the Product and/or Flexion's Manufacturing Process nor reviewed any third party patents in relation thereto and that Patheon's failure or omission to do so will not be considered negligence for the purposes of excluding or limiting a claim under this indemnity.

9.2 Patheon Indemnification Obligations. Patheon shall indemnify Flexion, its Affiliates, and their respective directors, officers, employees, and agents (the "Flexion Indemnified Parties"), and defend and save each of them harmless, from and against any and all (a) Third Party Losses incurred by any of them resulting from, or relating to, any claim of personal injury or property damage to the extent that the injury or damage is in connection with, arising from, or occurring as a result of (i) the breach or inaccuracy of any representation or warranty made by Patheon in this Agreement, (ii) any negligence or willful misconduct by Patheon or any of its Affiliates; and (iii) any product liability claim made by any Person with respect to any Product Manufactured by Patheon to the extent any such liability is based on or caused by a Patheon Nonconformance; (b) Third Party Losses incurred by any of them in connection with, arising from, or occurring as a result of a claim that any Existing Patheon Intellectual Property or Patheon Improvement used by Patheon in its Manufacture of the Product infringes or misappropriates the patent, trademark, or other intellectual property rights of such Person; except, in each case, for which Flexion has an obligation to indemnify the Patheon Indemnified Parties pursuant to Section 9.1, as to which Losses each Party shall indemnify the other to the extent of their respective liability for such Losses and provided, however, that Patheon will not be required to indemnify the Flexion Indemnified Parties with respect to any

such Loss hereunder to the extent the same is caused by any breach of contract, negligent act or omission, or intentional misconduct by Flexion Indemnified Parties.

9.3 Indemnification Procedure.

(a) Notice of Claim. The indemnified Party (the "Indemnified Party") shall give the indemnifying Party (the "Indemnifying Party") prompt written notice (an "Indemnification Claim Notice") of any Loss, action, or discovery of facts upon which such Indemnified Party intends to base a request for indemnification under Section 9.1 or 9.2 (a "Claim"), but in no event shall the Indemnifying Party be liable for any Losses that result from any delay in providing such notice. Each Indemnification Claim Notice must contain a description of the claim and the nature and amount of such Loss (to the extent that the nature and amount of such Loss are known at such time). The Indemnified Party shall furnish promptly to the Indemnifying Party copies of all papers and official documents received in respect of any Losses upon which it intends to seek indemnification.

(b) Control of Defense. At its option, the Indemnifying Party may assume the defense of any Claims by giving written notice to the Indemnified Party within […***…] days after the Indemnifying Party's receipt of an Indemnification Claim Notice; provided that the assumption of the defense of a Claim by the Indemnifying Party shall not be construed as an acknowledgment that the Indemnifying Party is liable to indemnify any Indemnified Party in respect of the Claim, nor shall it constitute a waiver by the Indemnifying Party of any defenses it may assert against any Indemnified Party's Claim. Upon assuming the defense of a Claim, the Indemnifying Party may appoint as lead counsel in the defense of such Claim any legal counsel selected by the Indemnifying Party. In the event the Indemnifying Party assumes the defense of a Claim, the Indemnified Party shall immediately deliver to the Indemnifying Party all original notices and documents (including court papers) received by any Indemnified Party in connection with the Claim. Subject to clause (c) below, if the Indemnifying Party assumes the defense of a Claim, the Indemnifying Party shall not be liable to the Indemnified Party for any legal expenses subsequently incurred by such Indemnified Party in connection with the analysis, defense, or settlement of such Claim. In the event that it is ultimately determined that the Indemnifying Party is not obliged to indemnify, defend, or hold harmless an Indemnified Party from and against any Claim, the Indemnified Party shall reimburse the Indemnifying Party for any and all costs and expenses (including attorneys' fees and costs of suit) and any Losses incurred by the Indemnifying Party in its defense of such Claim.

(c) Right to Participate in Defense. Without limiting Section 9.3(b), any Indemnified Party shall be entitled to participate in, but not control, the defense of a Claim and to employ counsel of its choice for such purpose; provided,

however, that such employment shall be at the Indemnified Party's own expense unless (i) the employment thereof has been specifically authorized by the Indemnifying Party in writing, (ii) the Indemnifying Party has failed to assume the defense and employ counsel in accordance with Section 9.3(b) (in which case the Indemnified Party shall control the defense), or (iii) the interests of the Indemnified Party and the Indemnifying Party with respect to such Claim are sufficiently adverse to prohibit the representation by the same counsel of both Parties under Applicable Law, ethical rules, or equitable principles.

(d) Settlement. With respect to any Losses (i) relating solely to the payment of money damages in connection with a Claim, (ii) that will not result in the Indemnified Party becoming subject to injunctive or other relief or otherwise adversely affect the business or reputation of the Indemnified Party in any manner, and (iii) as to which the Indemnifying Party has acknowledged in writing the obligation to indemnify the Indemnified Party hereunder, the Indemnifying Party shall have the sole right to consent to the entry of any judgment, enter into any settlement, or otherwise dispose of such Loss, on such terms as the Indemnifying Party, in its sole discretion, shall deem appropriate. With respect to all other Losses in connection with Claims, where the Indemnifying Party has assumed the defense of the Claim in accordance with Section 9.3(b), the Indemnifying Party shall have authority to consent to the entry of any judgment, enter into any settlement, or otherwise dispose of such Loss; provided that it obtains the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, agree to any settlement or acquiesce to any judgment with respect to a Claim that obligates the Indemnified Party to pay any amount subject to indemnification by the Indemnifying Party or causes the Indemnified Party to admit to any civil or criminal liability.

(e) Cooperation. If the Indemnifying Party chooses to defend or prosecute any Claim, the Indemnified Party shall cooperate in the defense or prosecution thereof and shall, at the Indemnifying Party's expense, furnish such records, information, and testimony, provide such witnesses, and attend such conferences, discovery proceedings, hearings, trials, and appeals as may be reasonably requested in connection therewith. Such cooperation shall include access during normal business hours afforded to the Indemnifying Party to, and reasonable retention by the Indemnified Party of, records and information that are reasonably relevant to such Claim, and making employees and agents available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder, and the Indemnifying Party shall reimburse the Indemnified Party for all its time and reasonable out-of-pocket expenses in connection therewith.

(f) Expenses. Except as provided above, the reasonable and verifiable costs and expenses, including fees and disbursements of counsel, incurred by the Indemnified Party in connection with any Claim shall be reimbursed on a monthly basis in arrears by the Indemnifying Party, without prejudice to the

Indemnifying Party's right to contest the Indemnified Party's right to indemnification and subject to refund in the event the Indemnifying Party is ultimately held not to be obliged to indemnify the Indemnified Party.

9.4 Insurance. During the Term and for […***…] thereafter, each Party shall procure and maintain at its own expense from a qualified and licensed insurer liability insurance or indemnity policies, in an amount not less than $[…***…] in the aggregate with respect to public and products liability, subject to such deductible or self-retention limits as either Party in its business discretion may elect. Such policies shall insure against liability on the part of each Party and any of its Affiliates, as their interests may appear, due to injury, disability, or death of any person or persons, or injury to property, arising from the distribution of the Products. Each Party will either (a) include the other Party and its officers and employees and consultants as additional insureds on such policies, or (b) ensure that such policy contains an indemnity to principal clause. Promptly following the execution of this Agreement, each Party shall provide to the other a certificate of insurance (i) summarizing the insurance coverage and (ii) identifying any exclusions. Each Party shall promptly notify the other of any material adverse alterations to the terms of this policy or decreases in the amounts for which insurance is provided.

9.5 Limitation on Damages

(a) Maximum Liability. Except with respect to (i) […***…] of Patheon or (ii) for damages incurred by Flexion arising from, or occurring as a result of a claim by a Third Party that any […***…] used by Patheon in its Manufacture of the Product […***…] or (iii) breaches of […***…], Patheon's maximum liability to Flexion under this Agreement for any reason whatsoever, including, without limitation, any liability arising under Sections 2.7, 2.8, 3.10, 3.12 or 9.2 hereof or resulting from any and all breaches of its representations, warranties, or any other obligations under this Agreement in each calendar year (liability cap pro-rated for part calendar years) will not exceed […***…]% of the revenues received by Patheon pursuant to this Agreement in the […***…] period prior to the month in which the underlying event occurred that gave rise to the liability (e.g. the date of the incident or manufacture).

(b) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR (I) ANY (DIRECT OR INDIRECT) LOSS OF PROFITS, OF PRODUCTION, OF ANTICIPATED SAVINGS, OF BUSINESS, OF GOODWILL OR OF USE OF THE PRODUCT OR COSTS OF ANY SUBSTITUTE SERVICES OR (II) ANY OTHER LIABILITY, DAMAGE, COST OR EXPENSE OF ANY KIND INCURRED BY THE OTHER PARTY OF AN INDIRECT OR CONSEQUENTIAL NATURE, REGARDLESS OF ANY

NOTICE OF THE POSSIBILITY OF THE DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS PARAGRAPH IS INTENDED TO LIMIT OR RESTRICT DAMAGES AVAILABLE FOR […***…].

(c) The limitations set forth in Sections 9.5(a) and 9.5(b) shall not act to exclude or limit either Party's liability for (i) personal injury or death caused by the negligence of that Party, or for (ii) fraudulent misrepresentation.

(d) Sole & Exclusive Remedies. Notwithstanding anything in this Article IX to the contrary:

(i) Except as described in Section 9.5(c) above and except for Patheon's indemnification obligations set forth in Section 9.2, Patheon's sole liability and Flexion's sole and exclusive remedy whether in contract, tort, equity or otherwise for Non-Conforming Product based on or caused by a Patheon Nonconformance shall be the rights and remedies set forth in Section 2.8, 3.10 and 3.12 of this Agreement and in Section 8.2(a)(iii) of this Agreement.

(ii) Patheon's sole liability and Flexion's sole and exclusive remedy whether in contract, tort, equity or otherwise for Patheon's failure to Manufacture the full quantity of Product specified in a Purchase Order by the Agreed Delivery Date shall be the rights and remedies set forth in Section 2.7 and Section 8.2(a)(iii) of this Agreement.

9.6 Product Liability Claims. As soon as it becomes aware, each Party will give the other prompt written notice of any defect or alleged defect in a Product, any injury alleged to have occurred as a result of the use or application of the Product, and any circumstances that may give rise to litigation or recall of a Product or regulatory action that may affect the sale or Manufacture of a Product, specifying, to the extent the Party has such information, the time, place, and circumstances thereof and the names and addresses of the persons involved. Each Party will also furnish promptly to the other copies of all papers received in respect of any claim, action, or suit arising out of such alleged defect, injury, or regulatory action.

9.7 Allocation of Risk. This Agreement (including, without limitation, this ARTICLE IX) is reasonable and creates a reasonable allocation of risk for the relative profits the Parties each expect to derive from the Products.

ARTICLE X. MISCELLANEOUS

10.1 Notices. Notwithstanding that advance notification of any notices or other communications may be given by electronic mail transmission, all notices or other communications that shall or may be given pursuant to this Agreement shall be in writing

(including by confirmed receipt electronic mail) and shall be deemed to be effective (a) when delivered if sent by registered or certified mail, return receipt requested, or (b) on the next business day, if sent by overnight courier, (c) when sent if sent by electronic mail provided that receipt is confirmed, in each case to the Parties at the following addresses (or at such other addresses as shall be specified by like notice) with postage or delivery charges prepaid:

If to Flexion:
Flexion Therapeutics, Inc.
Attn: Michael Clayman, MD
Telephone: […***…]
Email: […***…]

With a copy to: Legal

If to Patheon:

Attention:
Patheon UK Limited
Executive Director & General Manager
Kingfisher Drive, Covingham
Swindon, Wiltshire SN3 5BZ
England
Email: […***…]
with copy to
Legal Director.

10.2 Force Majeure. Neither Party shall be liable for delay in delivery, performance or nonperformance, in whole or in part, nor shall the other Party have the right to terminate this Agreement except as otherwise specifically provided in this Section 10.2 where such delay in delivery, performance or nonperformance results from acts beyond the reasonable control and without the fault or negligence of such Party including, but not limited to, the following conditions: fires, floods, storms, embargoes, shortages, epidemics, quarantines, war, acts of war (whether war be declared or not), terrorism, insurrections, riots, civil commotion, or acts, omissions, or delays in acting by any governmental authority; provided that the Party affected by such a condition shall, within five (5) days of its occurrence, give notice to the other Party stating the nature of the condition, its anticipated duration, and any action being taken to avoid or minimize its effect. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required, and the nonperforming Party shall use its commercially reasonable efforts to remedy its inability to perform; provided, however, that in the event the suspension of performance continues for […***…] days after the date of the occurrence, and such failure to perform would constitute a material breach of this Agreement in the absence of such force majeure event, the non-affected Party may terminate this Agreement immediately by written notice to the affected Party.

10.3 Independent Contractor. The Parties to this Agreement are independent contractors. Nothing contained in this Agreement shall be construed to place the Parties in the relationship of employer and employee, partners, principal, and agent or a joint venture. Neither Party shall have the power to bind or obligate the other Party nor shall either Party hold itself out as having such authority.

10.4 Waiver. Save where expressly stated in Sections 2.8 and 8.2(a)(iii), no waiver by either Party of any provision or breach of this Agreement shall constitute a waiver by such Party of any other provision or breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the Party against whom waiver is sought. No course of conduct or dealing between the Parties will act as a modification or waiver of any provision of this Agreement. Either Party's consent to or approval of any act of the other Party shall not be deemed to render unnecessary the obtaining of that Party's consent to or approval of any subsequent act by the other Party.

10.5 Entire Agreement. This Agreement (together with all Exhibits and Schedules hereto, which are hereby incorporated by reference), the Quality Agreement, and the Technical Transfer Agreement constitute the final, complete, and exclusive agreement between the Parties relating to the subject matter hereof and supersede all prior conversations, understandings, promises, and agreements relating to the subject matter hereof, including without limitation that (i) certain Confidentiality Agreement dated September 22, 2014 between Flexion and Patheon and the Letter Agreement, and (ii) that certain Patheon Partner External User Account/Access Form, Client Agreement and Authorization signed by Flexion on June 5, 2015.

Neither Party has relied upon any communications, representations, terms or promises, verbal or written, not set forth herein. No terms, provisions or conditions of any purchase order or other business form or written authorization used by Flexion or Patheon will have any effect on the rights, duties, or obligations of the Parties under or otherwise modify this Agreement, regardless of any failure of Flexion or Patheon to object to the terms, provisions, or conditions unless the document specifically refers to this Agreement and is signed by both Parties.

10.5A Assignment; Change of Control. This Agreement may not be assigned by Patheon without the prior written consent of Flexion. Notwithstanding the foregoing, either Party may assign this Agreement to an Affiliate or to an acquirer or successor in interest in connection with a Change of Control of such Party without the prior written consent of the other Party, provided that such Party provides the other Party with written notice of any such assignment. This Agreement shall be binding upon and inure to the benefit of Flexion and Patheon and their respective successors, heirs, executors, administrators, and permitted assigns. "Change of Control" means the closing of (a) a merger, consolidation or similar transaction providing for the acquisition of the direct or indirect ownership of more than fifty percent (50%) of a Party's shares or similar equity interests or voting power of the outstanding voting securities or that represents the power to direct the management and policies of such Party (including any acquisition arising through the offering of any shares of Patheon or any of its Affiliates on any securities or stock exchange), or (b) the sale of all or substantially all of a Party's assets related to the subject matter of the Agreement.

10.6 Amendment; Modification. This Agreement may not be amended, modified, altered, or supplemented except by a writing signed by both Parties. No modification of any nature to this Agreement and no representation, agreement, arrangement, or other communication shall be binding on the Parties unless such is expressly contained in writing and executed by the Parties as an amendment to this Agreement. This Agreement may not be amended in any respect by any purchase order, invoice, acknowledgment, or other similar printed document issued by either Party.

10.7 Governing Law

(a) The laws of […***…], whether procedural or substantive (but excluding application of any choice of law provisions contained therein) shall apply to all matters pertaining only to (a) title to and ownership of Materials, Equipment or the Facility, and its appurtenances including, without limitation, all rights therein and the creation, exercise and extinction of such rights, obligations and liabilities or (b) employment law matters. In relation to such matters, both Parties shall submit to the exclusive jurisdiction of the […***…] Courts. For the avoidance of doubt, the Parties agree that nothing in this Agreement shall (i) grant Flexion any property ownership rights in the Facility or (ii) shall constitute a lease to the Facility.

(b) In all other respects, this Agreement shall be construed under and governed by the laws of […***…] without regard to the application of principles of conflicts of law. In relation to such matters, both Parties shall submit to the exclusive jurisdiction of […***…].

(c) Any preliminary issue over which of sub-section 10.7(a) or (b) applies to a particular claim or dispute shall be determined in accordance with provisions of 10.7(a).

(d) The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if applicable.

10.8 Compliance with Applicable Laws. Each Party and its Affiliates, and their respective representatives, shall comply with all applicable laws, rules and regulations in the performance of their obligations under this Agreement. Without limiting the foregoing, each Party and its Affiliates, and their respective representatives, shall comply with export control laws and regulations of the country of Manufacture and of the United States. Neither Party nor its Affiliates (or representatives) shall, directly or indirectly, without prior U.S. government authorization, export, re-export, or transfer the Product to any country subject to a U.S. trade embargo, to any resident or national of any country subject to a U.S. trade embargo, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the

U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. In so far as the same applies to a Party or its Affiliates, each Party and its Affiliates and respective representatives shall comply with the requirements of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. § 78dd-1, et seq.).

10.9 Dispute Resolution.

(a) The Parties recognize that disputes may arise from time to time during the Term of this Agreement. It is the objective of the Parties to establish procedures to facilitate the resolution of such disputes arising under this Agreement in an expedient manner by mutual cooperation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Section 10.9 if and when a dispute arises under this Agreement.

(b) Unless otherwise specifically recited in the Agreement, disputes between the Parties under this Agreement will be first referred to the Project Manager of each Party as soon as reasonably possible after such dispute has arisen. If the Project Managers are unable to resolve such a dispute within fifteen (15) days of being requested by a Party to resolve such dispute, either Party may, by written notice to the other, have such dispute referred to the Steering Committee. If the Steering Committee is unable to resolve such dispute within thirty (30) days of being requested by a Party to resolve such dispute, each Party shall have the right, pursuant to written notice, to refer such dispute to the […***…] of each Party for attempted resolution by negotiations within thirty (30) days after such written notice is received. If the […***…] are unable to resolve such dispute within thirty (30) days of being requested by a Party to resolve such dispute, each Party shall have the right to pursue any remedies available to it at law or in equity.

10.10 Securities Authorities and Stock Exchange Filings; Press Releases; Use of Trademarks.

(a) The Parties shall coordinate in advance with each other in connection with (i) a Party's decision to file this Agreement with any securities authority or with any stock exchange on which securities issued by a Party or its Affiliate are traded, or (ii) any other disclosure of information pertaining to this Agreement as otherwise required by the rules and regulations of the Securities and Exchange Commission or any other securities authority or stock exchange on which securities issued by a Party or its Affiliates are traded, and, in each such instance, (a) the filing Party will provide the other Party at least ten (10) business days to review a draft redacted version of this Agreement, and (b) both Parties shall work together in good faith to agree on the disclosure to be made, having due and proper regard to their legal obligations; provided that the filing Party subject to such rules and regulations shall ultimately retain control over what information to disclose to any securities authority or stock exchange. Each filing Party shall use reasonable efforts to seek confidential treatment for terms proposed to be redacted; provided that the Parties shall use their reasonable efforts to file redacted versions with any governing bodies which are consistent with redacted versions previously filed with any other governing bodies.

***Confidential Treatment Requested

Other than such obligations, neither Party (nor any of its Affiliates) shall be obligated to consult with or obtain approval from the other Party with respect to any filings to any securities authority or stock exchange.

(b) Except for the filings described in Section 10.10(a) above, the Parties agree not to disclose in any press release or other public statement any terms or conditions of this Agreement to any Third Party without the prior consent of the other Party. Neither Party shall (a) issue a press release or make any other public statement that references this Agreement or (b) use the other Party's or the other Party's Affiliates' names or trademarks for publicity or advertising purposes, except with the prior written consent of the other Party. Each Party agrees that it shall cooperate fully and in a timely manner with the other with respect to all disclosures to the Securities and Exchange Commission or any other governmental or regulatory agencies, including requests for confidential treatment of Proprietary Information of either Party included in any such disclosure.

10.11 Severability. If any provision of this Agreement is found by a proper authority to be unenforceable, that provision to the extent it is found to be unenforceable or invalid shall be severed and the remainder of the provision and this Agreement will continue in full force and effect. The Parties shall use their best efforts to agree upon a valid and enforceable provision as a substitute for any invalid or unenforceable provision, taking in to account the Parties' original intent of this Agreement.

10.12 Construction. Unless the context of this Agreement otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement; (d) the terms "Article," "Section," "Exhibit," "Schedule," or "clause" refer to the specified Article, Section, Exhibit, Schedule, or clause of this Agreement; (e) "or" is disjunctive but not necessarily exclusive; and (f) the term "including" or "includes" means "including without limitation" or "includes without limitation." Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless business days are specified. The captions and headings of this Agreement are for convenience of reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The language of this Agreement shall be deemed to be the language mutually chosen by the Parties, and no rule of strict construction shall be applied against either Party hereto.

10.13 Third Party Beneficiaries. This Agreement is not intended to confer upon any non-party rights or remedies hereunder, except as may be received or created as part of a valid assignment.

10.14 Further Assurances. Each of the Parties agrees to duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such additional assignments, agreements, documents, and instruments, that may be necessary or as the other Party hereto may at any time and from time to time reasonably request in connection with this Agreement or to

carry out more effectively the provisions and purposes of, or to better assure and confirm unto such other Party its rights and remedies under, this Agreement.

10.15 Counterparts. This Agreement may be signed in counterparts, each and every one of which shall be deemed an original. Electronic or Facsimile signatures shall be treated as original signatures.

10.16 […***…]

[The remainder of this page is left blank intentionally.]

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

PATHEON UK LIMITED:		**FLEXION THERAPEUTICS, INC.**:	
By:	/s/ A.M. Botterill	By:	/s/ Michael D. Clayman, M.D.
Name:	A.M. Botterill	Name:	Michael D. Clayman, M.D.
Title:	Exec. Dir. & Gen. Manager	Title:	CEO

[…***…]

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Schedule 2.9
[…***…]

***Confidential Treatment Requested for pages 64-65.
Omitted pages have been filed separately with the Commission.

64-65

Schedule 1.60
[…***…]

***Confidential Treatment Requested for pages 66-71.
Omitted pages have been filed separately with the Commission.

66-71

Schedule 1.62
[…***…]

***Confidential Treatment Requested

Schedule 1.82
[…***…]

***Confidential Treatment Requested

Schedule 2.1(a)

I. […***…]

***Confidential Treatment Requested for pages 74-80.
Omitted pages have been filed separately with the Commission.

Schedule 6.4(a)
[…***…]

***Confidential Treatment Requested for pages 81-83.
Omitted pages have been filed separately with the Commission.

81-83

Schedule 8.4(a)

[…***…]

***Confidential Treatment Requested for pages 84-85.
Omitted pages have been filed separately with the Commission.

84-85

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM IF PUBLICLY DISCLOSED.

AMENDMENT AGREEMENT

First Amendment to the Manufacturing and Supply Agreement

This Amendment Agreement (this "**Amendment Agreement**") is between Flexion Therapeutics, Inc., having its principal office at 10 Mall Road, Burlington MA, USA ("Flexion") and Patheon UK Limited, having a principal place of business at Kingfisher Drive, Covingham, Swindon, Wiltshire SN35BZ, United Kingdom ("**Patheon**") (collectively, "**Parties**"; individually, "**Party**"). This Amendment Agreement is dated 8 May 2019 (the "**Amendment Effective Date**").

WHEREAS, Flexion and Patheon entered into a Manufacturing and Supply Agreement ("**Manufacturing and Supply Agreement**") on 31 July 2015, pursuant to which Patheon provides manufacturing services for Flexion's FX006 drug product (ZILRETTA) (an extended-release formulation of triamcinolone acetonide).

WHEREAS, the Parties have agreed to initiate construction of the area referred to as the Phase III manufacturing suite at Patheon's facility and to incur certain capital expenditures to facilitate the manufacture of Flexion's product in this manufacturing suite.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements set forth below and in the Manufacturing and Supply Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereto, intending to be legally bound, do hereby agree as follows:

1.Definitions

Defined terms in this Amendment Agreement shall have the same meaning as those in the Manufacturing and Supply Agreement as applicable unless otherwise indicated.

2.Amendments

The Manufacturing and Supply Agreement shall be amended such that the following Schedules or parts of Schedules to the Manufacturing and Supply Agreement shall be replaced as set out in the Exhibits attached to this Amendment Agreement.
Schedule 2.9 (Equipment)
Phase III and Combined Phases I, II and III of Schedule 1.60 (Footprint)
[***]

3.Effectiveness of Amendments

The amendments to the Manufacturing and Supply Agreement set forth herein shall be effective as of the Amendment Effective Date.

4.Integration

Except for the sections of the Manufacturing and Supply Agreement specifically amended hereunder, all terms and conditions of the Manufacturing and Supply Agreement remain and shall remain in full force and effect. This Amendment Agreement shall hereafter be incorporated into and deemed part of the Manufacturing and Supply Agreement and any future reference to the Manufacturing and Supply Agreement shall include the terms and conditions of this Amendment Agreement.

5.Governing Law and Jurisdiction

This Amendment Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws that govern the Manufacturing and Supply Agreement, and the Parties submit to the jurisdiction and dispute resolution provisions as set forth in the Manufacturing and Supply Agreement.

IN WITNESS WHEREOF, the Parties have caused this Amendment Agreement to be executed by their duly authorized representatives, effective as of the date of the last signature.

FLEXION THERAPEUTICS, INC.	**PATHEON UK LTD.**
/s/ Michael D. Clayman, M.D.	/s/ Luca Andretta
Signature	Signature
Michael D. Clayman, M.D.	Luca Andretta
Name	Name
CEO	Director
Title	Title
May 9, 2019	May 12, 2019
Date	Date

Exhibit 1 of the Amendment Agreement
[***]

Exhibit 2 of the Amendment Agreement
[***]

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM IF PUBLICLY DISCLOSED.

AMENDMENT AGREEMENT

Second Amendment to the Manufacturing and Supply Agreement

This Amendment Agreement (this "**Amendment Agreement**") is between Flexion Therapeutics, Inc., having its principal office at 10 Mall Road, Burlington MA, USA ("**Flexion**") and Patheon UK Limited, having a principal place of business at Kingfisher Drive, Covingham, Swindon, Wiltshire SN35BZ, United Kingdom ("**Patheon**") (collectively, "**Parties**"; individually, "**Party**"). This Amendment Agreement is dated 17 June 2019 (the "**Amendment Effective Date**").

WHEREAS, Flexion and Patheon entered into a Manufacturing and Supply Agreement on 31 July 2015 as amended by the First Amendment Agreement dated 8 May 2019, (together, the "**Manufacturing and Supply Agreement**"), pursuant to which Patheon provides manufacturing services for Flexion's FX006 drug product (ZILRETTA) (an extended-release formulation of triamcinolone acetonide).

WHEREAS, the Parties have agreed to amend certain pricing terms and other related terms of the Manufacturing and Supply Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements set forth below and in the Manufacturing and Supply Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereto, intending to be legally bound, do hereby agree as follows:

1.Definitions

Defined terms in this Amendment Agreement shall have the same meaning as those in the Manufacturing and Supply Agreement as applicable unless otherwise indicated.

2.Amendments

The Manufacturing and Supply Agreement shall be amended such that the original Schedule 2.1(a) to the Manufacturing and Supply Agreement shall be deleted and replaced in its entirety with new Schedule 2.1(a), as set forth in Exhibit 1 to this Amendment Agreement.

3.Memorialization of Understanding.

For additional clarity, the Parties understand and agree that the definition of "**Patheon Nonconformance**" for the purposes of the Agreement, is inclusive of (i) Patheon's [***]
in connection with performing (or failing to perform), [***] pursuant to Section [***], and (ii) Patheon's [***] [***] in connection with providing (or failing to provide), the [***] in accordance with the [***].

4.Effectiveness of Amendments

The amendments to the Manufacturing and Supply Agreement set forth herein shall be effective as of the Amendment Effective Date.

5.Integration; Counterparts

Except for the sections or schedules of the Manufacturing and Supply Agreement specifically amended hereunder, all terms and conditions of the Manufacturing and Supply Agreement

remain and shall remain in full force and effect. This Amendment Agreement shall hereafter be incorporated into and deemed part of the Manufacturing and Supply Agreement and any future reference to the Manufacturing and Supply Agreement shall include the terms and conditions of this Amendment Agreement. This Amendment Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

6.Governing Law and Jurisdiction

This Amendment Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws that govern the Manufacturing and Supply Agreement, and the Parties submit to the jurisdiction and dispute resolution provisions as set forth in the Manufacturing and Supply Agreement.

IN WITNESS WHEREOF, the Parties have caused this Amendment Agreement to be executed by their duly authorized representatives, effective as of the date of the last signature.

FLEXION THERAPEUTICS, INC.	**PATHEON UK LTD.**
/s/ Michael D. Clayman, M.D.	/s/ Luca Andretta
Signature	Signature
Michael D. Clayman, M.D.	Luca Andretta
Name	Name
CEO	Director
Title	Title
June 21, 2019	June 21, 2019
Date	Date

Exhibit 1 of the Amendment Agreement
[***]

TECHNICAL TRANSFER AND SERVICE AGREEMENT

*****Text Omitted and Filed Separately with the Securities and Exchange Commission. Confidential Treatment Requested Under 17 C.F.R. Sections 200.80(b)(4) and 240.24b-2.**

TECHNICAL TRANSFER AND SERVICE AGREEMENT

This **TECHNICAL TRANSFER AND SERVICE AGREEMENT** (this "Agreement"), dated as of July 31, 2015 (the "Effective Date"), is made by and between Flexion Therapeutics, Inc., a Delaware corporation having its principal place of business at 10 Mall Road, Suite 301, Burlington, Massachusetts, United States ("Flexion"), and Patheon UK Limited, a company incorporated in England and Wales having its principal place of business at Kingfisher Drive, Covingham, Swindon, SN35BZ, United Kingdom ("Patheon"). Flexion and Patheon are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Flexion has a commercial interest in the Manufacture (as defined herein) and commercialization of FX006 drug product, an extended-release formulation of triamcinolone acetonide (TCA) which is manufactured using Flexion's Manufacturing Process (the "Product");

WHEREAS, concurrently herewith, the Parties are executing a manufacturing and supply agreement (the "Manufacturing and Supply Agreement") pursuant to which Patheon would be a manufacturer and supplier of the Product; and

WHEREAS, in anticipation of the Manufacturing and Supply Agreement and the goods and services that Patheon will supply thereunder, the Parties desire to enter into a binding agreement pursuant to which Patheon would undertake certain technical transfer and construction services in order to validate and scale up portions of Flexion's technology package and prepare Patheon's facilities for the Manufacture of the Product;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants of the Parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
DEFINITIONS

The following terms will have the meanings set forth below. Unless the context indicates otherwise, the singular will include the plural and the plural will include the singular. Any term not defined hereunder shall have the meaning ascribed to such term in the Manufacturing and Supply Agreement.

1.1 "Act" means the United States Federal Food, Drug and Cosmetic Act, as amended.

1.2 "Additional Services" means any services requested and approved by Flexion that supplement Patheon's regular performance of the Services as described in Schedule 2.1(a) of the Manufacturing and Supply Agreement.

1.3 "Affiliate(s)" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common

control with, such Person. For the purposes of this Section 1.3 only, a Person will be regarded as in control of another Person if such Person owns, or directly or indirectly controls, more than 50% of the voting securities (or comparable equity interests) or other ownership interests of the other Person, or if such Person directly or indirectly possesses the power to direct or cause the direction of the management or policies of the other Person, whether through the ownership of voting securities, by contract, or any other means whatsoever.

1.4 "Agreement" has the meaning set forth in the preamble hereto.

1.5 "API" means the active pharmaceutical ingredient triamcinolone acetonide, micronized.

1.6 "Applicable Law" means applicable United States, Canadian, English and other foreign federal, state, and local laws, orders, rules, regulations, guidelines, standards, customs and ordinances, including, without limitation, those (to the extent they are applicable) of the FDA, Health Canada, the Medicines and Healthcare Products Regulatory Agency in the United Kingdom and other comparable foreign Regulatory Authorities, including the Food Drug and Cosmetic Act.

1.7 "Base Fee" means the monthly fee paid by Flexion in consideration for the Services, as more specifically set forth in Schedule 2.1(a) of the Manufacturing and Supply Agreement. For the avoidance of doubt, Base Fees do not include Capital Expenditures, Product Fees (as defined in the Manufacturing and Supply Agreement), Material Costs (as defined in the Manufacturing and Supply Agreement), or charges for Bill Back Items or Additional Services.

1.8 "Bill Back Items" means items and services set forth in Schedule 2.1(a) of the Manufacturing and Supply Agreement that are used or necessary in connection with the Manufacture of the Products and which result in a nominal cost to Flexion.

1.9 "Capital Expenditures" has the meaning set forth in Section 2.2.

1.10 "Certificate of Analysis" has the meaning set forth in Section 1.8a of the Manufacturing and Supply Agreement.

1.11 "Change of Control" has the meaning set forth in Section 9.6.

1.12 "Claim" has the meaning set forth in Section 7.3(a).

1.13 "Completion of the Tech Transfer" has the meaning set forth in Section 8.2.

1.14 "Control" or "Controlled" means ownership or the right by a Party to assign or grant a license or sublicense under intellectual property rights to the other Party of the scope set forth herein, without breaching the terms of any agreement with a Third Party.

1.15 "Discretionary Manufacturing Changes" has the meaning set forth in Exhibit 2.1-F.

1.16 "Effective Date" has the meaning set forth in the Preamble.

1.17 “EMA” means the European Medicines Agency.

1.18 “Equipment” means any equipment used in the Manufacture of the Product as more fully set forth in Section 2.9 of the Manufacturing and Supply Agreement.

1.19 “Exploit” means to make, have made, import, use, sell, offer for sale, receive or otherwise dispose of the Product or process, including the research, development (including the conduct of clinical trials), registration, modification, enhancement, improvement, Manufacture, storage, formulation, optimization, export, transport, distribution, promotion, or marketing of the Product or process.

1.20 “Facility” means the facility of Patheon located at Kingfisher Drive, Swindon, Wiltshire SN3 5BZ, United Kingdom.

1.21 “FDA” means the United States Food and Drug Administration and any successor organization thereto and all agencies under its direct control.

1.22 “Flexion” has the meaning set forth in the Preamble.

1.23 “Flexion Indemnified Parties” has the meaning set forth in Section 7.2.

1.24 “Flexion Manufacturing Equipment” has the meaning set forth in Exhibit 2.1-F.

1.25 “Flexion’s Manufacturing Process” means the proprietary process owned or Controlled by Flexion for Manufacturing the Product as disclosed by Flexion to Patheon, and each intermediate of the Product, as established as of the Effective Date, including, without limitation, as set forth in the investigational new drug application filed with the FDA (“IND”) and, when applicable, as set forth in the NDA as may be filed with, and approved by, the FDA.

1.26 “Flexion On Site Representative” has the meaning set forth in Section 0(a).

1.27 “GMP” means the current good manufacturing practices applicable from time to time to the Manufacturing of the Product, or any intermediate of the Product, pursuant to Applicable Law, including those promulgated under the Act at 21 C.F.R. (chapters 210 and 211), and those promulgated under EC Directive 2003/94/EC, together with the latest FDA and EMA guidance documents pertaining to manufacturing and quality control practices, all as updated, amended and revised from time to time.

1.28 “Indemnification Claim Notice” has the meaning set forth in Section 7.3(a).

1.29 “Indemnified Party” has the meaning set forth in Section 7.3(a).

1.30 “Indemnifying Party” has the meaning set forth in Section 7.3(a).

1.31 “Key Technical Assumptions” has the meaning set forth in Exhibit 2.1-D.

1.32 “Loss” means any claims, lawsuits, losses, damages, liabilities, penalties, costs, and expenses (including reasonable attorneys’ fees and disbursements).

1.33 “Maintenance” means the maintenance of Equipment and Facilities in satisfactory operating condition, including the performance of systematic inspection and service of Equipment pursuant to the applicable Standard Operating Procedures of Patheon, as reviewed and agreed to by Flexion (the “Equipment Standard Operating Procedures”), or the manufacturer’s terms of operation and recommended procedures.

1.34 “Make Good Costs” has the meaning set forth in Section 8.11(c).

1.35 “Manufacture” and “Manufacturing Services” means the manufacturing, processing, formulating, sterilization, filling, packaging, labelling, storage, handling, and quality control testing of Materials or the Product as more particularly set out in Schedule 2.1(a) of the Manufacturing and Supply Agreement.

1.36 “Manufacturing and Supply Agreement” has the meaning set forth in the Recitals.

1.37 “Manufacturing Suite” means the manufacturing suite at the Facility capable of Manufacturing the Product pursuant to Flexion’s Manufacturing Process, whose footprint is attached as Exhibit 2.1-A, together with the areas identified in the plan attached as Exhibit 2.1-A as the areas for the bulk powder Manufacture and bulk vial filling and, pursuant to the terms of Section 2.10 of the Manufacturing and Supply Agreement, the Phase I Filling Space. The footprint of the Manufacturing Suite and the engineering approach shall be revised by the Parties in order to adapt the Manufacturing Suite to Flexion’s Manufacturing Process, as set forth in Section 2.1 hereto. Such footprint is diagrammatic in nature and is intended to generally depict the location and approximate size of current and future spaces allocated to Flexion. Such footprint may be amended to be specifically adapted to the Manufacture of the Product, and the Parties shall agree upon the definitive footprint, taking into account parameters such as the exact design of the space, space classifications, code requirements, equipment, materials, personnel, waste stream process flows, equipment sizing and utility requirements. For purposes of clarity, prior to the Phase III Manufacturing Suite Clearance Date (as defined in Section 2.10 of the Manufacturing and Supply Agreement), the definition of Manufacturing Suite shall include the Phase I Filling Space.

1.38 “Materials” means all API, excipients and processing aids, and processing, filling and packaging components, used in connection with the Manufacture of the Product and listed in Schedule 1.62 of the Manufacturing and Supply Agreement, as amended prior to Product launch, based on the Parties’ most recent usage experience rate, and to reflect changes to the Specifications.

1.39 “NDA” means the new drug application for a product, including the Product, requesting permission to place a drug on the market in accordance with 21 C.F.R. Part 314, and all supplements filed pursuant to the requirements of the FDA, including all documents, data, and other information filed concerning such product that are necessary for FDA approval to market such product in the Territory.

1.40 “NDC” means “national drug code,” a unique three-segment number, which is a universal product identifier for human drugs.

1.41 “Party” or “Parties” has the meaning set forth in the Preamble.

1.42 “Patheon” has the meaning set forth in the Preamble.

1.43 “Patheon Indemnified Parties” has the meaning set forth in Section 7.1.

1.44 “Patheon Manufacturing Equipment” has the meaning set forth in Exhibit 2.1-F.

1.45 “Person” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, or other similar entity or organization, including a government or political subdivision, department, or agency of a government.

1.46 Not used.

1.47 “Product” has the meaning set forth in the Recitals hereto, in finished, unpackaged form, according to the Specifications.

1.48 “Project Manager” has the meaning set forth in Section 2.7(c).

1.49 “Proprietary Information” has the meaning given in the Manufacturing and Supply Agreement.

1.50 “Quality Agreement” has the meaning set forth in Section 3.1 of the Manufacturing and Supply Agreement.

1.51 “Regulatory Approval” means any and all approvals (including pricing and reimbursement approvals), licenses, registrations, or authorizations of any Regulatory Authority necessary to Exploit the Product in any country in the Territory, including any (a) approval of a Product, Marketing Authorization and supplements and amendments thereto; (b) pre- and post-approval marketing authorizations (including any prerequisite Manufacturing approval or authorization related thereto); (c) labelling approval; and (d) technical, medical, and scientific licenses.

1.52 “Regulatory Authority” means any applicable supra-national, federal, national, regional, state, provincial, or local regulatory agencies, departments, bureaus, commissions, councils, or other government entities regulating or otherwise exercising authority with respect to the Exploitation of the Product in the Territory.

1.53 “Remediation Period” has the meaning set forth in Section 8.5.

1.54 “Required Manufacturing Changes” has the meaning set forth in Exhibit 2.1-F.

1.55 “Services” means the (a) Manufacturing Services performed by Patheon pursuant to the Manufacturing and Supply Agreement; and (b) the Transfer Services performed by Patheon under this Agreement.

1.56 “Specifications” means the specifications for each presentation of Product (*i.e.*, the dosage forms in Schedule 1.82 of the Manufacturing and Supply Agreement) given by

Flexion to Patheon relating to the specifications of the Materials; the manufacturing specifications, directions and processes; the storage requirements; all environmental, health and safety information for the Product including material safety data sheets and the finished Product specifications, specifications for bulk and primary packaging and shipping requirements for the Product, as amended, modified, or supplemented from time to time.

1.57 "Steering Committee" has the meaning set forth in Section 2.7(e).

1.58 "Taxes" means all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholding or liabilities wherever chargeable and whether of the United Kingdom or any other jurisdiction (including for the avoidance of doubt, national insurance contributions in the United Kingdom) and any penalty, fine, surcharge, interest, charge, charges or costs thereto.

1.59 "Term" has the meaning set forth in Section 8.1.

1.60 "Territory" means […***…] and other territories agreed by the Parties pursuant to Section 2.2(h) of the Manufacturing and Supply Agreement from time to time.

1.61 "Third Party" means a Person who is neither a Party nor an Affiliate of a Party.

1.62 "Third Party Losses" means Losses incurred as a result of claims brought by Third Parties.

1.63 "Timeline" has the meaning set forth in Section 2.1.

1.64 "Transfer Services" means the services rendered under this Agreement, as described in Section 2.1 and in the Exhibits attached to this Agreement, based on the Key Technical Assumptions stated therein.

1.65 "VAT" has the meaning set forth in Section 9.15(c).

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ARTICLE 2
TRANSFER SERVICES

2.1 Description of Transfer Services. Patheon will (a) provide engineering and construction services, directly or using third parties (pursuant to Section 9.8 hereto), to construct the Manufacturing Suite in accordance with the engineering approach and the footprints set forth in Exhibit 2.1-A of this Agreement, as it may be amended by mutual written agreement of the Parties, and the projected capital requirements set forth in Exhibit 2.1-B, (b) procure and/or validate the Equipment necessary to Manufacture the Product in accordance with Exhibit 2.1-F and perform the Transfer Services set forth in Exhibit 2.1-C, and (c) provide other services set forth in Exhibit 2.1-D in order to validate and implement Flexion's Manufacturing Process for the Product in compliance with the Quality Agreement, GMP, all other Applicable Law and the Specifications and register the Facility to Manufacture the Product (collectively, the "Transfer Services"). Patheon will perform the Transfer Services, (i) to facilitate the Regulatory Approval of the Manufacturing Suite as the manufacturing, testing, and packaging sites for the Product, (ii) so that the Product is Manufactured and tested using Flexion's Manufacturing Process including testing and releasing (pursuant to the terms of the Quality Agreement) all Materials according to the Specifications and test methods, including the Specifications set forth in the NDA when approved. Patheon will use its commercially reasonable efforts to complete the Transfer Services in a timely fashion in accordance with the schedule set forth in Exhibit 2.1-E (the "Timeline"). The Parties will cooperate with one another in the performance of this Agreement in good faith.

2.2 Payments for Transfer Services. The Parties acknowledge and agree that Patheon's consideration for the Transfer Services performed hereunder is (a) the payment of the Base Fees, as set forth in Schedule 2.1(a) of the Manufacturing and Supply Agreement, (b) the payments associated with the Equipment, Manufacturing Suite construction and related process and support and validation services, each in accordance with the capital requirements set forth in Exhibit 2.1-B (together, the "Capital Expenditures"); (c) charges for Bill Back Items; and (d) charges for Additional Services. All payments from Flexion to Patheon hereunder shall be in British Pounds (GBP) and will be due and payable in accordance with the invoicing procedures set forth in ARTICLE IV of the Manufacturing and Supply Agreement. All invoices from Patheon to Flexion for Capital Expenditures shall include all (if any) applicable invoices from vendors for the supply, transportation, installation, and commissioning of the Equipment that pertain to the Transfer Services invoiced by Patheon. Flexion acknowledges that the amounts of Capital Expenditures are estimates and are subject to review once manufacturing details and process specification requirements have been confirmed, any necessary machine trials performed and upon receipt of formal quotations from the equipment suppliers; provided however that, in no event shall the Capital Expenditures exceed the amount set forth in Exhibit 2.1-B by more than […***…] percent ([…***…]%) unless otherwise mutually agreed by the Parties in writing.

2.3 Modifications. The Parties may modify and agree upon the definitive engineering approach, footprint of the Manufacturing Suite, or the Timeline, taking into account parameters such as the exact design of the space, space classifications, code requirements, Equipment,

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materials, personnel, waste stream process flows, equipment sizing and utility requirements. Any such modifications shall be discussed by the Parties and agreed to in writing including as to any consequential fees and costs or savings relating thereto, duly executed by the Parties.

2.4 Flexion's Responsibilities.

(a) To assist Patheon in its performance of the Transfer Services under this Agreement, Flexion shall (i) at its expense provide Patheon in a timely fashion with relevant information, documentation, and data relating to (1) Flexion's Manufacturing Process, (2) the Equipment necessary to Manufacture the Product in accordance with Flexion's Manufacturing Process, and (3) Product safety and information, documentation, and data, including any applicable NDA numbers, NDC codes, "CMC" sections of NDAs, validation protocols, validation reports, method validation protocols, method validation reports, and other documents necessary or reasonably requested by Patheon for Patheon to Manufacture the Product, provide the Transfer Services or otherwise necessary for Patheon's performance hereunder, and (ii) provide Flexion-Supplied Materials pursuant to Section 2.10. If requested by Patheon to provide support or information, Flexion shall use commercially reasonable efforts to provide such reasonable and necessary support or information in order to enable Patheon to perform the Transfer Services under this Agreement as soon as reasonably possible and in any event within […***…] business days of Patheon's request (or will provide an explanation of the legitimate reason for any delay and a projected date by which such support or information will be provided). In the event Flexion is to review or approve any information, documentation, data, or samples prepared or supplied by or on behalf of Patheon, it will complete such review and approval process as soon as reasonably possible and in any event within […***…] business days of Patheon's request.

(b) It is understood and acknowledged by the Parties that Flexion will retain ownership of the IND and NDA to the Product, and any supplements thereto, and is responsible for the NDA submission documents and all correspondence with the FDA and other competent Regulatory Authority concerning the Product, other than submission documents and correspondence associated with GMP inspections of the Facility; provided, however, that Section 2.9 of this Agreement and Sections 3.6 and 5.1 of the Manufacturing and Supply Agreement will govern the ownership of the intellectual property rights described or disclosed in such NDA and supplements.

(c) Flexion shall have the sole responsibility for the filing of all documents with all applicable Regulatory Authorities, and to take any other actions that may be required for the receipt of Regulatory Approval for the development or commercial manufacture of the Product (other than the licences, registrations and Regulatory Authority approvals to be obtained by Patheon pursuant to Section 3.3(b) of the Manufacturing and Supply Agreement). Flexion will, at its expense and in cooperation with Patheon, use commercially reasonable efforts to diligently and proactively pursue Regulatory Approval for Patheon's Manufacture of the Product at the Facility in a timely fashion in accordance with the Timeline. Without limiting such obligation, Flexion shall be responsible for filing the NDA submission documents, drug listing the Product,

and completing correspondence with the FDA concerning the Product. All documentation and data provided by Patheon in support of the NDA filing shall be accurate and true and will reflect the current processes and procedures in place at Patheon. Flexion shall provide Patheon with a copy of any Regulatory Approval relevant to this Agreement on request including any Regulatory Approval required for the storage, receipt or distribution of the Product by Flexion or its designee.

(d) Where documents or data generated by Patheon in relation to the Transfer Services are to be filed by Flexion with any Regulatory Authority and such filing includes data or information pertaining to a Patheon Regulatory Obligation within the meaning of Section 3.15 of the Manufacturing and Supply Agreement, prior to filing any such documents and data with the Regulatory Authority, Flexion shall provide Patheon with a copy of the documents incorporating such data so as to give Patheon the opportunity to review the accuracy of such documents as it relates to the Patheon Regulatory Obligation in accordance with the review and comment procedures set forth in Section 3.15 of the Manufacturing and Supply Agreement (including the process for resolution of inaccuracies set forth in Section 3.15(c) thereto). Notwithstanding anything in Section 3.15 of the Manufacturing and Supply Agreement to the contrary: (i) at least […***…] calendar days prior to filing with the Regulatory Authority any documentation which is or is equivalent to the Quality document portion (Drug Product section) of the U.S. Investigational New Drug application, the EU Clinical Trial application and Investigational Medicinal Product Dossier, the Common Technical Document module 3 (Drug Product section) of the US New Drug Application, U.S. Biological License Application, or the EU Marketing Authorization Application, as the case may be, Flexion shall provide Patheon with a copy of the Initial Draft (as defined in the Manufacturing and Supply Agreement) of such portion so as to permit Patheon to verify that the Initial Draft accurately describes the development and validation work Patheon has performed and the manufacturing and control processes that Patheon will perform pursuant to this Agreement; (ii) Patheon shall provide comments regarding such Initial Draft no later than […***…] days prior to the required filing date with the applicable Regulatory Authority (including notifying Flexion of any identified inaccuracies); and (iii) Flexion shall deliver a copy of the final version of the filing promptly after the required filing date.

2.5 Patheon's Responsibilities. Patheon will, at its expense, in consideration for the payments and reimbursements set forth in Section 2.2, provide the Transfer Services and use its commercially reasonable efforts to complete the Transfer Services in a timely fashion in accordance with the Timeline. Patheon will provide to Flexion all data and documentation necessary or reasonably useful to support Flexion's submissions to the FDA, or any responses to questions raised by the FDA with respect to those Transfer Services, that are necessary or reasonably useful for Regulatory Approval of the Facility as the manufacturing, testing, and packaging site for the Product.

2.6 Equipment. Patheon, acting as Flexion's agent, shall purchase the Flexion Manufacturing Equipment on Flexion's behalf. Title to all Flexion Manufacturing Equipment will be held by Flexion. The Parties shall procure, supply, install, commission and validate the

Equipment in compliance with (a) Exhibit 2.1-F; (b) the capital requirements set forth in Exhibit 2.1-B and (c) the "Qualification and Validation" process set forth in Exhibit 2.1-C. Patheon is authorized to use the Flexion Manufacturing Equipment pursuant to Exhibit 2.1-F solely for the purposes of performing the Transfer Services and for the Manufacturing Services as set forth in the Manufacturing and Supply Agreement.

2.7 Flexion On Site Representatives; Reporting of Results; Project Managers; Steering Committee.

(a) Flexion shall have the right at all times throughout the Term to have […***…] representatives (or other number as reasonably requested by Flexion after discussion by the members of the Steering Committee) (each, a "Flexion On Site Representative") present in that portion of the Facility that is being constructed or used to Manufacture the Product or store Materials, to observe the procedures and processes used to Manufacture the Product or to perform the activities associated with the transfer of Flexion's Technology hereunder. The Flexion On Site Representatives shall have full access to the Manufacturing Suite and to the non-financial records that relate to the Product, and all records pertaining to any Materials and to Third Party invoices specifically invoiced by Patheon to Flexion as a Capital Expenditure or Bill Back Item. For the avoidance of doubt, the term "non-financial records" as used in this Agreement does not include the Reports (defined in Section 3.11 of the Manufacturing and Supply Agreement). Patheon shall provide reasonable (semi-permanent) on-site accommodations at the Facility for the Flexion On Site Representatives (*e.g.*, office space). Flexion On Site Representatives shall be appropriately trained by Flexion (e.g. GMP training) and shall observe at all times Patheon's policies and procedures (as amended from time to time) as they pertain to the Facility, including policies relating to health and safety and compliance with GMP; provided that Flexion is given notice of such policies and given a reasonable period of time to review and implement such policies. Flexion will comply with all reasonable directions of Patheon in relation to the same. Patheon may refuse or limit in its sole discretion at any time admission to the Facility by any Flexion On Site Representative who fails to observe such policies or comply with such reasonable directions. For the avoidance of doubt, Flexion On Site Representatives shall have (i) no management authority over any Patheon employee and (ii) no authority to conclude contracts on behalf of Flexion.

(b) Patheon will respond to Flexion's inquiries regarding the status of the Transfer Services on an ongoing basis, and Patheon will endeavor to keep Flexion informed of interim results of the Transfer Services. Patheon will provide copies of all analytical, cleaning, and process validation protocols, data summaries, reports and all batch records, test methods, and specifications for Flexion's review, comment, and approval prior to implementation and execution. Once such protocols, data summaries, reports, records, methods, and specifications have been approved and executed, Patheon will provide copies to Flexion. Patheon will provide Flexion with information relating to the Equipment to be used in connection with the Manufacture of the Product, which Equipment will be subject to Flexion's review and approval (not to be unreasonably withheld or delayed). Within five (5) business days after Flexion's

request, Patheon will provide to Flexion documentation that summarizes the implementation efforts of the Transfer Services at the Facility.

(c) Patheon and Flexion will each appoint a project manager (each, a "Project Manager" and, together, the "Project Managers"), who will meet as needed to resolve any issues or problems associated with the Transfer Services. Flexion's Project Manager may be one of the Flexion On Site Representatives. Flexion reserves the right to request replacement of any personnel assigned by Patheon to perform the Transfer Services hereunder. If Patheon disagrees with such request and the Parties cannot reach resolution on Flexion's request for replacement, such request will be discussed by the Steering Committee pursuant to the procedures set forth in Exhibit 2.7 hereto.

(d) Patheon shall ensure that sufficient numbers of adequately educated and experienced staff are retained at the Facility in order to provide the Transfer Services. Patheon shall perform the Transfer Services under the direction of key personnel of Patheon to a project for the duration of the project ("Key Personnel"). Key Personnel include the Project Manager, Operational Manager, Quality Manager or other personnel reasonably agreed-to by the Parties. Patheon shall provide information on the qualifications and background of all proposed Key Personnel prior to such Key Personnel's commencement of activities under this Agreement on Patheon's behalf. Patheon will not remove Key Personnel without Flexion's prior written consent (not to be unreasonably withheld, conditioned or delayed) except in the event of such Key Personnel's promotion, resignation, incapacity or death, or termination for cause. Patheon will use commercially reasonable efforts to minimize turnover in Key Personnel, and will provide […***…] business days' notice to Flexion, whenever practical, of any changes to the Key Personnel, at which point, both Parties shall discuss and reasonable agree on a suitable replacement.

(e) The Parties desire to establish a steering committee (the "Steering Committee") as described in Exhibit 2.7.

2.8 Dispute Resolution.

(a) The Parties recognize that disputes may arise from time to time during the term of this Agreement that relate to whether either Party has fulfilled its obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of such disputes arising under this Agreement in an expedient manner by mutual cooperation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Section 2.8 if and when a dispute arises under this Agreement.

(b) Unless otherwise specifically recited in the Agreement, disputes between the Parties under this Agreement will be first referred to the Project Manager of each Party as soon as reasonably possible after such dispute has arisen. If the Project Managers are unable to resolve such a dispute within […***…] days of being requested by a Party to resolve such dispute, either Party may, by written notice to the other, have such dispute referred to the

Steering Committee. If the Steering Committee is unable to resolve such a dispute within […***…] day of being requested by a Party to resolve such dispute, either Party may, by written notice to the other, have such dispute referred to the […***…] of each Party for attempted resolution by negotiations within […***…] days after such notice received.

2.9 Ownership. The Parties' intellectual property ownership rights relating to the subject matter of this Agreement shall be governed by ARTICLE V of the Manufacturing and Supply Agreement.

2.10 Materials. Patheon will purchase all Patheon-Supplied Materials (as defined in the Manufacturing and Supply Agreement) for the Transfer Services as set forth in Schedule 1.62 of the Manufacturing and Supply Agreement. Flexion shall purchase all Flexion-Supplied Materials (as defined in the Manufacturing and Supply Agreement) for the Transfer Services and ship such Flexion-Supplied Materials to Patheon in accordance with this Section 2.10 (except as otherwise mutually agreed to by the Parties in writing, in which case such Materials shall be considered Bill Back Items hereunder). All shipments from Flexion to Patheon will be made DDP (Incoterms 2010) the Facility unless otherwise agreed. All shipments of Flexion-Supplied Materials, if required, will be accompanied by Certificate(s) of Analysis from the Material manufacturer or Flexion, confirming its compliance with the Material's specifications. Flexion will obtain the proper release of the Flexion-Supplied Materials from the applicable customs agency and Regulatory Authority. Flexion or Flexion's designated broker will be the "Importer of Record" for Flexion-Supplied Materials imported to the Facility. Flexion-Supplied Materials will be held by Patheon on behalf of Flexion as set forth in this Agreement. Title to Flexion-supplied Materials will at all times remain the property of Flexion or a Flexion Affiliate. Any Flexion-Supplied Materials received by Patheon will only be used by Patheon to perform the Transfer Services or associated activities necessary to perform the Transfer Services (e.g., media fills or validation runs).

2.11 Bill Back Items. Bill Back Items will be charged to Flexion at Patheon's cost plus a […***…]% handling fee. Patheon shall invoice Flexion monthly for any Bill Back Items used in connection with the Transfer Services during the preceding month in accordance with ARTICLE IV of the Manufacturing and Supply Agreement. Patheon may only invoice Bill Back Items that have been quoted to and approved in writing by Flexion's Project Manager, or otherwise mutually agreed to by the parties in advance.

2.11A Additional Services. If Flexion is interested in having Patheon perform Additional Services, Flexion will provide Patheon with a written request containing sufficient detail to enable Patheon to provide Flexion with a quote and proposal to provide such Additional Services. Patheon may only invoice for Additional Services that have been quoted to and approved in writing by Flexion's Project Manager and that have been agreed in writing by the Parties in a Change of Scope Agreement. Patheon shall invoice Flexion monthly for any Additional Services performed by Patheon during the preceding month in accordance with ARTICLE IV of the Manufacturing and Supply Agreement.

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2.12 Storage. Patheon will provide storage capacity to support storage of the required quantity of Materials necessary for Transfer Services which will be governed by Section 2.2(e) of the Manufacturing and Supply Agreement.

2.13 Shipping. Except to the extent set forth otherwise in this Agreement, any shipment from Patheon to Flexion, whether of Product, Materials or otherwise, shall be made pursuant to Section 2.3(e) of the Manufacturing and Supply Agreement.

2.14 Changes in Applicable Law. Should during the Term of this Agreement, a change or changes in Applicable Law lead to Patheon (a) providing services not originally contemplated by Patheon, or (b) incurring increased costs in order to comply with said change or changes, any such services or costs (to the extent pertaining to the Product or related to Flexion's Manufacturing Process or the Flexion Manufacturing Equipment) shall constitute an Additional Service subject to mutual written agreement of the Parties; provided that, if such services or costs relate generically to the entire Facility then such costs to Flexion shall be prorated as applicable.

2.15 Base Fees. Patheon will invoice Flexion monthly in advance for the Base Fees, and such Base Fees will be due and payable, in accordance with the provisions and invoicing procedures set forth in ARTICLE IV of the Manufacturing and Supply Agreement.

ARTICLE 3
CONFIDENTIALITY

3.1 Confidentiality Obligations. The Parties agree that the terms of ARTICLE VII of the Manufacturing and Supply Agreement shall govern the confidentiality obligations of the Parties and are incorporated herein by this reference.

ARTICLE 4
FLEXION'S REPRESENTATIONS, WARRANTIES, AND COVENANTS

4.1 Commercially Reasonable Efforts. Except where specifically stated to the contrary in this Agreement otherwise, Flexion will use its commercially reasonable efforts to perform Flexion's obligations hereunder.

4.2 Additional Representations, Warranties, and Covenants of Flexion. Flexion warrants, represents, and covenants that as of the Effective Date the warranties, representations and covenants set out in Sections 6.4(a) of the Manufacturing and Supply Agreement shall apply to the performance of the Transfer Services.

ARTICLE 5
PATHEON'S REPRESENTATIONS, WARRANTIES, AND COVENANTS

Patheon represents, warrants, and covenants to Flexion as follows:

5.1 Commercially Reasonable Efforts. Except where specifically stated to the contrary in this Agreement otherwise, Patheon will use its commercially reasonable efforts to perform the Transfer Services in accordance with the agreed upon Timeline. In the event Patheon is not able to meet the Timeline, Patheon will provide written notice to Flexion of such inability as soon as practical, but in any event within […***…] of discovering such inability.

5.2 Qualified Personnel and Transfer Services. Patheon will engage and employ professionally qualified personnel to perform the Transfer Services contemplated hereunder. Patheon represents and warrants that there is no claim, suit, proceeding, or other investigation issued on Patheon, or to the knowledge of Patheon (after due inquiry), pending or threatened against Patheon, which is likely to prevent or materially adversely affect the rights and interests of Flexion hereunder or keep Patheon from performing its obligations hereunder.

5.3 Additional Representations, Warranties, and Covenants of Patheon. Patheon warrants, represents, and covenants that:

(a) (i) it has facilities, personnel, experience, and expertise sufficient in quality and quantity to perform the obligations hereunder, (ii) it shall so perform in conformity with GMPs where applicable, and (iii) its management shall establish, and Patheon shall observe and comply with, appropriate quality assurance, quality controls, and review procedures for implementation of the Transfer Services;

(b) it has at the Effective Date and shall during the Term observe and comply with, at (subject to Section 2.14) its sole cost and expense, all Applicable Laws now in force or that may hereafter be in force, including federal, state, and local laws, orders, regulations, rules, customs, and ordinances now in force or that may hereafter be in force pertaining to Patheon's performance of the Transfer Services and the Facility and including, without limitation, (i) labor laws, orders, regulations, rules, customs, and ordinances and (ii) those of the FDA pertaining to Patheon's performance of the Transfer Services and the Facility, and any laws, orders, regulations, rules, or ordinances issued in addition to, as a supplement to or as a replacement of Applicable Laws.

(c) none of it, its Affiliates, nor any Person under its direction or control has ever been, nor will it engage suppliers which have to its actual knowledge, after due inquiry, been, (i) debarred or convicted of a crime for which a person can be debarred, under Section 335(a) or 335(b) of the Act, or any equivalent Applicable Law of the country of Manufacture, (ii) threatened to be debarred under the Act or any equivalent Applicable Law of the country of Manufacture or (iii) indicted for a crime or otherwise (to its actual knowledge after due inquiry)

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engaged in conduct for which a person can be debarred under the FDA or any equivalent Applicable Law of the country of Manufacture, and Patheon agrees that it will, within […***…], notify Flexion in the event it receives notification of any such debarment, conviction, threat or indictment. Should Patheon become aware of any actual or suspected noncompliance with the foregoing, Patheon will notify Flexion in writing of such issue within […***…]. For the purpose of this Section 5.3, suppliers and subcontractors engaged by Patheon to undertake the Manufacture of the Product shall be deemed to be under Patheon's direction or control;

(d) none of it, its Affiliates, nor any Person under its direction or control is currently excluded from a federal or state health care program under Sections 1128 or 1156 of the Social Security Act, 42 U.S.C. §§ 1320a-7, 1320c-5 or any equivalent Applicable Law of the country of Manufacture, as may be amended or supplemented;

(e) none of it, its Affiliates, nor any Person under its direction or control is otherwise currently excluded from contracting with the U.S. federal government or the government of the country of Manufacture;

(f) none of it, its Affiliates, nor any Person under its direction or control is otherwise currently excluded, suspended, or debarred from any U.S. or foreign governmental program;

(g) it shall immediately notify Flexion if, at any time during the Term, Patheon, its Affiliates, or any Person under its direction or control is convicted of an offense that would subject it or Flexion to exclusion, suspension, or debarment from any U.S. or foreign governmental program; and

(h) it will not enter into any agreement or arrangement with any other Person that would prevent its ability to perform its obligations hereunder.

5.4 Legal Compliance. Section 6.6 of the Manufacturing and Supply Agreement shall apply to this Agreement and any violation thereof by Patheon or its employees, agents, or contractors in the performance of this Agreement shall constitute a material default for the purpose of Section 8.5 of this Agreement.

5.5 Disclaimer. THE FOREGOING EXPRESS WARRANTIES AND THOSE IN ARTICLE 4 and ARTICLE 6 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY EACH PARTY.

ARTICLE 6
GENERAL REPRESENTATION AND WARRANTIES

Each Party represents, warrants, and covenants to the other as follows:

6.1 Power and Authorization. Such Party (a) is duly formed and in good standing under the laws of the jurisdiction of its formation, (b) has the power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder, and (c) has taken all necessary action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder.

6.2 Enforceability. This Agreement has been duly executed and delivered on behalf of such Party and constitutes a legal, valid, and binding obligation of such Party and is enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, or other similar laws of general application affecting the enforcement of creditor rights and judicial principles affecting the availability of specific performance and general principles of equity, whether enforceability is considered a proceeding at law or equity. Except for the FDA's approval of Patheon's manufacturing, testing, and packaging for the Product from the Manufacturing Suite, all necessary consents, approvals, and authorizations of all Regulatory Authorities, other governmental authorities, and other Persons required to be obtained by such Party in connection with the execution and delivery of this Agreement and the performance of its obligations hereunder have been obtained.

6.3 No Conflict. The execution and delivery of this Agreement and the performance of such Party's obligations hereunder (a) do not and will not conflict with or violate any requirement of Applicable Law or any provision of the articles of incorporation, bylaws, limited partnership agreement, or other constituent document of such Party and (b) do not and will not conflict with, violate, or breach, or constitute a default or require any consent under, any contractual obligation or court or administrative order by which such Party is bound.

6.4 Compliance with Applicable Law. Each Party and its Affiliates, and their respective representatives, shall comply with all Applicable Laws in the performance of their obligations under this Agreement. Without limiting the foregoing, each Party and its Affiliates, and their respective representatives, shall comply with export control laws and regulations of the country of Manufacture and of the United States. Neither Party nor its Affiliates (or representatives) shall, directly or indirectly, without prior U.S. government authorization, export, re-export, or transfer the Product to any country subject to a U.S. trade embargo, to any resident or national of any country subject to a U.S. trade embargo, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. In so far as the same applies to a Party or its Affiliates, each Party and its Affiliates and respective representatives shall comply with the requirements of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. § 78dd-1, et seq.).

ARTICLE 7
INDEMNIFICATION

7.1 Indemnification by Flexion. Flexion will indemnify Patheon, its Affiliates, and their respective directors, officers, employees, and agents (the "Patheon Indemnified Parties"), and defend and save each of them harmless from and against any and all (i) Third Party Loss incurred by any of them in connection with, arising from, or occurring as a result of (a) any claim of personal injury or property damage to the extent that the injury or damage is the result of or arises other than from a breach of this Agreement by Patheon, (b) a claim that the Transfer Services performed by Patheon hereunder, in accordance with the terms and conditions of this Agreement, infringes or misappropriates a patent or any other intellectual property rights, if it is a claim related to the use of Flexion Manufacturing Equipment, Existing Flexion Intellectual Property (as defined in the Manufacturing and Supply Agreement), Flexion Improvements (as defined in the Manufacturing and Supply Agreement) or the Manufacturing Process or the Product, (c) any negligence or willful misconduct by Flexion or any of its Affiliates, or (d) any breach by Flexion of any of its obligations or any inaccuracy of any of Flexion's warranties under this Agreement, or (ii) any Loss incurred by any of them as a direct result of and to the extent of the negligence or willful misconduct of the Flexion On Site Representatives at the Facility, except, in each case, for those Losses for which Patheon has an obligation to indemnify the Flexion Indemnified Parties pursuant to Section 7.2 below, as to which Losses each Party shall indemnify the other to the extent of their respective liability for such Losses; and provided, however, that Flexion will not be required to indemnify the Patheon Indemnified Parties with respect to any such Loss hereunder to the extent the same is caused by any breach of contract, negligent act or omission, or intentional misconduct by Patheon or any or its Affiliates. For the avoidance of doubt, the parties acknowledge that Patheon has not and will not conduct any freedom to operate searches in relation to the Product and/or Flexion's Manufacturing Process nor reviewed any third party patents in relation thereto and that Patheon's failure or omission to do so will not be considered negligence for the purposes of excluding or limiting a claim under this indemnity.

7.2 Indemnification by Patheon. Patheon will indemnify Flexion, its Affiliates, and their respective directors, officers, employees, and agents (the "Flexion Indemnified Parties"), and defend and save each of them harmless from and against any and all Third Party Loss incurred by any of them in connection with, arising from, or occurring as a result of (a) any claim of personal injury or property damage to the extent that the injury or damage is the result of a failure by Patheon to perform the Transfer Services in accordance with the terms of this Agreement; (b) a claim that any Existing Patheon Intellectual Property (as defined in the Manufacturing and Supply Agreement) or other intellectual property of Patheon employed by Patheon in providing the Transfer Services infringes or misappropriates a United States patent or any other intellectual property rights except to the extent such claim is based on the use of Existing Flexion Intellectual Property, Flexion Improvements, the Manufacturing Process or the Product in accordance with the terms and conditions of this Agreement, (c) any claim of personal injury or property damage to the extent that the injury or damage is the result of any negligence or willful misconduct by Patheon or any of its Affiliates, or (d) any claim of personal injury or property damage to the extent that the injury or damage is the result of any breach by Patheon of any of its obligations or any inaccuracy of any of Patheon's warranties under this Agreement; except, in each case, for those Losses for which Flexion has an obligation to indemnify the

Patheon Indemnified Parties pursuant to Section 7.1 above, as to which Losses each Party shall indemnify the other to the extent of their respective liability for such Losses; and provided, however, that Patheon will not be required to indemnify the Flexion Indemnified Parties with respect to any such Loss hereunder to the extent the same is caused by any breach of contract, negligent act or omission, or intentional misconduct by Flexion or any or its Affiliates.

7.3 Indemnification Procedures.

(a) Notice of Claim. The indemnified Party (the "Indemnified Party") shall give the indemnifying Party (the "Indemnifying Party") prompt written notice (an "Indemnification Claim Notice") of any Loss, action, or discovery of facts upon which such Indemnified Party intends to base a request for indemnification under Section 7.1 or 7.2 (a "Claim"), but in no event shall the Indemnifying Party be liable for any Loss that results from any delay in providing such notice. Each Indemnification Claim Notice must contain a description of the Claim and the nature and amount of such Loss (to the extent that the nature and amount of such Loss are known at such time). The Indemnified Party shall furnish promptly to the Indemnifying Party copies of all papers and official documents received in respect of any Loss upon which it intends to seek indemnification.

(b) Control of Defense. At its option, the Indemnifying Party may assume the defense of any Claims by giving written notice to the Indemnified Party within […***…] days after the Indemnifying Party's receipt of an Indemnification Claim Notice; provided that the assumption of the defense of a Claim by the Indemnifying Party shall not be construed as an acknowledgment that the Indemnifying Party is liable to indemnify any Indemnified Party in respect of the Claim, nor shall it constitute a waiver by the Indemnifying Party of any defenses it may assert against any Indemnified Party's Claim. Upon assuming the defense of a Claim, the Indemnifying Party may appoint as lead counsel in the defense of such Claim any legal counsel selected by the Indemnifying Party. In the event the Indemnifying Party assumes the defense of a Claim, the Indemnified Party shall immediately deliver to the Indemnifying Party all original notices and documents (including court papers) received by any Indemnified Party in connection with the Claim. Subject to clause (c) below, if the Indemnifying Party assumes the defense of a Claim, the Indemnifying Party shall not be liable to the Indemnified Party for any legal expenses subsequently incurred by such Indemnified Party in connection with the analysis, defense, or settlement of such Claim. In the event that it is ultimately determined that the Indemnifying Party is not obliged to indemnify, defend, or hold harmless an Indemnified Party from and against any Claim, the Indemnified Party shall reimburse the Indemnifying Party for any and all costs and expenses (including reasonable attorneys' fees and costs of suit) and any Loss incurred by the Indemnifying Party in its defense of such Claim.

(c) Right to Participate in Defense. Without limiting Section 7.3(b), any Indemnified Party shall be entitled to participate in, but not control, the defense of a Claim and to employ counsel of its choice for such purpose; provided, however, that such employment shall be at the Indemnified Party's own expense unless (i) the employment thereof has been specifically authorized by the Indemnifying Party in writing, (ii) the Indemnifying Party has failed to assume

the defense and employ counsel in accordance with Section 7.3(b) (in which case the Indemnified Party shall control the defense), or (iii) the interests of the Indemnified Party and the Indemnifying Party with respect to such Claim are sufficiently adverse to prohibit the representation by the same counsel of both Parties under Applicable Law, ethical rules, or equitable principles.

(d) Settlement. With respect to any Loss relating solely to the payment of money damages in connection with a Claim and that will not result in the Indemnified Party's becoming subject to injunctive or other relief or otherwise adversely affect the business or reputation of the Indemnified Party in any manner, and as to which the Indemnifying Party shall have acknowledged in writing the obligation to indemnify the Indemnified Party hereunder, the Indemnifying Party shall have the sole right to consent to the entry of any judgment, enter into any settlement, or otherwise dispose of such Loss, on such terms as the Indemnifying Party, in its sole discretion, shall deem appropriate. With respect to all other Losses in connection with Claims, where the Indemnifying Party has assumed the defense of the Claim in accordance with Section 7.3(b), the Indemnifying Party shall have authority to consent to the entry of any judgment, enter into any settlement, or otherwise dispose of such Loss; provided that it obtains the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed). The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, agree to any settlement or acquiesce to any judgment with respect to a Claim that obligates the Indemnified Party to pay any amount subject to indemnification by the Indemnifying Party or causes the Indemnified Party to admit to any civil or criminal liability.

(e) Cooperation. If the Indemnifying Party chooses to defend or prosecute any Claim, the Indemnified Party shall cooperate in the defense or prosecution thereof and shall, at the Indemnifying Party's expense, furnish such records, information, and testimony, provide such witnesses, and attend such conferences, discovery proceedings, hearings, trials, and appeals as may be reasonably requested in connection therewith. Such cooperation shall include access during normal business hours afforded to the Indemnifying Party to, and reasonable retention by the Indemnified Party of records and information that are reasonably relevant to such Claim, and making employees and agents available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder, and the Indemnifying Party shall reimburse the Indemnified Party for all its reasonable time and out-of-pocket expenses in connection therewith.

(f) Expenses. Except as provided above, the reasonable and verifiable costs and expenses, including fees and disbursements of counsel, incurred by the Indemnified Party in connection with any Claim shall be reimbursed on a monthly basis in arrears by the Indemnifying Party, without prejudice to the Indemnifying Party's right to, contest the Indemnified Party's right to indemnification and subject to refund in the event the Indemnifying Party is ultimately held not to be obliged to indemnify the Indemnified Party.

7.4 Limitation of Liability.

(a) SUBJECT TO SECTION 7.4(b) BELOW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR (I) ANY (DIRECT OR INDIRECT) LOSS OF PROFITS, OF PRODUCTION, OF ANTICIPATED SAVINGS, OF BUSINESS, OF GOODWILL OR OF

USE OF THE PRODUCT OR COSTS OF ANY SUBSTITUTE SERVICES OR (II) FOR ANY OTHER LIABILITY, DAMAGE, COST OR EXPENSE OF ANY KIND INCURRED BY THE OTHER PARTY OF AN INDIRECT OR CONSEQUENTIAL NATURE, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF THE DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS PARAGRAPH IS INTENDED TO LIMIT OR RESTRICT THE DAMAGES AVAILABLE FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS IN ARTICLE 3.

(b) Nothing in this Agreement is intended to limit either Party's liability for: (i) death or personal injury caused by its negligence; or (ii) fraud or fraudulent misrepresentation.

(c) If any part of the Transfer Services provided or procured by Patheon is not materially performed in accordance with the terms of this Agreement, then Flexion's sole remedy whether in contract, tort, equity or otherwise (in addition to those expressly set forth in ARTICLE 8) will be for Patheon to repeat that part of the Transfer Service at Patheon's cost (provided that where the Transfer Services to be repeated requires Flexion-Supplied Materials, Flexion will provide such Flexion-Supplied Materials and Patheon shall reimburse Flexion for the actual costs for such Flexion-Supplied Materials, including associated shipment costs); provided that, (i) Patheon shall only be liable to reimburse the costs of any Flexion-Supplied Materials and associated shipment costs […***…], and (ii) Patheon's aggregate liability in each calendar year (liability cap to be pro-rated for partial calendar years) to reimburse the costs of any Flexion-Supplied Materials shall not exceed […***…]% of the […***…] received by Patheon in the […***…] period prior to the month in which the underlying event occurred that gave rise to the liability (e.g. the date of the incident or manufacture) up to a maximum of £[…***…]. Patheon shall not be liable to reimburse the cost of any Flexion-Supplied Materials under any other circumstances.

7.5 Insurance. During the Term and for […***…] thereafter, each Party shall procure and maintain at its own expense from a qualified and licensed insurer liability insurance or indemnity policies, in an amount not less than $[…***…] in the aggregate with respect to public and products liability, subject to such deductible or self-retention limits as either Party in its business discretion may elect. Such policies shall insure against liability on the part of each Party and any of its Affiliates, as their interests may appear, due to injury, disability, or death of any person or persons, or injury to property, arising from the distribution of the Products. Each Party will either (a) include the other Party and its officers, employees and consultants as additional insureds on such policies, or (b) ensure that such policy contains an indemnity to principal clause. Promptly following the execution of this Agreement, each Party shall provide to the other a certificate of insurance (i) summarizing the insurance coverage and (ii) identifying any exclusions. Each Party shall promptly notify the other of any material adverse alterations to the terms of this policy or decreases in the amounts for which insurance is provided.

ARTICLE 8
TERM AND TERMINATION

8.1 Term. This Agreement will remain in full force and effect unless and until it expires or is terminated in accordance with the provisions of this ARTICLE 8 (the "Term").

8.2 Expiration. This Agreement will expire upon completion of the Transfer Services as described herein or until the Parties agree that the Transfer Services have been completed (the "Completion of the Tech Transfer").

8.3 Termination by Flexion. Flexion may terminate this Agreement in its entirety (a) prior to the FDA Approval Date by giving Patheon ninety (90) days' written notice for convenience, in which case, Section 8.11(f) shall apply, or (b) by giving Patheon thirty (30) days written notice if Patheon (due primarily to its acts or omissions) fails to complete Manufacturing Suite construction by the date stated in the Timeline and due solely to such failure, Patheon has not Manufactured registration batches in the Manufacturing Suite by […***…].

8.4 Termination by Mutual Agreement. This Agreement may be terminated at any time upon mutual written agreement between the Parties.

8.5 Termination for Default. Each Party will have the right to terminate this Agreement at any time upon written notice to the other Party, if such other Party (a) breaches any of the representations, warranties, covenants, or agreements set forth in this Agreement or (b) otherwise defaults in the performance of any of its duties or obligations under this Agreement, which in either case has a material effect on the other Party, and which breach or default is not cured within ninety (90) days after written notice is given to the breaching Party specifying the breach or default ("Remediation Period"). The aggrieved Party's right to terminate this Agreement for a particular breach under this Section 8.5 may only be exercised for a period of one hundred and twenty (120) days following the expiry of the Remediation Period (where the breach has not been remedied) and, if the termination right is not exercised during this period, then the aggrieved Party will be deemed to have waived its right to terminate this Agreement for such breach.

8.6 Bankruptcy; Insolvency. To the extent permitted by law, each Party will have the right to terminate this Agreement immediately upon notice to the other Party, if the other Party shall file in any court or agency, pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for arrangement or for the appointment of a receiver or trustee of the other Party or of its assets, or if the other Party proposes a written agreement of composition or extension of its debts, or if the other Party shall be served with an involuntary petition against it, filed in any insolvency proceeding, and such petition shall not be dismissed within sixty (60) days after the filing thereof, or if the other Party shall propose or be a party to any dissolution or liquidation, or if the other Party shall make an assignment for the benefit of its creditors.

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8.7 Cross Termination. Should either Flexion or Patheon exercise its right to terminate this Agreement or the Manufacturing and Supply Agreement in its entirety (but not in the event of an expiration of this Agreement as set forth in Section 8.2) prior to the FDA Approval Date, then the Manufacturing and Supply Agreement, this Agreement and the Quality Agreement will concurrently and automatically terminate.

8.8 No Release. Neither the termination nor expiration of this Agreement will release or operate to discharge either Party from any liability or obligation that may have accrued prior to such termination or expiration, including any obligation to pay to the other Party any amounts accrued under this Agreement with respect to the period prior to the effective date of such expiration or termination. Except as otherwise expressly provided herein, termination of this Agreement in accordance with the provisions hereof will not limit remedies that may otherwise be available in law or equity.

8.9 Obligations. Notwithstanding the giving of any notice of termination pursuant to this ARTICLE 8, each Party will continue to fulfill its obligations under this Agreement at all times until the effective date of any such termination or expiration.

8.10 Survival. The expiration or termination of this Agreement shall be without prejudice to any rights or obligations of the Parties that may have accrued prior to such termination, and the provisions of Sections 2.2 (as it may relate to any unpaid amounts due and owing), 2.6 (as it may relate to the use to which Patheon may put the Flexion Manufacturing Equipment), 2.8, 2.9 and ARTICLE 1, ARTICLE 3, ARTICLE 7, ARTICLE 8, and ARTICLE 9 shall survive the expiration or termination of this Agreement.

8.11 Rights and Duties Upon Termination.

(a) Upon termination of this Agreement, Patheon will, as promptly as practicable, (i) cease work on the Transfer Services, and (ii) make available for collection by Flexion, […***…] (Incoterms 2010) the Facility, all Materials and results and information resulting from the Transfer Services (whether in written or electronic form) that are then in Patheon's or its subcontractors' possession and that are the property of Flexion in accordance with Section 2.9 of this Agreement, including all Flexion Proprietary Information. Flexion shall return to Patheon all Patheon Proprietary Information.

(b) Upon termination of this Agreement, Flexion will (i) pay all earned but unpaid fees and charges for the Transfer Services, including Material Costs, Capital Expenditures, Bill Back Items, Additional Services, Base Fees (through the month of such termination) to reflect Transfer Services performed as of the date of such termination by Patheon; and (ii) pay all due and outstanding invoices in accordance with ARTICLE IV of the Manufacturing and Supply Agreement, including those for Bill Back Items or Additional Services performed as of the date of such expiration and termination; provided that, the Parties agree that if any fees or charges are duplicated under Section 8.3 of the Manufacturing and Supply Agreement, Flexion shall only be obligated to make such payment once.

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(c) Upon termination of this Agreement, Flexion will pay to Patheon all and any removal and Make Good Costs associated with the removal of the Flexion Manufacturing Equipment from the Facility as agreed to in good faith by the Parties in writing. "Make Good Costs" means the reasonable costs required to repair the Facility and return it to a clean, safe and useable area based on the repair of damage caused by the installation or removal of Flexion Manufacturing Equipment.

(d) Upon termination of this Agreement prior to termination of the Manufacturing and Supply Agreement, Flexion will, as promptly as practicable, pay to Patheon the Manufacturing Services Termination Costs pursuant to the provisions of Sections 8.3(f) and 8.3(g) of the Manufacturing and Supply Agreement to the extent applicable to this Agreement or the Transfer Services.

(e) Upon termination of this Agreement, in the event that Patheon will not be Manufacturing the Product for Flexion pursuant to the Manufacturing and Supply Agreement, Flexion shall remove all Flexion Manufacturing Equipment and Materials from the Facility within […***…] days of said termination under all sections other than Section 8.5 and within […***…] days […***…] of a termination by Flexion pursuant to Section 8.5 that is not reasonably disputed by Patheon, failing which Flexion will pay a fee equivalent to the aggregate monthly Base Fee for each month or part month the Flexion Manufacturing Equipment or Materials remain at the Facility post-termination.

(f) Upon termination of this Agreement by Flexion pursuant to Section 8.3(a), in addition to any other obligation of Flexion under Section 8.11, Flexion shall also pay Patheon compensation of £1,300,000 (one million, three hundred thousand British Pounds). The Parties confirm that this sum represents a genuine pre-estimate of Patheon's loss in such circumstances.

ARTICLE 9
MISCELLANEOUS

9.1 Notices. Notwithstanding that advance notification of any notices or other communications may be given by electronic mail transmission, all notices or other communications that shall or may be given pursuant to this Agreement shall be in writing (including by confirmed receipt electronic mail) and shall be deemed to be effective (a) when delivered if sent by registered or certified mail, return receipt requested, or (b) on the next business day, if sent by overnight courier, (c) when sent if sent by electronic mail provided that receipt is confirmed, in each case to the Parties at the following addresses (or at such other addresses as shall be specified by like notice) with postage or delivery charges prepaid.

If to Flexion:

Flexion Therapeutics, Inc.
Attn: Michael Clayman, MD
Telephone: […***…]

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Email: […***…]

With a copy to: Legal

If to Patheon:

Attention:

Executive Director & General Manager
Patheon UK Limited
Kingfisher Drive, Covingham
Swindon, Wiltshire SN3 5BZ
England
Email: […***…]

with copy to

Legal Director.

9.2 Force Majeure. Neither Party shall be liable for delay in delivery, performance or nonperformance, in whole or in part, nor shall the other Party have the right to terminate this Agreement except as otherwise specifically provided in this Section 9.2 where such delay in delivery, performance or nonperformance results from acts beyond the reasonable control and without the fault or negligence of such Party including, but not limited to, the following conditions: fires, floods, storms, embargoes, shortages, epidemics, quarantines, war, acts of war (whether war be declared or not), terrorism, insurrections, riots, civil commotion, or acts, omissions, or delays in acting by any governmental authority; provided that the Party affected by such a condition shall, within five (5) days of its occurrence, give notice to the other Party stating the nature of the condition, its anticipated duration, and any action being taken to avoid or minimize its effect. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required, and the nonperforming Party shall use its commercially reasonable efforts to remedy its inability to perform; provided, however, that in the event the suspension of performance continues for […***…] days after the date of the occurrence, and such failure to perform would constitute a material breach of this Agreement in the absence of such force majeure event, the non-affected Party may terminate this Agreement immediately by written notice to the affected Party.

9.3 Independent Contractor. The Parties to this Agreement are independent contractors. Nothing contained in this Agreement will be construed to place the Parties in the relationship of employer and employee, partners, principal, and agent or a joint venture. Neither Party will have the power to bind or obligate the other Party nor will either Party hold itself out as having such authority.

9.4 Waiver. Save where expressly stated to the contrary in this Agreement, no waiver by either Party of any provision or breach of this Agreement will constitute a waiver by such

Party of any other provision or breach, and no such waiver will be effective unless made in writing and signed by an authorized representative of the Party against whom waiver is sought. No course of conduct or dealing between the Parties will act as a modification or waiver of any provision of this Agreement. Either Party's consent to or approval of any act of the other Party will not be deemed to render unnecessary the obtaining of that Party's consent to or approval of any subsequent act by the other Party.

9.5 Entire Agreement. This Agreement (together with all Exhibits hereto, which are hereby incorporated by reference), the Manufacturing and Supply Agreement and the Quality Agreement, constitute the final, complete, and exclusive agreement between the Parties relating to the subject matter hereof and supersede all prior conversations, understandings, promises, and agreements relating to the subject matter hereof, including without limitation that (i) certain Confidentiality Agreement dated September 22, 2014 between Flexion and Patheon and the Letter Agreement between the Parties dated 1 May 2015, and (ii) that certain Patheon Partner External User Account/Access Form, Client Agreement and Authorization signed by Flexion on June 5, 2015. Neither Party has relied upon any communication, representation, term, or promise, verbal or written, not set forth herein.

9.6 Assignment; Change of Control.

This Agreement may not be assigned by Patheon without the prior written consent of Flexion. Notwithstanding the foregoing, either Party may assign this Agreement to an Affiliate or to an acquirer or successor in interest in connection with a Change of Control of such Party without the prior written consent of the other Party, provided that such Party provides the other Party with written notice of any such assignment. This Agreement shall be binding upon and inure to the benefit of Flexion and Patheon and their respective successors, heirs, executors, administrators, and permitted assigns. "Change of Control" means the closing of (a) a merger, consolidation or similar transaction providing for the acquisition of the direct or indirect ownership of more than fifty percent (50%) of a Party's shares or similar equity interests or voting power of the outstanding voting securities or that represents the power to direct the management and policies of such Party (including any acquisition arising through the offering of any shares of Patheon or any of its Affiliates on any securities or stock exchange), or (b) the sale of all or substantially all of a Party's assets related to the subject matter of the Agreement.

9.7 Amendment; Modification. This Agreement may not be amended, modified, altered, or supplemented except by a writing signed by both Parties. No modification of any nature to this Agreement and no representation, agreement, arrangement, or other communication will be binding on the Parties unless such is expressly contained in writing and executed by the Parties as an amendment to this Agreement. This Agreement may not be amended in any respect by any purchase order, invoice, acknowledgment, or other similar printed document issued by either Party.

9.8 Subcontractors. Prior to subcontracting any of Patheon's obligations hereunder, Patheon will notify Flexion (1) in advance of engaging a proposed subcontractor that directly relates to the Manufacture of the Product and will obtain Flexion's prior written approval of each such subcontractor, and (2) within six (6) months of all other subcontractors so engaged. The terms of any subcontract will be in writing and will not be materially inconsistent with this

Agreement or the Manufacturing and Supply Agreement, including Section 3.14 of the Manufacturing and Supply Agreement. No subcontracting will release Patheon from its responsibility for its obligations under this Agreement. Patheon will be responsible for the work and activities of each subcontractor as they relate to performance of Patheon's obligations under this Agreement, including compliance with the terms of this Agreement.

9.9 Governing Law.

(a) The laws of […***…], whether procedural or substantive (but excluding application of any choice of law provisions contained therein) shall apply to all matters pertaining only to (a) title to and ownership of Materials, Equipment or the Facility, and its appurtenances including, without limitation, all rights therein and the creation, exercise and extinction of such rights, obligations and liabilities or (b) employment law matters. In relation to such matters, both Parties shall submit to the exclusive jurisdiction of the […***…] Courts. For the avoidance of doubt, the Parties agree that nothing in this Agreement shall (i) grant Flexion any property ownership rights in the Facility or (ii) shall constitute a lease to the Facility.

(b) In all other respects, this Agreement shall be construed under and governed by the laws of […***…] without regard to the application of principles of conflicts of law. In relation to such matters, both Parties shall submit to the exclusive jurisdiction of the […***…].

(c) Any preliminary issue over which of sub-section 9.9(a) or (b) applies to a particular claim or dispute shall be determined in accordance with provisions of 9.9(a).

(d) The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if applicable.

9.10 Severability. If any provision of this Agreement is found by a proper authority to be unenforceable, that provision to the extent it is found to be unenforceable or invalid will be severed and the remainder of the provision and this Agreement will continue in full force and effect. The Parties shall use their best efforts to agree upon a valid and enforceable provision as a substitute for any invalid or unenforceable provision, taking in to account the Parties' original intent of this Agreement.

9.11 Construction. Unless the context of this Agreement otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement; (d) the terms "Article," "Section,"

"Exhibit," or "clause" refer to the specified Article, Section, Exhibit, or clause of this Agreement; (e) "or" is disjunctive but not necessarily exclusive; and (f) the term "including" or "includes" means "including without limitation" or "includes without limitation." Whenever this Agreement refers to a number of days, such number will refer to calendar days unless business days are specified. The captions and headings of this Agreement are for convenience of reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The language of this Agreement will be deemed to be the language mutually chosen by the Parties, and no rule of strict construction will be applied against either Party hereto.

9.12 Third Party Beneficiaries. This Agreement is not intended to confer upon any non-party any right or remedy hereunder, except as may be received or created as part of a valid assignment.

9.13 Further Assurances. Each of the Parties agrees to duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such additional assignments, agreements, documents, and instruments, that may be necessary or as the other Party hereto may at any time and from time to time reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes of, or to better assure and confirm unto such other Party its rights and remedies under, this Agreement.

9.14 Counterparts. This Agreement may be signed in counterparts, each and every one of which will be deemed an original. Facsimile or PDF signatures will be treated as original signatures.

9.15 Taxes.

(a) Subject to (b) and (c) below, Patheon will bear all Taxes however designated as a result of the provision of the Transfer Services under this Agreement.

(b) Flexion acknowledges that it will be responsible for all Taxes that arise in respect of the following:

(i) The acquisition of the Flexion-Supplied Materials.

(ii) The acquisition of the Flexion Manufacturing Equipment.

(c) Any payment due under this Agreement for the provision of Transfer Services to Flexion by Patheon is exclusive of value added or equivalent tax in any other jurisdiction, including any related interest and penalties (hereinafter all referred to as "VAT"). If any VAT is payable on a Transfer Service supplied by Patheon to Flexion under this Agreement, this VAT will be added to the invoice amount and will be for the account of (and reimbursable to Patheon by) Flexion. Where applicable, Patheon will use its reasonable commercial efforts to ensure that its invoices to Flexion are issued in such a way that these invoices meet the requirements for deduction of input VAT by Flexion, to the extent permitted by law to do so.

(d) Flexion acknowledges that all amounts due in respect of any fees payable by Flexion under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding in respect of any Tax liabilities.

The remainder of this page is left blank intentionally.

IN WITNESS WHEREOF, this Technical Transfer and Service Agreement has been executed by the Parties hereto as of the day and year first written above.

PATHEON UK LIMITED:		**FLEXION THERAPEUTICS, INC.**:	
By:	/s/ A.M. Botterill	By:	/s/ Michael D. Clayman, M.D.
Name:	A.M. Botterill	Name:	Michael D. Clayman, M.D.
Title:	Exec. Dir. & Gen. Manager	Title:	CEO

Exhibit 2.1-A

[…***…]

***Confidential Treatment Requested for pages 30-36.
Omitted pages have been filed separately with the Commission.

30-36

Exhibit 2.1-B

[…***…]

***Confidential Treatment Requested for pages 37-43.
Omitted pages have been filed separately with the Commission.

37-43

[…***…]

***Confidential Treatment Requested

Exhibit 2.1-D

[…***…]

***Confidential Treatment Requested for pages 45-50.
Omitted pages have been filed separately with the Commission.

45-50

Exhibit 2.1-E

[…***…]

***Confidential Treatment Requested for pages 51-52.
Omitted pages have been filed separately with the Commission.

51-52

Exhibit 2.1-F

[…***…]

***Confidential Treatment Requested for pages 53-55.
Omitted pages have been filed separately with the Commission.

53-55

Exhibit 2.7

Steering Committee

1. Generally. The purpose of the Steering Committee shall be to oversee the Technical Transfer and Service Agreement, the Manufacturing and Supply Agreement and the Quality Agreement (the "Agreements") and to facilitate communications between the Parties with respect thereto. The Steering Committee shall have the responsibilities and authority allocated to it in this Exhibit 2.7. The Steering Committee shall have the obligation to exercise its authority consistent with the respective purpose for the Steering Committee as stated herein and any such decisions shall be made in good faith.

2 Formation and Purpose. Promptly following the Effective Date, the Parties shall confer and then create a Steering Committee. The Steering Committee shall have authority, subject to Paragraph 5, to oversee the priorities and budgets (not less than on a quarterly basis), to oversee manufacturing and controls for the Products, to review and approve all associated regulatory filings and correspondence under the Agreements (including reviewing and approving itemized budgets with respect to the foregoing), to approve the projects and plans of any subcommittee it establishes consistent with this authority and to review any concerns either Party may have concerning key employees employed by the Parties to provide the Transfer Services under the Technical Transfer Agreement and the Services under the Manufacturing and Supply Agreement.

3 General Steering Committee Membership and Procedure.

(a) Membership. Each Party shall designate an equal number of representatives (not to exceed three (3) for each Party) to the Steering Committee with appropriate expertise to serve as members of the Steering Committee. The Steering Committee representatives must all be employees of such Party or an Affiliate of such Party, with the caveat that each Party may designate for the Steering Committee up to one (1) representative who is not an employee if: (i) such non-employee representative agrees in writing to be bound to the terms of this Agreement for the treatment and ownership of confidential information of the Parties, and (ii) the other Party consents to the designation of such non-employee representative, which consent shall not be unreasonably withheld. Each Party may replace its Steering Committee representatives at any time upon written notice to the other Party. The Steering Committee shall have a chairperson which shall be appointed by Flexion. The chairperson of the Steering Committee shall be responsible for calling meetings, preparing and circulating an agenda in advance of each meeting of the Steering Committee, and preparing and issuing minutes of each meeting within fifteen (15) days thereafter.

(b) Meetings. The Steering Committee shall be constituted and the first meeting of the Steering Committee shall be held within sixty (60) days following the Effective Date, with the Steering Committee considering finalization and approval of workplans prepared by the Parties for inclusion and commencement under the Agreements. Otherwise, the Steering Committee shall hold meetings at such times as it elects to do so, but in no event shall such meetings be held less

frequently than once every six (6) months. Meetings of the Steering Committee may be held in person or by means of telecommunication (telephone, video, or web conferences). To the extent that the Steering Committee holds any meetings in person, the Parties will alternate in designating the location for such in-person meetings, with Flexion selecting the first meeting location for the Steering Committee. A reasonable number of additional representatives of a Party may attend meetings of the Steering Committee in a non-voting capacity. Each Party shall be responsible for all of its own expenses of participating in the Steering Committee.

(c) Meeting Agendas. Each Party will disclose to the other proposed agenda items along with appropriate information at least three (3) business days in advance of each meeting of the Steering Committee; provided, that a Party may provide its agenda items to the other Party within a lesser period of time in advance of the meeting, or may propose that there not be a specific agenda for a particular meeting, so long as such other Party consents to such later addition of such agenda items or the absence of a specific agenda for the Steering Committee meeting.

(d) Limitations of Steering Committee Powers. The Steering Committee shall have only such powers as are specifically delegated to it hereunder or from time to time as agreed to in writing by the mutual consent of the Parties and shall not be a substitute for the rights of the Parties. Without limiting the generality of the foregoing, the Steering Committee shall not have any power to amend the Agreements. Any amendment to the terms and conditions of this Agreement shall be implemented pursuant to Section 9.7 above. Additionally, no member of the Steering Committee shall be able to vote in the Steering Committee and thereby bind its respective Party on any material matter except as otherwise properly authorized, approved, or delegated by such Party in accord with Paragraph 5.

4 Restrictions. Neither Party shall exercise its right to finally resolve a dispute at the Steering Committee in accordance with this Paragraph 4 in a manner that (i) excuses such Party from any of its obligations specifically enumerated under this Agreement; (ii) expands the obligations of the other Party under this Agreement; (iii) negates any consent rights or other rights specifically allocated to the other Party under this Agreement; (iv) purports to resolve any dispute involving the breach or alleged breach of this Agreement; (v) resolves a matter if the provisions of this Agreement specify that mutual agreement is required for such matter; or (vi) would require the other Party to perform any act that is inconsistent with applicable law.

5 Authorization of Steering Committee Representatives. Each representative serving on the Steering Committee shall be responsible for ensuring that he or she acts only as duly authorized by its respective Party and obtains any advance approvals, delegations, or other authorizations from his or her respective Party in advance of making any Steering Committee votes.

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY [***], HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM IF PUBLICLY DISCLOSED.

AMENDMENT AGREEMENT

First Amendment to the Technical Transfer and Service Agreement

This Amendment Agreement (this "**Amendment Agreement**") is between Flexion Therapeutics, Inc., having its principal office at 10 Mall Road, Burlington MA, USA ("Flexion") and Patheon UK Limited, having a principal place of business at Kingfisher Drive, Covingham, Swindon, Wiltshire SN35BZ, United Kingdom ("**Patheon**") (collectively, "**Parties**"; individually, "**Party**"). This Amendment Agreement is dated 8 May 2019 (the "**Amendment Effective Date**").

WHEREAS, Flexion and Patheon entered into a Technical Transfer and Service Agreement ("**Technical Transfer Agreement**") on 31 July 2015, pursuant to which Patheon provides certain technical transfer and construction services in order to validate and scale up portions of Flexion's technology package and prepare Patheon's facilities for the manufacture of Flexion's FX006 drug product (ZILRETTA) (an extended-release formulation of triamcinolone acetonide).

WHEREAS, the Parties have agreed to initiate construction of the area referred to as the Phase III manufacturing suite at Patheon's facility and to incur certain capital expenditures to facilitate the manufacture of Flexion's product in this manufacturing suite.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements set forth below and in the Technical Transfer Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereto, intending to be legally bound, do hereby agree as follows:

1.Definitions

Defined terms in this Amendment Agreement shall have the same meaning as those in the Technical Transfer Agreement as applicable unless otherwise indicated.

2.Amendments

The Technical Transfer Agreement shall be amended such that the following Paragraphs or parts of the Exhibits to the Technical Transfer Agreement shall be replaced as set out in the Schedules attached to this Amendment Agreement.

[***]

3.Effectiveness of Amendments

The amendments to the Technical Transfer Agreement set forth herein shall be effective as of the Amendment Effective Date.

4.Integration

Except for the sections of the Technical Transfer Agreement specifically amended hereunder, all terms and conditions of the Technical Transfer Agreement remain and shall remain in full force and effect. This Amendment Agreement shall hereafter be incorporated into and deemed part of the Technical Transfer Agreement and any future reference to the Technical Transfer Agreement shall include the terms and conditions of this Amendment Agreement.

5.Governing Law and Jurisdiction

This Amendment Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws that govern the Technical Transfer Agreement, and the Parties submit to the jurisdiction and dispute resolution provisions as set forth in the Technical Transfer Agreement.

IN WITNESS WHEREOF, the Parties have caused this Amendment Agreement to be executed by their duly authorized representatives, effective as of the date of the last signature.

FLEXION THERAPEUTICS, INC.	**PATHEON UK LTD.**
/s/ Michael D. Clayman, M.D.	/s/ Luca Andretta
Signature	Signature
Michael D. Clayman, M.D.	Luca Andretta
Name	Name
CEO	Director
Title	Title
May 9, 2019	May 12, 2019
Date	Date

Schedule 1 of the Amendment Agreement
[***]

Schedule 2 of the Amendment Agreement
[***]

Schedule 3 of the Amendment Agreement
[***]

CERTAIN CONFIDENTIAL PORTIONS HAVE BEEN REDACTED FROM THIS EXHIBIT BECAUSE THEY ARE BOTH (i) NOT MATERIAL AND (ii) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. INFORMATION THAT HAS BEEN OMITTED HAS BEEN IDENTIFIED IN THIS DOCUMENT WITH A PLACEHOLDER IDENTIFIED BY THE MARK "[***]".

April 8, 2020

VIA ELECTRONIC MAIL

Patheon UK Ltd
Executive Director & General Manager
Kingfisher Drive, Covingham
Swindon, Wiltshire SN3 5 BZ
England

Re: Side Letter to the Manufacturing and Supply Agreement by and between Flexion Therapeutics, Inc. ("**Flexion**") and Patheon UK Limited ("**Patheon**")

Dear Mr. McLean:

Reference is hereby made to the Manufacturing and Supply Agreement by and between Flexion and Patheon effective as of 31 July 2015, as amended by the First Amendment Agreement dated 8 May 2019 and by the Second Amendment Agreement dated 17 June 2019 (together, the "**Manufacturing and Supply Agreement**"), pursuant to which Patheon provides manufacturing services for Flexion's FX006 drug product (ZILRETTA) (an extended-release formulation of triamcinolone acetonide) (the "**Product**").

In accordance with Schedule 2.1(a) of the Manufacturing and Supply Agreement, Flexion's minimum annual volume commitment for 2020 is [***] units. However, Flexion has requested to reduce its own volume commitment for the calendar year 2020 and Patheon has agreed to accommodate such request at the conditions reported hereinafter. Therefore, each of Flexion and Patheon hereby agree as follows:

1.Definitions
Defined terms in this Side Letter shall have the same meaning as those in the Manufacturing and Supply Agreement as applicable unless otherwise indicated.

2.For calendar year 2020:
(a)the manufacturing services for Flexion's Product will be stopped for an extended period, starting from the end of the production activities for the batch [***] and until further notice by Flexion. It is understood that, in accordance with the current provisions of the Manufacturing and Supply Agreement, Flexion shall provide not less than three (3) months' notice if it wishes Patheon to resume Manufacture at the Manufacturing Suite.

(b)Patheon will not require Flexion [***]. For the sake of clarity, any additional batch of Product that Flexion should require Patheon to manufacture after batch [***], will be invoiced by Patheon at the Product Fee set out in the Manufacturing and Supply Agreement.

(c)Flexion will continue to pay the Base Fee due for the remainder months of 2020 [***], in 2020, pursuant to the Manufacturing and Supply Agreement.

3.Additional Provisions

The Parties agree that, on or about the end of the Q3 2020, good faith discussions will start concerning (i) Parties' business needs [***]. Nothing in this Section 3 shall be construed as an obligation for either Party to do anything or to amend the Manufacturing and Supply Agreement unless the Parties otherwise agree in writing.

4.Effectiveness of Amendments
This Side Letter constitutes the full, complete, final and integrated agreement between Flexion and Patheon relating to the subject matter hereof and supersedes all previous written or oral negotiations, commitments, agreements, transactions or understandings with respect to the subject matter hereof. This Side Letter shall be effective as of the date of the last signature entered below (the "**Side Letter Effective Date**").

5.Integration; Counterparts
Except for the sections or schedules of the Manufacturing and Supply Agreement specifically amended hereunder, all terms and conditions of the Manufacturing and Supply Agreement remain and shall remain in full force and effect. This Side Letter shall be incorporated into and deemed part of the Manufacturing and Supply Agreement as of the Side Letter Effective Date and any future reference to the Manufacturing and Supply Agreement shall include

the terms and conditions of this Side Letter. This Side Letter may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

6.Governing Law and Jurisdiction
This Side Letter and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws that govern the Manufacturing and Supply Agreement, and the Parties submit to the jurisdiction and dispute resolution provisions as set forth in the Manufacturing and Supply Agreement.

IN WITNESS WHEREOF, the Parties have caused this Side Letter to be executed by their duly authorized representatives, on the dates shown below and will take effect from the Side Letter Effective Date.

FLEXION THERAPEUTICS, INC.

By: */s/ Michael Clayman*

Name: Michael Clayman

Title: CEO

Date: April 8, 2020

PATHEON UK LTD.

By: */s/ Jim McLean*

Name: Jim McLean

Title: General Manager

Date: April 9, 2020

Exhibit 21.1

SUBSIDIARIES OF THE REGISTRANT

The following is a listing of the subsidiaries of Pacira BioSciences, Inc., a Delaware corporation:

	Jurisdiction of Incorporation
Domestic Subsidiaries	
Pacira Pharmaceuticals, Inc.	California
Pacira CryoTech, Inc.	Delaware
Pacira Pharmaceuticals International, Inc.	Delaware
Pacira Therapeutics, Inc.	Delaware
Flexion Therapeutics Securities Corporation	Massachusetts
International Subsidiaries	
Pacira Limited	United Kingdom
Pacira Ireland Limited	Ireland
Pacira Canada, Inc.	Canada

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the registration statements (Nos. 333-175101, 333-181986, 333-196542, 333-212098, 333-233141 and 333-258410) on Form S-8 of our reports dated February 28, 2022, with respect to the consolidated financial statements of Pacira BioSciences, Inc. and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

Short Hills, NJ

February 28, 2022

Exhibit 31.1

CERTIFICATION

I, David Stack, certify that:

1. I have reviewed this annual report on Form 10-K of Pacira BioSciences, Inc. (the "Registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
(b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
(c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
(d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

(a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: February 28, 2022

/s/ DAVID STACK

David Stack
Chief Executive Officer and Chairman
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION

I, Charles A. Reinhart, III, certify that:

1. I have reviewed this annual report on Form 10-K of Pacira BioSciences, Inc. (the "Registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
(b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
(c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
(d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

(a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: February 28, 2022

/s/ CHARLES A. REINHART, III

Charles A. Reinhart, III
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATIONS OF THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, the undersigned certifies that this Annual Report on Form 10-K of Pacira BioSciences, Inc. for the year ended December 31, 2021, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in this report fairly presents, in all material respects, the financial condition and results of operations of Pacira BioSciences, Inc. at the dates and for the periods indicated.

Date: February 28, 2022

/s/ DAVID STACK

David Stack
Chief Executive Officer and Chairman
(Principal Executive Officer)

Date: February 28, 2022

/s/ CHARLES A. REINHART, III

Charles A. Reinhart, III
Chief Financial Officer
(Principal Financial Officer)