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

FORM 10-K

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

For the fiscal year ended December 31, 2023

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 001-31938

ACORDA THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**13-3831168**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
2 Blue Hill Plaza, 3rd Floor, Pearl River, New York	**10965**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (914) 347-4300

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 $0.001 par value per share	ACOR	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 ☐ No ☒

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 ☐ No ☒

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 ☒ No ☐

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 ☒ No ☐

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 provided pursuant to Section 13(a) of the Exchange Act. ☐

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. ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

As of June 30, 2023, the aggregate market value (based on the closing price on that date) of the registrant's voting stock held by non-affiliates was $16,055,406. For purposes of this calculation, we have excluded shares of common stock held by directors, officers and stockholders reporting ownership on Schedule 13D (or amendments thereto) that exceeds five percent of the common stock outstanding at June 30, 2023. Exclusion of

shares held by any person should not be construed to indicate that the person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant, or that the person is controlled by or under common control with the registrant.

As of March 27, 2024, the registrant had 1,242,098 shares of common stock, $0.001 par value per share, outstanding. The registrant does not have any non-voting stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

The information required by Part III of Form 10-K is incorporated herein by reference to the definitive proxy statement for the registrant's 2024 annual meeting of stockholders, or alternatively included in an amendment to this Form 10-K, which the registrant expects to file within 120 days of the registrant's fiscal year ended December 31, 2023.

ACORDA THERAPEUTICS, INC.
2023 FORM 10-K ANNUAL REPORT
TABLE OF CONTENTS

This Annual Report on Form 10-K contains forward-looking statements relating to future events and our future performance within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements, other than statements of historical facts, included in this report regarding our strategy, future operations, future financial position, future revenues, projected costs, prospects, plans and objectives of management are forward-looking statements. The words "anticipates," "believes," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Forward-looking statements are based on current expectations, estimates, forecasts and projections about the industry and markets in which we operate and management's beliefs and assumptions. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements we make, and investors should not place undue reliance on these statements. Readers are cautioned that such statements involve risks and uncertainties, including: our ability to negotiate and confirm a sale of substantially all of our assets under Section 363 of the United States Bankruptcy Code (the "Code") (or other plan of reorganization or liquidation); the high costs and related fees of cases instituted under Chapter 11 of the Code ("Chapter 11"); our ability to obtain sufficient financing to allow us to operate our business during the course of the Intended Chapter 11 Proceedings (as defined below); our ability to satisfy the conditions and milestones in the Restructuring Support Agreement (as defined below); our ability to maintain our relationships with our suppliers, service providers, customers, employees and other third parties; our ability to maintain contracts that are critical to our operations; our ability to execute competitive contracts with third parties; the ability of third parties to seek and obtain court approval to terminate contracts and other agreements with us; our ability to retain our current management team and to attract, motivate and retain key employees; the ability of third parties to seek and obtain court approval to convert the Intended Chapter 11 Proceedings to a proceeding under Chapter 7 of the Code ("Chapter 7"); the actions and decisions of our shareholders, creditors and other third parties who have interests in the Intended Chapter 11 Proceedings that may be inconsistent with our plans; we may not be able to successfully market Ampyra, Inbrija or any other products that we may develop; our ability to attract and retain key management and other personnel, or maintain access to expert advisors; our ability to raise additional funds to finance our operations, repay outstanding indebtedness or satisfy other obligations, and our ability to control our costs or reduce planned expenditures and take other actions which are necessary for us to continue as a going concern; risks associated with the trading of our common stock and our credit agreements, including the likely delisting of our common stock from the Nasdaq Global Select Market and default under the 2024 Indenture (as defined below); risks related to the successful implementation of our business plan, including the accuracy of our key assumptions; risks related to our corporate restructurings, including our ability to outsource certain operations, realize expected cost savings and maintain the workforce needed for continued operations; risks associated with complex, regulated manufacturing processes for pharmaceuticals, which could affect whether we have sufficient commercial supply of Inbrija to meet market demand; our reliance on third-party manufacturers for the production of commercial supplies of Ampyra and Inbrija; third-party payers (including governmental agencies) may not reimburse for the use of Inbrija at acceptable rates or at all and may impose restrictive prior authorization requirements that limit or block prescriptions; reliance on collaborators and distributors to commercialize Inbrija and Ampyra outside the U.S.; our ability to satisfy our obligations to distributors and collaboration partners outside the U.S. relating to commercialization and supply of Inbrija and Ampyra; our plans to enter into additional collaborations and distribution arrangements with third parties to transition commercialization of Fampyra due to the termination of our collaboration agreement with Biogen; competition for Inbrija and Ampyra and Fampyra, including increasing competition and accompanying loss of revenues in the U.S. from generic versions of Ampyra following our loss of patent exclusivity and launch of a generic version of Fampyra in Germany; the risk of unfavorable results from future studies of Inbrija or from other research and development programs, or any other acquired or in-licensed programs; the occurrence of adverse safety events with our products; the outcome (by judgment or settlement) and costs of legal, administrative or regulatory proceedings, investigations or inspections, including, without limitation, collective, representative or class-action litigation; failure to protect our intellectual property, to defend against the intellectual property claims of others or to obtain third-party intellectual property licenses needed for the commercialization of our products; and failure to comply with regulatory requirements could result in adverse action by regulatory agencies. In addition to the risks and uncertainties described above, we have included important factors in the cautionary statements included in this Annual Report, particularly in the "Risk Factors" section, that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments that we may make. Forward-looking statements in this report are made only as of the date hereof and we disclaim any intent or obligation to update any forward-looking statements as a result of developments occurring after the date of this report except as may be required by law.

We and our subsidiaries own several registered trademarks in the U.S. and in other countries. These registered trademarks include, in the U.S., the marks "Acorda Therapeutics," our stylized Acorda Therapeutics logo, "Ampyra," "Inbrija," and "ARCUS." Also, our marks "Fampyra" and "Inbrija" are registered marks in the European Community Trademark Office and we have registrations or pending applications for these marks in other jurisdictions. Our trademark portfolio also includes several registered trademarks and pending trademark applications in the U.S. and worldwide for potential product names or for disease awareness activities. Third-party trademarks, trade names, and service marks used in this report are the property of their respective owners.

PART I

Item 1. Business.

Company Overview and Highlights

Acorda Therapeutics, Inc. ("Acorda" or the "Company") is a biopharmaceutical company focused on developing therapies that restore function and improve the lives of people with neurological disorders. We market Inbrija (levodopa inhalation powder), which is approved in the U.S. for intermittent treatment of OFF episodes, also known as OFF periods, in people with Parkinson's disease treated with carbidopa/levodopa. Inbrija is for as needed use and utilizes our ARCUS pulmonary delivery system, a technology platform designed to deliver medication through inhalation that we believe has potential to be used in the development of a variety of inhaled medicines. We also market branded Ampyra (dalfampridine) Extended Release Tablets, 10 mg to improve walking in adults with multiple sclerosis, and we will regain from Biogen the global commercialization rights to Fampyra (the brand name of Ampyra outside the U.S.).

Voluntary Filing Under Chapter 11

Over the past several months, we, with the assistance of outside legal and financial advisors, have been engaged in a robust process to explore strategic alternatives and maximize value for our stakeholders in light of the upcoming maturity of our 6.00% convertible senior secured notes that mature on December 1, 2024 ("2024 Notes"). During this process, we were, and continue to be, in regular communication with the holders of the 2024 Notes and their advisors. We have evaluated every aspect of our business and have taken proactive steps to respond to the challenges we continue to face. Notwithstanding these measures, we engaged in an exhaustive process to find an appropriate strategic solution. Our Board of Directors, after reviewing a number of alternatives, has determined that it is in the best interests of the Company and its stakeholders to pursue a sale of assets under Chapter 11 of the Code, which we believe will ensure we obtain the maximum value for the Company and most importantly, that our products will be provided on an uninterrupted basis to patients who will continue to benefit from these much needed medications.

We intend to commence voluntary proceedings under Chapter 11 of the Code in the United States Bankruptcy Court for the Southern District of New York (the "Court") shortly after filing this Annual Report (the "Intended Chapter 11 Proceedings"). We expect to continue to operate our business as a "debtor in possession" in accordance with the applicable provisions of the Code and orders of the Court. We expect to request approval from the Court for certain customary "first day" motions to continue our ordinary course operations after the filing date of the Intended Chapter 11 Proceedings.

Shortly following the commencement of the Intended Chapter 11 Proceedings, we expect to receive written notice from the staff of the Nasdaq Global Select Market ("Nasdaq") notifying us that, as a result of the Chapter 11 filing, and in accordance with Nasdaq Listing Rules, our common stock will be delisted from the Nasdaq. In such event, we expect that our common stock would commence trading on the Pink Open Market (commonly referred to as the "pink sheets").

Asset Purchase Agreement

Prior to the commencement of the Intended Chapter 11 Proceedings, on March 31, 2024 we entered into a "stalking horse" Asset Purchase Agreement (the "Asset Purchase Agreement") with Merz Pharmaceuticals, LLC, a North Carolina limited liability company (the "Purchaser"), and, solely with respect to the guarantee of purchaser's obligations thereunder, Merz Pharma GmbH & Co. KGaA, a German partnership (the "Purchaser Parent"). The Asset Purchase Agreement provides for the sale of substantially all of the Company's assets (the "Purchased Assets") to the Purchaser for $185.0 million, subject to certain adjustments as specified in the Asset Purchase Agreement. The Asset Purchase Agreement is subject to Court approval and compliance with agreed-upon bidding procedures under Section 363 of the Code ("Section 363") allowing for the submission of higher or otherwise better offers and satisfaction of other agreed-upon conditions. In accordance with the sale process under Section 363, notice of the proposed sale to the Purchaser will be given to third parties and competing bids will be solicited over a specified period of time. We will manage the bidding process and evaluate the bids, in consultation with our advisors and as overseen by the Court. We cannot provide any assurance that we will be able to successfully complete a sale of the Purchased Assets or that we will be able to continue to fund our operations throughout the Intended Chapter 11 Proceedings.

Restructuring Support Agreement

Prior to the commencement of the Intended Chapter 11 Proceedings, on April 1, 2024 we entered into a Restructuring Support Agreement with the holders who collectively hold more than 90% of the aggregate principal amount of a majority of our 2024 Notes (the "RSA Noteholders" and such agreement, the "Restructuring Support Agreement"). As contemplated in the Restructuring Support Agreement, we will seek to sell substantially all of our assets in a sale pursuant to Section 363. The Restructuring Support Agreement sets out certain milestones and conditions relating to the Section 363 sale process, subject to the terms and conditions contained therein.

DIP Credit Agreement

In order to fund the continued operations of the Company during the pendency of the Intended Chapter 11 Proceedings, we and certain of the RSA Noteholders agreed to the terms of a form of Debtor-in-Possession Credit Agreement (the "DIP Credit Agreement") to be entered into by and among the Company, as borrower, and the lenders from time to time party thereto (collectively, the "DIP Lenders", GLAS USA LLC, as administrative agent (the "DIP Administrative Agent"), and GLAS Americas, LLC, collateral agent (collectively, with the DIP Administrative Agent, the "DIP Agent"), pursuant to which the DIP Lenders would provide the Company with a senior secured, superpriority debtor-in-possession term loan facility in the maximum aggregate amount of $60.0 million (the "DIP Credit Facility," and the commitments of the DIP Lenders thereunder, the "DIP Commitments" and, the loans thereunder, the "DIP Loans"), which, subject to the satisfaction of certain conditions precedent to drawing as set forth in the DIP Credit Agreement, including the approval of the Court, will be made available to the Company in multiple drawings as follows: (i) up to $10.0 million ("Interim DIP Loan Commitment") will be made available for drawing upon entry by the Court of an interim order authorizing and approving the DIP Credit Facility on an interim basis (the "Interim DIP Order"), (ii) up to $10.0 million ("Final DIP Loan Commitments") will be made available for drawing upon entry of the Court of a final order authorizing and approving the DIP Credit Facility on a final basis (the "Final DIP Order" and together with the Interim DIP Order, the "DIP Orders"), and (iii) upon subject to entry of the Final Order, a roll-up facility in the aggregate maximum principal amount of $40.0 million, representing a roll-up of obligations under the 2024 Notes on a two dollars to one dollar basis of the DIP Commitments under the DIP Facility made by the RSA Noteholders. See *Financing Arrangements* in Part II, Item 7 of this Annual Report for more information.

Our Products

Inbrija/Parkinson's Disease

Inbrija is the first and only inhaled levodopa, or L-dopa, for intermittent treatment of OFF periods in people with Parkinson's disease treated with a carbidopa/levodopa regimen. Approximately one million people in the U.S. and 1.2 million people in Europe are diagnosed with Parkinson's; it is estimated that approximately 40% of people with Parkinson's in the U.S. experience OFF periods. The U.S. Food and Drug Administration's ("FDA") approval of Inbrija is for a single dose of 84 mg (administered as two capsules), which may be taken up to five times per day. Currently, Inbrija is available in the U.S. without the need for a medical exception for approximately 92% of commercially insured lives and approximately 68% of Medicare plan lives. U.S. net revenue for Inbrija was $33.6 million for the year ended December 31, 2023.

Inbrija is also approved for use in the European Union ("EU"). The European Commission ("EC") approved Inbrija dose is 66 mg (administered as two capsules) up to five times per day (per EU convention, this reflects emitted dose and is equivalent to the 84 mg labeled dose in the U.S.). Under the EU approval, Inbrija is indicated for the intermittent treatment of episodic motor fluctuations (OFF episodes) in adult patients with Parkinson's disease treated with a levodopa/dopa-decarboxylase inhibitor. We have entered into agreements to commercialize Inbrija in Spain, Germany, Latin America, and China, and are in discussions with potential partners for commercialization of Inbrija in other jurisdictions outside of the U.S. Net revenues for ex-U.S. Inbrija sales were $4.8 million for the year ended December 31, 2023.

Inbrija utilizes our ARCUS platform for inhaled therapeutics. Because of our limited financial resources, we previously suspended work on ARCUS and other proprietary research and development programs. However, we will continue to discuss potential collaborations with companies that express interest in formulating their novel molecules for pulmonary delivery using ARCUS, and we have performed feasibility studies for a number of these opportunities.

Ampyra/MS

Ampyra is an extended-release tablet formulation of dalfampridine approved by the FDA as a treatment to improve walking in patients with multiple sclerosis, or MS. Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse court ruling that invalidated certain Ampyra Orange Book-listed patents. We have experienced a significant decline in Ampyra sales due to competition from several generic versions of Ampyra. Additional manufacturers may market generic versions of Ampyra, and we expect our Ampyra sales will continue to decline over time. U.S. net revenue for Ampyra was $63.9 million for the year ended December 31, 2023.

Ampyra is marketed as Fampyra outside the U.S. by Biogen International GmbH ("Biogen"), under a License and Collaboration Agreement that we entered into in June 2009 ("Collaboration Agreement"). Fampyra has been approved in several countries across Europe, Asia, and the Americas. Our Fampyra patents have been challenged and invalidated in Germany and could be similarly challenged in other countries where Fampyra is marketed by Biogen, and these challenges could lead to generic competition for Fampyra. Generic drug manufacturers have launched competing products in Germany. See *Legal Proceedings* in Part I, Item 3 of this report for more information.

In January 2024, we received notice of termination from Biogen of the Collaboration Agreement. Accordingly, we will regain global commercialization rights to Fampyra. Biogen exercised its right to terminate the Collaboration Agreement in order to shift resources towards upcoming launches and programs that align with its priorities. The termination will be effective as of January 1, 2025. We plan to assume commercialization responsibilities during 2024 as marketing authorization transfers and distribution arrangements are finalized for each territory and we expect to enter into additional collaborations and distribution arrangements with third parties to transition commercialization of Fampyra.

Sale of Chelsea Manufacturing Operations and Catalent MSA

In February 2021, we sold our Chelsea manufacturing operations to Catalent Pharma Solutions ("Catalent"). In connection with the sale, we entered into a long-term, global manufacturing services (supply) agreement (the "2021 MSA") with Catalent for the manufacture of Inbrija. The 2021 MSA provided that we would purchase Inbrija exclusively from Catalent, and we were obligated to make minimum purchase commitments for Inbrija of $18 million annually through the expiration of the agreement on December 31, 2030.

In December 2021, we entered into an amendment of the 2021 MSA that adjusted the structure of the minimum payment terms for the period from July 1, 2021 through June 30, 2022 (the "Adjustment Period"). Under the amendment, the minimum payment obligation for the Adjustment Period was replaced with payments to Catalent for actual product delivered during the Adjustment Period subject to a cap for the Adjustment Period that corresponds to its original minimum purchase obligation for that period (i.e., $17 million), and with certain payments being made in the first half of 2022 instead of during the second half of 2021. As a result of the amendment, payments to Catalent for product delivered during the Adjustment Period were approximately $8.4 million less than the $17 million minimum inventory purchase obligation for that period.

On December 31, 2022, we entered into a termination letter, which was subsequently amended and restated in March 2023, to terminate the 2021 MSA. In connection with the termination of the 2021 MSA, we are obligated to pay a $4 million termination fee to Catalent, payable in April 2024 and included in Accounts Payable as of September 30, 2023. The parties also entered into a Settlement and Release Agreement with respect to certain batches of Inbrija that were not delivered in 2022 as scheduled, and that were delivered in the first quarter of 2023.

Effective January 1, 2023, we entered into a new manufacturing services agreement with Catalent, which was subsequently amended in March 2023 (as amended in March 2023, the "New MSA"). Under the New MSA, Catalent will continue to manufacture Inbrija through 2030, with reduced minimum annual commitments through 2024 and significantly lower pricing thereafter. The New MSA provides for the scale-up of new spray drying equipment ("PSD-7"), which will provide expanded capacity for the long-term worldwide manufacturing requirements of Inbrija. In 2023, we satisfied our purchase commitment under the New MSA and purchased 15 batches of Inbrija at a total cost of $10.5 million. We are subject to a purchase commitment in 2024 of 24 batches of Inbrija at a total cost of $15.5 million. Thereafter, in 2025, we will pay Catalent a fixed per capsule fee based on the amount of Inbrija that is delivered for sale in the U.S. and other markets.

It is anticipated that by 2026, the PSD-7 equipment will be fully operational, which will significantly reduce the per capsule fees for all markets. We agreed to a minimum purchase requirement of at least three batches per year on the PSD-7 equipment and will provide up to $1 million in each of 2023 and 2024 for capital expenditures to assist in the capacity expansion efforts. In addition, we paid Catalent $2 million in 2023 in connection with certain activities relating to the operational readiness of the PSD-7.

The New MSA, unless earlier terminated, will continue until December 31, 2030, and will be automatically extended for successive two-year periods unless either party provides the other with at least 18-months' prior written notice of non-renewal. Either party may terminate the New MSA by written notice under certain circumstances, including material breach (subject to specified cure periods) or insolvency. We may also terminate the New MSA upon certain specified regulatory events and for convenience upon 180 days' prior written notice.

During the year ended December 31, 2023, we incurred approximately $10.5 million of purchase commitments with Catalent, of which $10.5 million are recognized as inventory within our balance sheet for the period.

Convertible Senior Secured Notes Due 2024

In December 2019, we completed the private exchange of $276.0 million aggregate principal amount of our then outstanding 1.75% convertible senior notes due 2021 in exchange for a combination of approximately $207.0 million aggregate principal amount of newly-issued 6.00% convertible senior secured notes due 2024 ("2024 Notes") and paid approximately $55.2 million in cash to participating holders. As a result of the exchange, approximately $69.0 million of convertible senior notes due in 2021 remained outstanding, which were repaid at maturity on June 15, 2021 using cash on hand. The 2024 Notes will mature on December 1, 2024 unless earlier converted in accordance with their terms. However, the commencement of the Intended Chapter 11 Proceedings will constitute an event of default under the Indenture governing the 2024 Notes, which will in turn result in the 2024 Notes becoming immediately due and payable, along with accrued and unpaid interest. The amount of the 2024 Notes significantly exceeds the price the Purchaser has agreed to pay for the Purchased Assets and the noteholders' security interest in substantially all of our remaining assets (including any recovery we receive from our ongoing litigation with Alkermes as described in this Annual Report) will continue following the commencement of the Intended Chapter 11 Proceedings and the consummation of the Section 363 sale. More information about the terms and conditions of the 2024 Notes is set forth in Note 7 to our Consolidated Financial Statements included in this report as well as in *Financing Arrangements* in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of this Annual Report.

Financial Management

As of December 31, 2023, we had cash, cash equivalents, and restricted cash of approximately $30.6 million. Restricted cash includes $0.7 million of which $0.4 million is related to self-funded employee health insurance, and $0.3 million is related to collateralized standby letters of credit. On June 1 and December 1, 2023, we made cash interest payments of approximately $6.2 million each in satisfaction of the interest payments, which was made out of restricted cash and operating cash respectively. Following the June 1, 2023 interest payment, we no longer have the option to pay interest on the 2024 Notes in our common stock and we have fully utilized the restricted cash that was set aside for the payment of interest on the 2024 Notes. More information about the terms and conditions of the 2024 Notes, including the expected event of default upon commencement of the Intended Chapter 11 Proceedings, is set forth in Note 7 to our Consolidated Financial Statements included in this report as well as in *Financing Arrangements* in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of this Annual Report.

Reverse Stock Split

On June 2, 2023, we filed an Amended and Restated Certificate of Incorporation with the Secretary of State of Delaware to effect a 1-for-20 reverse stock split and a proportionate reduction in the number of authorized shares from 61,666,666 to 3,083,333. Our common stock began trading on a split-adjusted basis on the Nasdaq Global Select Market on June 5, 2023. The reverse stock split applied equally to all outstanding shares of the common stock and did not modify the rights or preferences of the common stock. All figures in this report relating to shares of our common stock (such as share amounts, per share amounts, and conversion rates and prices), including in the financial statements and accompanying notes to the financial statements, have been retroactively restated to reflect the reverse stock split.

Our Products and ARCUS Technology

Commercial Products	Indication	Status	Marketing Rights
Inbrija (levodopa inhalation powder)	Parkinson's disease OFF periods	FDA, U.K., and EMA-approved; marketed in the U.S. by Acorda; Esteve launched in Germany in June 2022, Spain in February 2023	Acorda/Worldwide; rights granted to Esteve in Germany and Spain; seeking collaborators for commercialization in other countries outside the U.S.
Ampyra (dalfampridine)	Multiple Sclerosis	FDA-approved and marketed in the U.S. by Acorda	Acorda (U.S.)
Fampyra (fampridine)	Multiple Sclerosis	Approved in a number of countries across Europe, Asia and the Americas	Biogen (outside the U.S.)*

*In January 2024, we received written notice of termination from Biogen of the Collaboration Agreement, and, accordingly, we will regain global commercialization rights to Fampyra. The termination will be effective as of January 1, 2025.

Inbrija utilizes our ARCUS platform for inhaled therapeutics. ARCUS is a dry-powder pulmonary drug delivery technology that we believe has potential to be used in the development of a variety of inhaled medicines. The ARCUS platform allows systemic delivery of medication through inhalation, by transforming molecules into a light, porous dry powder. This allows delivery of substantially higher doses of medication than can be delivered via conventional dry powder technologies. Although we have deferred internal investment in ARCUS research programs, we will continue to discuss potential collaborations with companies that express interest in formulating their novel molecules for pulmonary delivery using ARCUS, and we have performed feasibility studies for a number of these opportunities.

Background on Neurological Conditions

We are a biopharmaceutical company focused on developing therapies that restore function and improve the lives of people with neurological disorders. Our current strategic priorities include marketing our approved Inbrija and Ampyra therapeutics targeted to the conditions described below. We believe there is significant unmet medical need for these conditions, which can severely impact the lives of those who suffer from them.

Parkinson's Disease

Parkinson's disease is a progressive neurodegenerative disorder resulting from the gradual loss of certain neurons in the brain. These neurons are responsible for producing dopamine and that loss causes a range of symptoms including impaired movement, muscle stiffness and tremors. Approximately one million people in the U.S. and 1.2 million people in Europe are diagnosed with Parkinson's. There is no cure or disease-modifying treatment currently available for Parkinson's, and current treatment strategies are focused on the management and reduction of the major symptoms of the disease and related disabilities. These therapies either aim to supplement dopamine levels in the brain, mimic the effect of dopamine in the brain by stimulating dopamine receptors, or prevent the enzymatic breakdown of dopamine. The standard of care for the treatment of Parkinson's symptoms is oral carbidopa/levodopa. Approximately 70% of people with Parkinson's in the U.S. are treated with oral carbidopa/levodopa. Effective control of Parkinson's symptoms is referred to as an ON state.

As Parkinson's progresses, people are likely to experience OFF periods, also known as OFF episodes, which are characterized by the return of Parkinson's symptoms, which can occur despite underlying baseline therapy. Even optimized regimens of oral carbidopa/levodopa are associated with increasingly wide variability in the timing and amount of absorption into the bloodstream. This results in the unreliable control of symptoms, leading to motor complications including OFF periods. OFF periods can increase in frequency and severity during the course of the disease and remain one of the most challenging aspects of the disease despite optimized regimens with current therapeutic options and strategies. About half of the people with Parkinson's treated with levodopa therapy experience OFF periods within five years of initiating treatment. For the approximately 350,000 people in the U.S. and 420,000 in Europe who experience them, OFF periods are inadequately addressed by available therapies and are considered one of the greatest unmet medical needs facing people with Parkinson's. OFF periods can be very disruptive to the lives of people with Parkinson's, their families and caregivers. In a survey of 3,000 people with Parkinson's conducted by the Michael J. Fox Foundation, 64% of respondents reported having at least two hours of OFF time per day.

Multiple Sclerosis

Multiple Sclerosis, or MS, is a chronic, usually progressive disease in which the immune system attacks and degrades the function of nerve fibers in the brain and spinal cord. These nerve fibers consist of long, thin fibers, or axons, surrounded by a myelin sheath, which facilitates the transmission of electrical impulses, much as insulation facilitates conduction in an electrical wire. In MS, the myelin sheath is damaged by the body's own immune system, causing areas of myelin sheath loss, also known as demyelination. This damage, which can occur at multiple sites in the central nervous system, blocks or diminishes conduction of electrical impulses. Patients with MS may suffer impairments in a wide range of neurological functions. These impairments vary from individual to individual and over the course of time, depending on which parts of the brain and spinal cord are affected, and often include difficulty walking. Individuals vary in the severity of the impairments they suffer on a day-to-day basis, with impairments becoming better or worse depending on the activity of the disease on a given day.

Approximately 1,000,000 people in the U.S. suffer from MS, and each year approximately 10,000 people in the U.S. are newly diagnosed. In a poll of more than 2,000 people with MS, 87% said they experienced some limitation to their walking ability and limited activities that involved walking. Among MS patients diagnosed within the last 5 years, 58% report experiencing mobility issues at least twice a week. In the EU, over 700,000 people suffer from MS, and an additional 100,000 people in Canada are also diagnosed with this disease.

Inbrija and ARCUS

Inbrija/Parkinson's Disease

Inbrija (levodopa inhalation powder) is the first and only inhaled levodopa, or L-dopa, for intermittent treatment of OFF episodes, also known as OFF periods, in people with Parkinson's disease treated with carbidopa/levodopa regimen. Our New Drug Application, or NDA, for Inbrija was approved by the FDA on December 21, 2018. The approval is for a single dose of 84 mg (administered as two capsules), which may be taken up to five times per day. Inbrija became commercially available in the U.S. in February 2019. Currently, Inbrija is available in the U.S. without the need for a medical exception for approximately 92% of commercially insured lives and approximately 68% of Medicare plan lives. U.S. net revenue for Inbrija was $33.6 million for the year ended December 31, 2023.

In September 2019, the EC approved our Marketing Authorization Application ("MAA") for Inbrija. The approved dose is 66 mg (administered as two capsules) up to five times per day (per EU convention, this reflects emitted dose and is equivalent to the 84 mg labeled dose in the U.S.). Under the MAA, Inbrija is indicated in the EU for the intermittent treatment of episodic motor fluctuations (OFF episodes) in adult patients with Parkinson's disease treated with a levodopa/dopa-decarboxylase inhibitor. The MAA approved Inbrija for use in what were then the 27 countries of the EU, as well as Iceland, Norway, and Liechtenstein. Following the exit of the UK from the EU, we were granted a grandfathered Marketing Authorization (MA) by the Medicines and Healthcare Products Regulatory Agency (MHRA) in the UK that was approved in November 2021.

We have entered into agreements to commercialize Inbrija in Spain, Germany, Latin America, and China, and we are in discussions with potential partners for commercialization of Inbrija in other jurisdictions outside of the U.S. In 2021, we entered into exclusive distribution and supply agreements with Esteve Pharmaceuticals ("Esteve") to commercialize Inbrija in Spain and Germany. Under the terms of the Germany distribution agreement, in 2021 we received a €5 million (approximately $5.9) upfront payment, and we are entitled to receive additional sales-based milestones. Under the terms of both the Spain and Germany supply agreements, we are entitled to receive a significant double-digit percent of the Inbrija selling price in exchange for supply of the product. Esteve launched Inbrija in Germany in June 2022 and in Spain in February 2023. Net revenues for ex-U.S. Inbrija sales were $4.8 million for the year ended December 31, 2023.

In May 2022, we announced that we entered into exclusive distribution and supply agreements with Pharma Consulting Group, S.A., also known as Biopas Laboratories ("Biopas"), to commercialize Inbrija in nine countries within Latin America. Under the terms of the Biopas agreements, we are entitled to receive a significant double-digit, tiered percentage of the Inbrija selling price in exchange for supply of the product, and we are entitled to sales-based milestones. Biopas has submitted for marketing approval of Inbrija in Argentina, Chile, Colombia, Costa Rica, Ecuador, Panama and Peru, and expects to submit additional regulatory filings for approval in Mexico and Brazil in 2024. Biopas expects up to five regulatory approvals in 2024.

In May 2023, we entered into a distribution agreement and a commercial supply agreement with Hangzhou Chance Pharmaceuticals Co., Ltd ("Chance"), for the exclusive distribution of Inbrija in China. Chance is obligated to use commercially reasonable efforts to market Inbrija in China. The agreements remain in effect until the earlier of (a) the last commercial sale of Inbrija on a jurisdiction- by- jurisdiction basis, and (b) 12 years from the effective date of the agreements, subject to customary termination for insolvency and certain other termination rights. We received a non-refundable upfront payment of $2.5 million, and a near term milestone payment of up to $6 million, depending on the clinical study requirements to be determined by the Chinese National Medical Products Administration (NMPA). We will also receive $3 million upon regulatory approval of Inbrija in China, up to $132.5 million in sales milestones based on specified sales volumes, and a fixed fee for each carton of Inbrija supplied to Chance.

ARCUS Platform and Product Development

Inbrija utilizes our ARCUS platform for inhaled therapeutics. ARCUS is a dry-powder pulmonary drug delivery technology that we believe has potential to be used in the development of a variety of inhaled medicines. The ARCUS platform allows systemic delivery of medication through inhalation, by transforming molecules into a light, porous dry powder. This allows delivery of substantially higher doses of medication than can be delivered via conventional dry powder technologies. We acquired the ARCUS technology platform as part of our 2014 acquisition of Civitas Therapeutics, Inc. ("Civitas"). We have worldwide rights to our ARCUS drug delivery technology, which is protected by extensive know-how and trade secrets and various U.S. and foreign patents, including patents that protect the Inbrija dry powder capsules beyond 2030. We have several patents listed in the Orange Book for Inbrija, including patents expiring between 2024 and 2032. We have patents in Europe for Inbrija expiring in 2033. One of our European patents, EP 3090773B, had been opposed by an unnamed party but in 2021 was maintained as granted by the European Opposition Board. Inbrija also has market exclusivity in Europe that is set to expire in September 2029.

We believe there are potential opportunities for using ARCUS with central nervous system ("CNS") as well as non-CNS, disorders. Due to several corporate restructurings since 2017 and associated cost-cutting measures, we suspended work on ARCUS and other proprietary research and development programs. However, we will continue to discuss potential collaborations with companies that express interest in formulating their novel molecules for pulmonary delivery using ARCUS, and we have performed feasibility studies for a number of these opportunities.

Also, due to the corporate restructurings, employee attrition, and the 2021 sale of our Chelsea manufacturing operations, we may need to hire replacement personnel or engage consultants to continue with ARCUS research and development work beyond feasibility and similar early-stage studies.

Ampyra

Ampyra (dalfampridine) is an oral drug approved by the FDA in January 2010 to improve walking in adults with multiple sclerosis. To our knowledge, Ampyra is the first drug approved for this indication. Efficacy was shown in people with all four major types of multiple sclerosis (relapsing remitting, secondary progressive, progressive relapsing and primary progressive). Ampyra can be used alone or with concurrent medications, including immunomodulatory drugs. Ampyra is an extended-release tablet formulation of dalfampridine (4-aminopyridine, 4-AP), which had previously been referred to as fampridine. Dalfampridine is a potassium channel blocker. In animal studies, dalfampridine has been shown to increase conduction of nerve signals in demyelinated axons through blocking of potassium channels. The mechanism by which dalfampridine exerts its therapeutic effect has not been fully elucidated.

Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse court ruling that invalidated certain Ampyra Orange Book-listed patents. We have experienced a significant decline in Ampyra sales due to competition from several generic versions of Ampyra. Additional manufacturers may market generic versions of Ampyra, and we expect our Ampyra sales will continue to decline over time. U.S. net revenue for Ampyra was $63.9 million for the year ended December 31, 2023.

Prior to October 2022 our primary source of supply of Ampyra was provided through a manufacturing and license agreement with Alkermes Plc ("Alkermes"). In connection with a dispute over license and supply royalties, in the fourth quarter of 2022, an arbitration panel awarded us an aggregate of $18.3 million including prejudgment interest. In addition, the arbitration panel ruled the agreements with Alkermes as unenforceable, and as a result we no longer pay Alkermes any royalties on net sales for license and supply of Ampyra, and we are using an alternative source for supply of Ampyra. The cost savings associated with this decision have greatly benefited Ampyra's value to us. For information regarding a recent action by us to modify the arbitration award, see *Legal Proceedings* in Part 1, Item 3 of this report.

License and Collaboration Agreement with Biogen

Ampyra is marketed as Fampyra outside the U.S. by Biogen under the Collaboration Agreement. Under the Collaboration Agreement, we are entitled to receive double-digit tiered royalties on net sales of Fampyra, and we are also entitled to receive additional payments based on achievement of certain regulatory and sales milestones, although we do not anticipate achievement of any of those milestones in the foreseeable future. Fampyra has been approved in several countries across Europe, Asia, and the Americas. Our Fampyra patents have been challenged and invalidated in Germany and could be similarly challenged in other countries where Fampyra is marketed by Biogen. The Germany nullity actions are further described in the *Legal Proceedings* section of this Annual Report. Fampyra currently faces generic competition in Germany. Continued challenges to the Fampyra patents could lead to generic competition with Fampyra in other countries, which could have a material adverse effect on our royalty revenue from Biogen and revenues following transition of our commercialization right from Biogen.

In January 2024, we received notice of termination from Biogen of the Collaboration Agreement. Accordingly, we will regain global commercialization rights to Fampyra. Biogen exercised its right to terminate the Collaboration Agreement in order to shift resources towards upcoming launches and programs that align with its priorities. The termination will be effective as of January 1, 2025. We plan to assume commercialization responsibilities during 2024 as marketing authorization transfers and distribution arrangements are finalized for each territory and we expect to enter into additional collaborations and distribution arrangements with third parties to transition commercialization of Fampyra.

Ampyra Patent Update

There are no patents listed in the Orange Book for Ampyra. Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse court ruling that invalidated certain Ampyra Orange Book-listed patents.

There are two European patents, EP 1732548 and EP 2377536, with claims directed to use of a sustained release dalfampridine composition (known under the trade name Fampyra in the EU) to increase walking speed in a patient with multiple sclerosis. Both European patents are set to expire in 2025, absent any additional exclusivity granted based on regulatory review timelines. Fampyra had ten years of market exclusivity in the EU that expired in 2021. Accordingly, even though the European patents were upheld by the Technical Board of Appeal of the European Patent Office, generic drug manufacturers may seek to challenge Fampyra's European patents within individual European countries, and Fampyra could potentially face competition from those generic drug manufacturers. For example, generic drug manufacturers have sought to invalidate Fampyra patents in Germany through nullity proceedings, as described in the *Legal Proceedings* section of this Annual Report, and have commenced generic launches in Germany. Several other generic companies have taken steps to potentially initiate a generic launch in other European countries although the patents have not been invalidated in those jurisdictions.

Sales, Marketing and Market Access

Inbrija

We market Inbrija in the U.S. using field-based teams supported by our corporate marketing personnel. Our own neuro-specialty sales representatives work in combination with sales representatives provided by a contract commercial organization, and collectively they are currently focused on a priority list of physicians who are high volume prescribers of carbidopa/levodopa and other products indicated to treat OFF periods. Our field-based teams also include reimbursement and market access specialists, who provide information to physicians and payers on our marketed products, as well as market development specialists who work collaboratively with field-sales teams and corporate personnel to assist in the execution of our strategic initiatives. Our Inbrija field-based and marketing activities are focused on physician awareness and market access as well as patient awareness, education and training. Inbrija is distributed in the U.S. primarily through specialty pharmacies, including those associated with our e-prescribing program described below, such as AllianceRx Walgreens Prime, or Walgreens, a specialty pharmacy that delivers the medication to patients by mail; and ASD Specialty Healthcare, Inc. (an Amerisource Bergen affiliate), a specialty distributor. In 2022, we implemented an e-prescribing program for the distribution of Inbrija in the U.S. through a specialty pharmacy that supports electronic prescriptions. We believe the convenience of electronic prescribing may be preferred by some physicians and patients.

We have established Prescription Support Services for Inbrija, sometimes referred to as the Inbrija hub, which helps patients navigate their insurance coverage and identify potential financial support alternatives, when appropriate. The Inbrija hub also includes a virtual nurse educator program to assist patients with proper usage of the Inbrija inhaler. Insurance coverage services fall into one of these categories: insurance verification, to research patient insurance benefits and confirm insurance coverage; prior authorization support, to identify prior authorization requirements; and appeals support. For patients that may need assistance paying for their medication, Prescription Support Services offers several support options, including: a program that provides no cost medication to patients who meet specific program eligibility requirements; co-pay support, which may help commercially insured (non-government funded) patients lower their out-of-pocket costs; and a bridge program for federally insured patients who experience a delay in coverage determination. We have a no-cost sample program, available at physician offices, to enable patients and their physicians to assess the efficacy and tolerability of Inbrija before the patient incurs out-of-pocket co-pay or co-insurance costs. In addition, we have a first dispense zero-dollar copay program for commercially insured patients to enable those patients to assess the value of Inbrija before incurring out-of-pocket co-pay or co-insurance costs, and we have a cash pay program allowing reduced costs for eligible cash paying patients.

Currently, Inbrija is available in the U.S. without the need for a medical exception for approximately 92% of commercially insured lives and approximately 68% of Medicare plan lives.

Ampyra

We market Ampyra in the U.S. using field-based teams supported by our corporate marketing personnel. Our own neuro-specialty sales representatives work in combination with sales representatives provided by a contract commercial organization. Ampyra is distributed in the U.S. primarily through a network of specialty pharmacies, which deliver the medication to patients by mail. We have contracted with a third-party organization with extensive experience in coordinating patient benefits to run Ampyra Patient Support Services, or APSS, a dedicated resource that coordinates the prescription process among healthcare providers, people with multiple sclerosis, and insurance carriers.

Material and Other Collaborations and License Agreements

Alkermes (ARCUS products)

On December 27, 2010, Civitas, our wholly owned subsidiary, entered into an Asset Purchase and License Agreement ("License Agreement") with Alkermes pursuant to which Alkermes assigned, sold and transferred to Civitas certain of its rights in certain pulmonary delivery patents and patents applications, certain equipment and instruments relating to pulmonary drug delivery, copies of certain documents and reports relating to pulmonary delivery, certain pulmonary drug delivery inhalers and certain pulmonary drug delivery Investigational New Drug Applications, or INDs, filed with the FDA. Alkermes also granted to Civitas a non-exclusive sublicense to know-how for the purpose of development and commercialization of ARCUS-related products. Civitas is permitted to license and sublicense the pulmonary patents, patent applications and know-how, subject to certain restrictions, as necessary for our business. Without the prior written consent of Alkermes, Civitas is prohibited from assigning the intellectual property acquired from Alkermes, except to an affiliate or to a person that acquires all or substantially all of its business to which the agreement relates, whether by acquisition, sale, merger or otherwise.

Civitas is required to use commercially reasonable efforts to develop ARCUS products. Civitas is obligated to pay to Alkermes royalties for each licensed product. For licensed products sold by Civitas or an affiliate, Civitas will pay Alkermes a mid-single digit percentage royalty on net sales. For licensed products sold by a collaboration partner, Civitas will pay Alkermes the lower of either (1) a mid-single digit percentage royalty on collaboration partner net sales of licensed products in any given calendar year, or (2) a percentage in the low-to-mid-double digits of all collaboration partner revenue received in such calendar year. Notwithstanding the foregoing, in no event shall the collaboration partner royalty paid be less than a low-single digit percentage of collaboration partner net sales of the licensed product in any given calendar year.

Civitas has the right to terminate the License Agreement at any time upon giving 90 days' written notice. The License Agreement may also be terminated by either party with respect to certain specified uncured breaches following notice and the expiration of a cure period.

Subject to the termination provisions described above, the License Agreement remains in effect until expiration of Civitas' royalty obligations to Alkermes. Royalties are payable to Alkermes on a product-by-product and country-by-country basis until the later of (i) the expiration of the patents acquired from Alkermes containing a valid claim covering a product in a particular country and (ii) 12 years and six months after the launch of a product in a country.

Biogen (Fampyra)

Under the Collaboration Agreement with Biogen, Ampyra is marketed by Biogen as Fampyra outside the U.S. Fampyra has been approved in several countries across Europe, Asia, and the Americas. Our Fampyra patents have been challenged and invalidated in Germany and could be similarly challenged in other countries where Fampyra is marketed by Biogen. The Germany nullity actions are further described in the *Legal Proceedings* section of this Annual Report. Fampyra currently faces generic competition in Germany. We are entitled to receive double-digit tiered royalties on net sales of Fampyra, and we are also entitled to receive additional payments based on achievement of certain regulatory and sales milestones, although we do not anticipate achievement of any of those milestones in the foreseeable future.

We also entered into a related supply agreement with Biogen (the "Supply Agreement") concurrently with the Collaboration Agreement pursuant to which we are obligated to supply Biogen with its requirements for the licensed products. However, since our supply agreement with Alkermes was declared unenforceable by an arbitration panel in October 2022, Biogen was permitted to negotiate directly with Alkermes for its continued supply of Fampyra.

In January 2024, we received notice of termination from Biogen of the Collaboration Agreement. Accordingly, we will regain global commercialization rights to Fampyra. Biogen exercised its right to terminate the Collaboration Agreement in order to shift resources towards upcoming launches and programs that align with its priorities. The termination will be effective as of January 1, 2025. We plan to assume commercialization responsibilities during 2024 as marketing authorization transfers and distribution arrangements are finalized for each territory and we expect to enter into additional collaborations and distribution arrangements with third parties to transition commercialization of Fampyra.

Manufacturing and Supply

Inbrija

Chelsea Manufacturing Facility

All commercial supply of Inbrija is currently manufactured at Catalent's Chelsea, Massachusetts manufacturing facility, which was transferred to Catalent in February 2021 in connection with our sale to Catalent of our Chelsea manufacturing operations.

Catalent Manufacturing Services Agreement

In connection with the sale of our Chelsea manufacturing operations to Catalent in February 2021, we entered into the 2021 MSA with Catalent for the manufacture of Inbrija. The 2021 MSA provided that we would purchase Inbrija exclusively from Catalent during the term of the agreement.

Under the 2021 MSA, we agreed to purchase from Catalent at least $16 million of Inbrija in 2021 (pro-rated for a partial year) and $18 million of Inbrija each year from 2022 through 2030, subject to reduction in certain cases.

On December 31, 2022, we entered into a termination letter, which was subsequently amended and restated in March 2023, to terminate the 2021 MSA. In connection with the termination of the 2021 MSA, we are obligated to pay a $4 million termination fee to Catalent, payable in April 2024 and included in Accounts Payable as of December 31, 2023. The parties also entered into a Settlement and Release Agreement with respect to certain batches of Inbrija that were not delivered in 2022 as scheduled, and that were delivered in the first quarter of 2023.

Effective January 1, 2023, we entered into the New MSA whereby Catalent will continue to manufacture Inbrija through 2030, with reduced minimum annual commitments through 2024 and significantly lower pricing thereafter. The New MSA provides for the scale-up of new spray drying equipment ("PSD-7"), which will provide expanded capacity for the long-term worldwide manufacturing requirements of Inbrija. In 2023, we satisfied our purchase commitment under the New MSA and purchased 15 batches of Inbrija at a total cost of $10.5 million. We are subject to a purchase commitment in 2024 of 24 batches of Inbrija at a total cost of $15.5 million. Thereafter, in 2025, we will pay Catalent a fixed per capsule fee based on the amount of Inbrija that is delivered for sale in the U.S. and other markets.

It is anticipated that by 2026, the PSD-7 equipment will be fully operational, which will significantly reduce the per capsule fees for all markets. We agreed to a minimum purchase requirement of at least three batches per year on the PSD-7 equipment and provide up to $1 million in each of 2023 and 2024 for capital expenditures to assist in the capacity expansion efforts. In addition, we paid Catalent $2 million in 2023 in connection with certain activities relating to the operational readiness of the PSD-7.

The New MSA, unless earlier terminated, will continue until December 31, 2030, and will be automatically extended for successive two-year periods unless either party provides the other with at least 18-months' prior written notice of non-renewal. Either party may terminate the New MSA by written notice under certain circumstances, including material breach (subject to specified cure periods) or insolvency. We may also terminate the New MSA upon certain specified regulatory events and for convenience upon 180 days' prior written notice. We have agreed to purchase from Catalent all of its requirements for Inbrija for the United States, Germany, Spain, and Latin America except in the case of termination or certain supply disruptions. For China, we are not required to purchase supply from Catalent and may arrange for an alternate supplier. For other countries, we may be released from exclusivity as long as it purchases at least two batches from Catalent in the applicable year, subject to certain rights of first refusal on alternative source of supply arrangements.

The New MSA contains customary representations, warranties and covenants, including with respect to the ownership of any intellectual property created pursuant to the manufacturing services agreement, as well as provisions relating to ordering, payment and shipping terms, regulatory matters, reporting obligations, indemnity, confidentiality, and other matters.

Although we have deferred internal investment in ARCUS research programs, we will continue to discuss potential collaborations with companies that express interest in formulating their novel molecules using ARCUS and have already performed feasibility studies for a number of these opportunities. However, currently we are not investing in any proprietary ARCUS research and development programs. Also, due to the corporate restructurings, employee attrition, and the 2021 sale of our Chelsea manufacturing operations, we may need to hire replacement personnel or engage consultants to continue with ARCUS research and development work beyond feasibility and similar early-stage studies.

Supply of Inbrija Components

Catalent, as our Inbrija blistered capsule supplier, is responsible for all Inbrija components other than certain packaging components, the inhaler device and levodopa, or L-dopa, the active pharmaceutical ingredient, or API, in Inbrija. Although in some cases we have contracts for these requirements, we cannot be certain that those contracts will be renewed on commercially reasonable terms, if at all. We do not have contracts with the supplier of the API used in the manufacture of Inbrija, which exposes us to the risk that they could discontinue supply at any time. Manufacturers, packagers or suppliers may choose not to conduct business with us at all, or may choose to discontinue doing business with us, for example if they determine that our particular business requirements would be unprofitable or otherwise not appropriate for their business.

We do not control how Catalent sources the other components of Inbrija, but we are aware that they rely on a single supplier for a critical excipient used for Inbrija manufacturing and they could rely on single suppliers for other components. Our business could similarly be exposed to risk to the extent they rely on single source suppliers or do not have supply contracts.

Our proprietary Inbrija inhalers are manufactured using standard manufacturing processes and are shipped fully assembled to us. We own the molds and design history files for the inhalers. We currently source our proprietary Inbrija inhalers from a single third-party plastic molding manufacturer for the Inbrija inhalers. Our reliance on a single third party for the manufacture of inhalers increases the risk that we will not have sufficient quantities of our inhalers or will not be able to obtain such quantities at an acceptable cost or quality, which could harm our commercialization of Inbrija. If the inhaler supplier fails to provide sufficient inhaler supply, we would need to enter into alternative arrangements with a different supplier. Transition to a new inhaler supplier would be a lengthy and complex process. Among other things, we would have to revalidate the molding and assembly processes pursuant to any applicable health authority requirements and we would have to ensure that inhalers manufactured by the new supplier adhere to other applicable regulatory requirements.

Ampyra

In October 2022, an arbitration panel issued a decision in our dispute with Alkermes and ruled that the existing license and supply agreements with Alkermes are unenforceable. As a result of the panel's ruling, we are using an alternative source for supply of Ampyra. The cost savings associated with this decision have greatly benefited Ampyra's value to us. For information regarding a recent action by us to modify the arbitration award, see *Legal Proceedings* in Part 1, Item 3 of this Annual Report.

On September 30, 2010, we entered into a world-wide manufacturing services agreement with Patheon, Inc. ("Patheon") as a second manufacturer for Ampyra. Under the manufacturing services agreement, we agreed to purchase from Patheon, on a non-exclusive basis, a portion of our requirements for Ampyra in the U.S. We pay Patheon a fixed per bottle fee (60 tablets per bottle) based on the annual quantity of Ampyra bottles that are delivered for sale. Patheon is currently our sole manufacturer and packager of Ampyra for sales in the United States.

The manufacturing services agreement is automatically renewed for successive one-year periods on December 31 of each year, unless either we or Patheon provide the other party with at least 12-months' prior written notice of non-renewal. Either party may terminate manufacturing services agreement by written notice under certain circumstances, including material breach (subject to specified cure periods) or insolvency. We may also terminate the manufacturing services agreement upon certain regulatory actions or objections. Patheon may terminate the manufacturing services agreement if we assign the agreement to a third party under certain circumstances.

The manufacturing services agreement contains customary representations, warranties and covenants, including with respect to the ownership of any intellectual property created pursuant to the manufacturing services agreement, as well as provisions relating to ordering, payment and shipping terms, regulatory matters, reporting obligations, indemnity, confidentiality and other matters.

We rely on a single third-party manufacturer to supply dalfampridine, the active pharmaceutical ingredient, or API, in Ampyra, and also on a single supplier for a critical excipient used in the manufacture of Ampyra. If these companies experience any disruption in their operations, our supply of Ampyra could be delayed or interrupted until the problem is solved or we locate another source of supply or another packager, which may not be available. We may not be able to enter into alternative supply or packaging arrangements on terms that are commercially reasonable, if at all. Any new supplier or packager would also be required to qualify under applicable regulatory requirements. Because of these and other factors, we could experience substantial delays before we are able to obtain qualified replacement products or services from any new supplier or packager.

Intellectual Property

We have patent portfolios relating to: Inbrija (levodopa inhalation powder); Ampyra/aminopyridines; and the ARCUS drug delivery technology. Our intellectual property also includes copyrights, confidential and trade secret information as well as a portfolio of trademarks.

The intellectual property relating to our programs is owned directly by Acorda or indirectly through a subsidiary, including for example our Civitas subsidiary. Throughout this Annual Report, we may refer to any and all such intellectual property, and the corresponding research and development programs as, "our" or "Acorda's" programs.

Inbrija and ARCUS Development Programs

The intellectual property portfolio that we acquired with Civitas has U.S. and foreign patents relating to Inbrija and the ARCUS drug delivery technology, including several issued U.S. patents relating to Inbrija directed to compositions of the drug product and the capsule for the drug product. We have several patents listed in the Orange Book for Inbrija, including patents expiring between 2024 and 2032. We have patents in Europe for Inbrija expiring in 2033. One of our European patents, EP 3090773B, had been opposed by an unnamed party but in 2021 was maintained as granted by the European Opposition Board. Inbrija also has ten years of market exclusivity in Europe that will expire in September 2029.

Ampyra/aminopyridines

There are no patents listed in the Orange Book for Ampyra. Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse U.S. federal district court ruling that invalidated certain Ampyra Orange Book-listed patents.

There are two European patents, EP 1732548 and EP 2377536, with claims directed to use of a sustained release dalfampridine composition (known under the trade name Fampyra in the European Union) to increase walking speed in a patient with multiple sclerosis. Both European patents are set to expire in 2025, absent any additional exclusivity granted based on regulatory review timelines. Fampyra had ten years of market exclusivity in the European Union that expired in 2021. Accordingly, even though the Technical Board of Appeal of the European Patent Office upheld the European patents, Fampyra could potentially face competition from generic drug manufacturers that may seek to challenge Fampyra's European patents within individual European countries.

Nullity actions with respect to Fampyra have been filed in Germany against both of the German national patents. On August 20, 2020, ratiopharm Gmbh ("ratiopharm") filed nullity actions against us in the German Federal Patent Court seeking to invalidate both of our German patents that derived from our European patents, EP 1732548 (the '548 patent) and EP 2377536 (the '536 patent), with claims directed to the use of a sustained dalfampridine composition to increase walking speed in a patient with multiple sclerosis. In November 2021, the German Federal Patent Court issued preliminary opinions indicating that the claimed subject matter of the '548 patent lacked inventive step and the claimed subject matter of the '536 patent lacked novelty and inventive step. At oral hearings in February 2022 and April 2022, the German Federal Patent Court dismissed ratiopharm's action against the '536 patent and the '548 patent, respectively, as inadmissible because of ongoing formality proceedings relating to these patents in the European Patent Office. Ratiopharm appealed the decision on the '536 patent but not the decision on the '548 patent. On December 6, 2022, the German Federal Court of Justice held that ratiopharm's '536 nullity action was admissible and remanded the case back to the German Federal Patent Court. On January 11, 2022, Stada Arzneimittel ("Arzneimittel") also filed a nullity action against the '536 patent. The ratiopharm and Arzneimittel '536 nullity actions have been consolidated. In November 2023, the German Federal Patent Court issued a preliminary opinion indicating that the claimed subject matter of the '536 patent lacked novelty and inventive step. At an oral hearing on March 4, 2024, the German Federal Patent Court held that the '536 patent was invalid. We are considering an appeal of this decision and will make a determination following receipt of the formal written decision. On July 27, 2022, Teva GmbH ("Teva") also filed a nullity action against the '548 patent, in the same court as the ratiopharm nullity actions. On January 27, 2023, the German Federal Patent Court issued a preliminary opinion in the '548 Teva nullity action that the claimed subject matter of the '548 patent lacked inventive step. At an oral hearing on July 11, 2023, the German Federal Patent Court held that the '548 patent was invalid. The German Federal Patent Court issued its formal written decision on the '548 patent on November 10, 2023. We appealed the decision on December 11, 2023 and the appeal is now pending before the Federal Court of Justice. We are working with Biogen to vigorously defend these patents and enforce our patent rights. See *Legal Proceedings* in Part I, Item 3 of this Annual Report for more information.

Trademarks

In addition to patents, our intellectual property portfolio includes registered trademarks, along with pending trademark applications. We own several registered trademarks in the U.S. and in other countries. These registered trademarks include, in the U.S., the marks "Acorda Therapeutics," our stylized Acorda Therapeutics logo, "Ampyra," "Inbrija," and "ARCUS." We also have trademark registrations for "Fampyra" and "Inbrija" and pending trademark applications therefore, in numerous foreign jurisdictions. In addition, our trademark portfolio includes several trademark registrations and pending trademark applications for potential product names and for disease awareness activities.

Competition

The market for developing and marketing pharmaceutical products is highly competitive. Many biotechnology and pharmaceutical companies, as well as academic laboratories, are engaged in research, development and/or marketing of therapeutics for various neurological conditions, including Parkinson's disease and multiple sclerosis. Many of our competitors have substantially greater financial, research and development, human and other resources than we do. Furthermore, many of these companies have significantly more experience than we do in preclinical testing, human clinical trials, regulatory approval procedures and sales and marketing.

Inbrija/Parkinson's Disease

Inbrija competes against other therapies approved for intermittent, or as needed, use that aim to specifically address Parkinson's disease symptoms. Apokyn, an injectable formulation of apomorphine, is approved for the treatment of OFF episodes, also known as OFF periods. Apokyn was approved for this use in the U.S. in 2004 and in Europe in 1993, and in 2022 the FDA approved a generic version of Apokyn.

The standard of care for the treatment of Parkinson's is oral carbidopa/levodopa, but oral medication can be associated with wide variability in the timing and the amount of absorption and there are significant challenges in creating a regimen that consistently maintains therapeutic effects as Parkinson's progresses. Inbrija may face competition from therapies that can limit the occurrence of OFF periods. Approaches to achieve consistent levodopa plasma concentrations include new formulations of carbidopa/levodopa, such as extended-release and intestinal infusions, and therapies that prolong the effect of levodopa. Amneal Pharmaceuticals, Inc. markets RYTARY, an extended-release formulation of oral carbidopa/levodopa, and extended-release formulations of oral and patch carbidopa/levodopa are being developed by others including Intec Pharma and Mitsubishi Tanabe Pharma Corporation. Also, AbbVie Inc. has developed a continuous administration of a gel-containing levodopa through a tube that is surgically implanted into the intestine. This therapy, known as Duopa, and PRODUODOPA (foslevodopa/foscarbidopa), a subcutaneous 24-hour infusion of levodopa-based therapy, has been approved by the FDA and EU health authorities.

One or more of our competitors may utilize their expertise in pulmonary delivery of drugs to develop and obtain approval for pulmonary delivery products that may compete with Inbrija and any other ARCUS drug delivery technology product candidates that we may develop in the future. These competitors may include smaller companies such as Alexza Pharmaceuticals, Inc., Pulmatrix, Inc., Vectura Group plc, and PureIMS B.V. and larger companies such as Allergan, Inc., GlaxoSmithKline plc, MannKind Corporation, and Novartis AG, among others. If approved, our product candidates may face competition in the target commercial areas for these pulmonary delivery products. Also, we are aware that at least one company, Impel Neuropharma, is developing intranasally delivered levodopa therapies which, if approved, might compete with Inbrija.

Ampyra/MS

Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse court ruling that invalidated certain Ampyra Orange Book-listed patents. We have experienced a significant decline in Ampyra sales due to competition from several generic versions of Ampyra. Additional manufacturers may market generic versions of Ampyra, and we expect our Ampyra sales will continue to decline over time.

Current disease management approaches to MS are classified either as relapse management, disease course management, or symptom management approaches. For relapse management, the majority of neurologists treat sudden and severe relapses with a four-day course of intravenous high-dose corticosteroids. Many of these corticosteroids are available generically. For disease course management, there are a number of FDA-approved MS therapies that seek to modify the immune system. These treatments attempt to reduce the frequency and severity of exacerbations or slow the accumulation of physical disability for people with certain types of MS, though their precise mechanisms of action are not known. These products include Avonex, Tysabri, Plegridy and Tecfidera from Biogen, Zinbryta from Biogen and AbbVie, Betaseron from Bayer AG, Copaxone from Teva Pharmaceutical Industries, Ltd., Rebif from Merck Serono, Gilenya and Extavia from Novartis AG, Aubagio and Lemtrada from Genzyme Corporation (a Sanofi company), Glatopa from Sandoz International GmbH (a Novartis AG company), Rituxan from F. Hoffman-La Roche AG, Ponvory from Janssen (a Johnson & Johnson company), and Zeposia from Bristol-MyersSquibb.

Several biotechnology and pharmaceutical companies, as well as academic laboratories, are involved in research and/or product development for various neurological diseases, including MS. Other companies also have products in clinical development, including products approved for other indications in MS, to address improvement of walking ability in people with MS. This potential product may compete with Ampyra in the future. Furthermore, several companies are engaged in developing products that include novel immune system approaches and cell therapy approaches to remyelination for the treatment of people with MS. These programs are in early stages of development and may compete in the future with Ampyra or some of our product candidates. In addition, in certain circumstances, pharmacists are not prohibited from formulating certain drug compounds to fill prescriptions on an individual patient basis, which is referred to as compounding. We are aware that at present compounded dalfampridine is used by some people with MS and it is possible that some people will want to continue to use compounded formulations even though Ampyra and generic versions of Ampyra are commercially available.

Government Regulation

The FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries impose substantial requirements upon the preclinical testing, clinical development, manufacture, distribution and marketing of pharmaceutical products. These agencies and other federal, state and local entities regulate research and development activities and the testing, manufacturing, quality control, safety, effectiveness, labeling, storage, distribution, record keeping, approval, advertising, sale, promotion, import and export of our products and product candidates. The discussion below covers FDA regulation of drugs and drug product approval. We currently do not have any active development programs for new potential drug products; however, we will continue to discuss potential collaborations with companies that express interest in formulating their novel molecules for pulmonary delivery using ARCUS, and have already performed feasibility studies for a number of these opportunities.

FDA Regulation of Drugs and Drug Product Approval

In the U.S., Ampyra is regulated by the FDA as a drug but, as further discussed below, Inbrija is regulated as a combination product because it has both a drug and a device component. Drugs, biologics, and medical devices are regulated primarily under the Federal Food, Drug, and Cosmetic Act, as amended, the Public Health Service Act, as amended, and the regulations of the FDA. These products are also subject to other federal, state, and local statutes and regulations. Violations of regulatory requirements at any stage of development may result in various adverse consequences, including the FDA's and other health authorities' delay in approving or refusal to approve a product. Violations of regulatory requirements also may result in enforcement actions, including withdrawal of approval, labeling restrictions, seizure of products, fines, injunctions, and/or civil or criminal penalties. Similar civil or criminal penalties could be imposed by other government agencies or agencies of the states and localities in which our products are tested, manufactured, sold, or distributed.

The process required by the FDA under these laws before drug and biological product candidates may be marketed in the U.S. generally involves the following:

- preclinical laboratory and animal tests;
- submission to the FDA of an Investigational New Drug, or IND, application, which must become effective before human clinical trials may begin;
- completion of adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed drug, or the safety, purity, and potency of the proposed biologic, for each intended use;
- FDA review of whether each facility in which the product is manufactured, processed, packed or held meets standards designed to assure the product's identity, strength, quality, and purity; and
- submission and FDA approval of a New Drug Application, or NDA, in the case of a drug, or a Biologics License Application, or BLA, in the case of a biologic, containing preclinical and clinical data, proposed labeling, information to demonstrate that the product will be manufactured to appropriate standards, and other required information.

The research, development and approval process require substantial time, effort, and financial resources, and we cannot be certain that any approval will be granted on a timely or commercially viable basis, if at all, for any product that we or our collaborators may be developing.

Preclinical studies include laboratory evaluation of a product candidate, its chemistry, formulation and stability, as well as animal studies to assess its safety and potential efficacy. The results of the preclinical studies, together with manufacturing information, analytical data, and any available clinical data or literature must be submitted to the FDA as part of an IND application. The IND sponsor may initiate clinical trials 30 days after filing the IND application, unless the FDA, within the 30-day time period, raises concerns or questions about the conduct of the proposed clinical trial, which the FDA commonly communicates to the IND sponsor through a clinical hold letter. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. Further, an independent Institutional Review Board, or IRB, charged with protecting the welfare of human subjects involved in research at each medical center proposing to conduct the clinical trials must review and approve any clinical trial before it commences at that center. The IRB(s) must continue to monitor the trial until its completion. Many studies also employ a data safety monitoring board, or DSMB, with experts who are otherwise independent of the conduct of the study and are given access to the unblinded study data periodically during the study to determine whether the study should be halted. For example, a DSMB might halt a study if an unacceptable safety issue emerges, or if the data showing the effectiveness of the study drug would make it unethical to continue giving patients placebo. Study subjects must provide informed consent before their participation in the research study. Once initiated, the FDA may also place an ongoing clinical study on a clinical hold, which must be resolved before the study may continue.

Human clinical trials are typically conducted in three sequential phases, which may overlap:

- *Phase 1.* The drug is initially administered into healthy human subjects or subjects with the target condition and tested for safety, dosage tolerance, absorption, metabolism, distribution, and excretion.

- *Phase 2.* The drug is administered to a limited patient population to identify possible adverse effects and safety risks, to determine the efficacy of the product for specific targeted diseases, and to determine dosage tolerance and optimal dosage.

- *Phase 3.* When Phase 2 evaluations demonstrate that a dosage range of the drug is effective and has an acceptable safety profile, Phase 3 clinical trials are undertaken to confirm the clinical efficacy from Phase 2 and to further test for safety in an expanded population at geographically dispersed clinical trial sites.

In the case of product candidates for severe or life-threatening diseases, the initial human testing is often conducted in affected patients rather than in healthy volunteers. Since these patients already have the target condition, these clinical trials may provide initial evidence of efficacy traditionally obtained in Phase 2 clinical trials and thus these clinical trials are frequently referred to as Phase 1b clinical trials.

Before proceeding with a Phase 3 trial, sponsors may seek a written agreement from the FDA regarding the design and size of clinical trials intended to form the primary basis of an effectiveness claim. This is known as a Special Protocol Assessment, or SPA. SPAs help establish up-front agreement with the FDA about the adequacy of the design of a clinical trial, but the agreement does not guarantee FDA approval even if the SPA is followed. For example, a substantial scientific issue essential to determining the safety or effectiveness of the drug could be identified after the testing has begun. In addition, even if a SPA remains in place and the trial meets its endpoints with statistical significance, the FDA could determine that the overall balance of risks and benefits for the product candidate is not adequate to support approval, or only justifies approval for a narrow set of clinical uses or approval with restricted distribution or other burdensome post-approval requirements or limitations.

Federal law requires the submission of registry and results information for most clinical trials to a publicly available database at www.clinicaltrials.gov. These requirements generally do not apply to Phase 1 clinical trials.

U.S. law requires that trials conducted to support approval for product marketing be “adequate and well controlled.” This entails a number of requirements, including that there is a clear statement of objectives and methods in the clinical trial protocol, the study design permits a valid comparison with a control (e.g., a placebo, another drug already approved for the studied condition, or a non-concurrent control such as historical data), and that the statistical methods used to analyze the data are adequate to assess the effects of the drug. Studies must also be conducted in compliance with Good Clinical Practice, or GCP, requirements.

We cannot be certain that we or our collaborators will successfully complete Phase 1, Phase 2, or Phase 3 testing of any product candidates within any specific time period, if at all. Furthermore, the FDA, the IRBs, or the DSMB may prevent clinical trials from beginning or may place clinical trials on hold or terminate them at any point in the development process if, among other reasons, they conclude that study subjects or patients are being exposed to an unacceptable health risk.

In the U.S., for most drugs and biologics, the results of product development, preclinical studies, and clinical trials must be submitted to the FDA for review and approval prior to marketing and commercial distribution of the product candidate. If the product candidate is regulated as a drug, an NDA must be submitted and approved before commercial marketing may begin. If the product candidate, such as an antibody, is regulated as a biologic, a BLA must be submitted and approved before commercial marketing may begin. The NDA or BLA must include a substantial amount of data and other information concerning safety and effectiveness (for a drug) and safety, purity and potency (for a biologic) of the compound from laboratory, animal and clinical testing, as well as data and information on manufacturing, product stability, and proposed product labeling.

Each domestic and foreign manufacturing establishment, including any contract manufacturers we or our collaborators may decide to use, must be listed in the NDA or BLA and must be registered with the FDA. The application will not be approved until the FDA conducts a manufacturing inspection, approves the applicable manufacturing process for the drug or biological product, and determines that the facility is in compliance with current Good Manufacturing Practice, or cGMP, requirements. If relevant manufacturing facilities and processes fail to pass FDA inspection, we or our collaborator will not receive approval to market the products, or approval will likely be delayed until the manufacturing issues are resolved. The FDA may also inspect clinical trial sites and/or the clinical trial sponsor for compliance with GCP requirements. If the FDA determines that one or more of our clinical trials were not conducted in accordance with GCP, the agency may determine not to consider effectiveness data generated from such clinical trials in support of our applications for marketing approval.

Under the Prescription Drug User Fee Act, as amended, the FDA receives fees for reviewing an NDA or BLA and supplements thereto, as well as annual fees for commercial manufacturing establishments and for approved products. These fees could be significant.

Once an NDA or BLA is submitted for FDA approval, the FDA will accept the NDA or BLA for filing if deemed complete, thereby triggering substantive review of the application. The FDA can refuse to file any NDA or BLA that it deems incomplete or not properly reviewable. The FDA has established performance goals for the review of NDAs and BLAs: six months for priority applications and 10 months for regular applications, with two additional months added to each period for new molecular entities. However, the FDA is not legally required to complete its review within these periods and these performance goals may change over time. Moreover, the outcome of the review, even if favorable, often is not an actual approval but an “action letter” or “complete response letter” that describes additional work that must be done before the application can be approved. This additional work could include substantial additional clinical trials. The FDA’s review of an application may involve review and recommendations by an independent FDA advisory committee.

The FDA may deny an NDA or BLA if the applicable regulatory criteria are not satisfied or may require additional preclinical or clinical data. Even if such data are submitted, the FDA may ultimately decide that the NDA or BLA does not satisfy the criteria for approval. If the FDA approves a product, it will limit the approved therapeutic uses for the product as described in the product labeling, may require that contraindications or warning statements be prominently highlighted in the product labeling such as in a black box or comparable prominent format, may require that additional post-approval studies or clinical trials be conducted as a condition of the approval, may impose restrictions and conditions on product distribution, prescribing or dispensing in the form of a risk evaluation and mitigation strategy, or REMS, or may otherwise limit the scope of any approval. Under a REMS, the FDA may impose significant restrictions on distribution and use of a marketed product, may require the distribution of medication guides to patients and/or healthcare professionals or patient communication plans, and may impose a timetable for submission of assessments of the effectiveness of a REMS. Once issued, the FDA may withdraw product approval if compliance with regulatory standards is not maintained or if problems occur after the product reaches the market.

Satisfaction of the above FDA requirements or similar requirements of state, local, and foreign regulatory agencies typically take several years or more and the actual time required may vary substantially, based upon the type, complexity, and novelty of the product candidate. Government regulation may delay or prevent marketing of potential products for a considerable period of time or permanently and impose costly procedures upon our activities. Even if a product candidate receives regulatory approval, the approval will be limited to the specific approved indications. Further, even after regulatory approval is obtained, later discovery of previously unknown problems with a product may result in restrictions on the product, labeling changes, or even complete withdrawal of the product from the market. Delays in obtaining, or failures to obtain and maintain, regulatory approvals for our products and any product candidates we or our collaborators may seek to develop would harm our business. Marketing products abroad requires similar regulatory approvals, additional fees and are subject to similar risks. In addition, we cannot predict what adverse governmental regulations may arise from future U.S. or foreign governmental action.

Post-Approval Regulation in the U.S.

Any products manufactured or distributed in the U.S. by us pursuant to FDA approvals are subject to pervasive and continuing regulation by the FDA, including requirements relating to record-keeping, labeling, packaging, reporting of adverse experiences and other reporting, advertising and promotion, distribution, cGMPs, and import/export, as well as any other requirements imposed by the NDA or BLA. The FDA's rules for advertising and promotion require, among other things, that our promotion be truthful, fairly balanced and adequately substantiated, and that our labeling bears adequate directions for all intended uses of the product. We must also submit appropriate new and supplemental applications and obtain FDA approval for certain changes to an approved product, product labeling, or manufacturing process. On its own initiative, the FDA may require changes to the labeling of an approved drug, require post-approval studies or clinical trials, or impose a REMS post-approval if it becomes aware of new safety information that the agency believes impacts the drug's safety profile. Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMPs, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. Foreign drug manufacturers must comply with similar FDA and local requirements and may be subject to inspections by the FDA or local regulatory agencies. We cannot be certain that we or our present or future suppliers will be able to comply with cGMPs and other regulatory requirements. The FDA also enforces the requirements of the Prescription Drug Marketing Act, or PDMA, which, among other things, imposes various requirements in connection with the distribution of product samples to physicians.

In addition to inspections related to manufacturing, we are subject to periodic unannounced inspections by the FDA and other regulatory authorities related to the other regulatory requirements that apply to marketed drugs manufactured or distributed by us. The FDA also may conduct periodic inspections regarding our review and reporting of adverse events or related to compliance with the requirements of the PDMA concerning the handling of drug samples. When the FDA conducts an inspection, the inspectors will identify any deficiencies they believe exist in the form of a notice of inspectional observations on FDA Form 483. The observations may be more or less significant. If we receive a notice of inspectional observations, we likely will be required to respond in writing, and may be required to undertake corrective and preventive actions in order to address the FDA's concerns. Failure to address the FDA's concerns may result in the issuance of a warning letter or other enforcement or administrative actions against us and/or against any products we are manufacturing or distributing.

We are also subject to a variety of state laws and regulations in those states or localities where products or product candidates are or will be marketed, or where we have operations. For example, we must comply with state laws that require the registration of manufacturers and wholesale distributors of pharmaceutical products in that state, including, in certain states, manufacturers and distributors who ship products into the state even if such manufacturers or distributors have no place of business within the state. Federal law and some states also impose requirements on manufacturers, distributors, and other trading partners that govern the introduction and movement of product through the supply chain, including requirements for the exchange of transaction documentation, development of systems capable of tracking and tracing product as it moves through the distribution chain, and responding to requests from trading partners and government agencies. Any applicable federal, state, or local regulations may hinder our ability to market, or increase the cost of marketing, our products in those states or localities.

The FDA's policies may change and additional U.S. or foreign government laws and/or regulations may be enacted which could impose additional burdens or limitations on our ability to obtain approval of our product candidates or market our products after approval. Moreover, increased attention to the containment of healthcare costs in the U.S. and in foreign markets could result in government scrutiny or new regulations that could harm our business. For example, significant price increases in recent years by certain drug manufacturers have received considerable scrutiny from the U.S. Congress, in some cases forcing those companies to dramatically reduce those prices. The current U.S. administration has indicated an interest in measures designed to lower drug costs and there continues to be political pressure at both the U.S. federal and state levels related to drug pricing and drug transparency that could result in legislative or administrative actions, or at a minimum continued scrutiny. We cannot predict the likelihood, nature or extent of adverse governmental regulation that might arise from future legislative or administrative action, either in the U.S. or abroad.

Generic Drugs, AB Ratings and Pharmacy Substitution

Generic drugs are approved through an abbreviated regulatory process, which differs in important ways from the process followed for innovative products. For generic versions of drugs subject to an NDA, an abbreviated new drug application, or ANDA, is filed with the FDA. The ANDA must seek approval of a product candidate that has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use (labeling) as a so-called "reference listed drug" or RLD that has already been approved pursuant to a full NDA. Only limited exceptions exist to this ANDA sameness requirement, including certain limited variations approved by the FDA through a special suitability petition process. ANDA applicants are not required to submit clinical data to demonstrate safety and efficacy. Instead, the FDA relies on its prior finding of safety and effectiveness of the RLD to approve the ANDA. As a result, the law requires that the ANDA applicant submit only limited clinical data to demonstrate that the product covered by the ANDA is absorbed in the body at a rate and extent consistent with that of the RLD. This is known as bioequivalence, which commonly is shown in a bioequivalence study that typically is performed in healthy volunteers and generally is considerably less time-consuming and expensive than clinical studies in patients. In addition, the ANDA must contain information regarding the manufacturing processes and facilities that will be used to ensure product quality. It also must contain certifications with respect to all patents that are listed for the RLD in the FDA's publication, "Approved Drug Products with Therapeutic Equivalence Evaluations," commonly known as the "Orange Book."

Under the Federal Food, Drug, and Cosmetic Act, drugs that are new chemicals entities, or NCEs, are eligible for a five-year data exclusivity period. During this period, the FDA may not accept for review an ANDA submitted by another company that relies on any of the data submitted by the innovator company. This exclusivity period also applies to "505(b)(2)" applications, which are hybrid applications that rely in-part on pioneer data and in-part on new clinical data submitted to account for differences between the 505(b)(2) product and the RLD (i.e., the innovator NDA). ANDA applicants and 505(b)(2) applicants must certify to all patents listed in the Orange Book for the RLD. An ANDA (or 505(b)(2) application) may be submitted to FDA after four years if it contains a certification of patent invalidity or non-infringement to one of those listed patents. The statute also provides three years of data exclusivity for an NDA (or NDA supplement) that is not an NCE if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed essential to approval. During this period, the FDA will not approve an application filed by a third party for the protected conditions of use that relies on any of the data that was submitted by the innovator company. Neither exclusivity period blocks the approval of full applications (i.e., full NDAs) submitted to the FDA because full NDAs do not rely on a pioneer's data.

Special procedures apply when an ANDA contains one or more certifications stating that a listed patent is invalid or not infringed. This is known as a "Paragraph IV" certification. If the owner of the patent or the NDA for the RLD brings a patent infringement suit within a specified time after receiving notice of the Paragraph IV certification, an automatic stay bars FDA approval of the ANDA for 30 months, which period may be extended under certain circumstances. The length of the automatic stay depends on whether the FDA classifies the RLD as an NCE, as follows:

- If the FDA does not classify the RLD as an NCE, then the automatic stay is for 30 months from the date that the sponsor of the RLD receives the patent certification described above.

- If the RLD is classified by the FDA as an NCE, then the length of the automatic stay depends on when the ANDA is filed. No company can file an ANDA on a reference listed drug that the FDA has designated as an NCE until five years after the RLD's FDA approval, except that an ANDA may be submitted four years after the RLD's FDA approval if the ANDA contains a Paragraph IV patent certification. If an ANDA containing a Paragraph IV certification is filed five or more years after FDA approval of the NCE, then the stay duration is 30 months. However, if an ANDA containing a Paragraph IV certification is filed in between the fourth and fifth years after FDA approval of the NCE, the automatic 30-month stay is extended by a number of months equal to the number of months remaining in the fifth year after approval of the RLD, providing a total of up to a 42 month stay.

If the stay is either lifted or expires and the FDA approves the ANDA, the generic manufacturer may decide to begin selling its product even if patent litigation is pending unless the court enjoins their launch. However, in the absence of an injunction, if the generic manufacturer launches before patent litigation is resolved, the launch is at the risk of the generic manufacturer being later held liable for patent infringement damages.

Most states require or permit pharmacists to substitute generic equivalents for brand-name prescriptions unless the physician has prohibited substitution. Managed care organizations and pharmacy benefit managers often urge physicians to prescribe drugs with generic equivalents, and to authorize substitution, as a means of controlling costs of prescriptions. They also may require lower copayments for generics as an incentive to patients to ask for and accept generics.

While the question of substitutability is one of state law, most states look to the FDA to determine whether a generic is substitutable. The FDA lists therapeutic equivalence ratings in the "Orange Book." In general, a generic drug that is listed in the Orange Book as therapeutically equivalent to the branded product will be substitutable under state law and, conversely, a generic drug that is not so listed generally will not be substitutable. Drug products that the FDA considers to be therapeutically equivalent to other drug products receive one of various types of "A" ratings. For example, solid oral dosage form drug products that are considered therapeutically equivalent are generally rated "AB" in the Orange Book, while therapeutically equivalent solutions and powders for aerosolization generally receive an "AB" or an "AN" rating depending on how bioequivalence was demonstrated.

To be considered therapeutically equivalent, a generic drug must first be a pharmaceutical equivalent of the branded drug. This means that the generic has the same active ingredient, dosage form, strength or concentration, and route of administration as the branded drug. Tablets and capsules are currently considered different dosage forms that are pharmaceutical alternatives and therefore are not substitutable pharmaceutical equivalents. In addition to being pharmaceutical equivalents, therapeutic equivalents must be bioequivalent to their branded counterparts. Bioequivalence for this purpose is defined in the same manner as for ANDA approvals, and usually requires a showing of comparable rate and extent of absorption in a small study in healthy volunteers.

The process described above is not applicable to drugs where the pioneer product was approved pursuant to a BLA, rather than an NDA. A separate process exists for follow-on versions of such products and is discussed in the section entitled "Biosimilars," below.

Requirements Applicable to Medical Devices in the United States

The FDA regulates, among other things, the development, testing, manufacturing, labeling, safety, effectiveness, storage, record keeping, marketing, import, export, and distribution of medical devices. The level of regulation applied by the FDA generally depends on the class into which the medical device falls: Class I, II, or III. Class I medical devices present the lowest risk, and Class III medical devices present the highest risk. In general, the higher the class of device, the greater the degree of regulatory control. All devices, for example, are subject to "General Controls," which include:

- Establishment registration by manufacturers, distributors, re-packagers, and re-labelers;
- Device listing with FDA;
- Good manufacturing practices;
- Labeling regulations; and
- Reporting of adverse events.

Class II medical devices are subject to General Controls, but also Special Controls, including special labeling requirements, mandatory performance standards, additional post market surveillance, and specific FDA guidance. Most Class III medical devices are assessed individually through an extensive Premarket Review application, or PMA. As a result, although they are subject to General Controls, they generally are not subject to Special Controls. Instead, most Class III devices have additional requirements and conditions of use imposed on them through the individualized PMA review and approval process.

Although we do not manufacture or market stand-alone medical devices, Inbrija relies on a device component (the inhaler) to deliver drug product to patients. In general, the FDA regulates that type of product as a "combination product." The FDA assigns combination products for primary or lead review by the drug or device center based on a determination of the product's "primary mode of action." If the FDA determines that the product achieves its therapeutic effect through the drug component, as was the case with Inbrija, it will be assigned to the Center for Drugs ("CDER") or the Center for Biologics ("CBER") for review and approval. By contrast, if the FDA determines that the device component is the primary mode of action, then the product will be reviewed and approved by the Center for Devices ("CDRH"). CDER is the lead review division for Inbrija. We anticipate that, to the extent that any of the other products we may develop are regulated as combination products, the FDA likely will find that the primary mode of action is through the drug component, and therefore the product will be reviewed by CDER. In that case, however, CDER/CBER will consult with CDRH on the device component, and we will still have to comply with certain requirements applicable to medical devices.

Most Class I devices are exempt from the FDA premarket review or approval process. With some exceptions, Class II devices may be marketed only if the FDA "clears" the medical device through the 510(k) process, which requires a company to show that the device is "substantially equivalent" to certain devices already on the market. Again, with some exceptions, Class III devices are approved through a PMA, which generally requires an applicant to submit data from clinical trials that establish the safety and effectiveness of the device. Clinical data are sometimes required for a 510(k) application as well. Manufacturers conducting clinical trials with medical devices are subject to similar requirements as those conducting clinical trials with drugs or biologics. For example, a manufacturer must obtain an investigational device exemption, or IDE, to test a significant risk device in humans, must comply with GCPs, and must obtain IRB approval. Although Inbrija includes a medical device component (the inhaler), Inbrija is a combination product that was approved by CDER via an NDA in consultation with CDRH, and these separate medical device clearance/approval requirements are not applicable to Inbrija.

The FDA has broad post-market regulatory and enforcement powers with respect to medical devices, similar to those for drugs and biologics. For example, medical devices are subject to detailed manufacturing standards under the FDA's quality systems regulations, or QSRs, and specific rules regarding labeling and promotion and reporting of adverse events. Medical device manufacturers must also register their establishments and list their products with the FDA.

States also impose regulatory requirements on medical device manufacturers and distributors, including registration and record-keeping requirements. Failure to comply with the applicable federal and state medical device requirements could result in, among other things, refusal to approve or clear pending applications, withdrawal of an approval or clearance, warning letters, product recalls, product seizures, total or partial suspension of production, fines, refusals of government contracts, restitution, disgorgement, or other civil or criminal penalties.

Biosimilars

The Affordable Care Act amended the Public Health Service Act to authorize the FDA to approve "biosimilars" (follow-on versions of pioneer biological products approved pursuant to a BLA) via a separate, abbreviated pathway. Under this abbreviated pathway, the biosimilar applicant must demonstrate that its product is "highly similar" to the "reference product," and that there are no "clinically meaningful differences" between the biosimilar and the reference product. Unlike ANDAs, biosimilars are not, in general, automatically substitutable for the reference product at the pharmacy. Instead, the FDA must make a separate finding of "interchangeability." To date, the trend in state law has been to permit or require substitution only of those biosimilars that have also been deemed by the FDA to be interchangeable.

The Affordable Care Act also established a period of 12 years of data exclusivity against biosimilars for reference products in order to preserve incentives for future innovation. Under this framework, data exclusivity protects the data in the BLA-holders' regulatory application by prohibiting others, for a period of 12 years, from gaining FDA approval based in part on reliance on or reference to the reference product's data in its approved BLA. In contrast to the provisions for NDAs, the biologics data exclusivity provisions do not change the duration of patents granted on biologic products, or otherwise create an "automatic stay" of FDA approval of a biosimilar. If we develop any product candidates that are approved as biologics under BLAs, they may face significant competition from biosimilars in the future.

Foreign Regulation and Product Approval

Outside the U.S., our ability or the ability of one of our collaborators or distributors to market a product candidate is contingent upon receiving a marketing authorization from the appropriate regulatory authorities. The requirements governing the conduct of clinical trials, marketing authorization, pricing and reimbursement can vary widely from country to country. The foreign regulatory approval process involves risks very similar to those associated with FDA approval discussed above, and there are fees associated with filing the Marketing Application as well as additional fees for submissions throughout the life cycle of the product.

Within the EU, it is possible to obtain marketing authorizations that enable an approved product to be marketed in the entire European Economic Area, or EEA, which is composed of the EU member states plus Iceland, Liechtenstein, and Norway. This can be through the "centralized procedure" which is mandatory for certain products, including biotechnology and advanced therapy medicinal products, orphan medicines and new active substances for the treatment of acquired immune deficiency syndrome (AIDS), cancer, neurodegenerative disorder, diabetes, auto-immune diseases and other immune dysfunctions and viral diseases. Alternatively, marketing authorizations can be obtained through the "mutual recognition" or "decentralized" procedure, which provides for the approval of a product by one or more member states based on an assessment of an application review performed by one or more other member states. The foreign regulatory approval process involves risks very similar to those associated with FDA approval discussed above.

On September 19, 2019, the EC granted a marketing authorization to Inbrija, for the intermittent treatment of episodic motor fluctuations (OFF episodes) in adult patients with Parkinson's disease treated with a levodopa/dopa-decarboxylase inhibitor. This marketing authorization was granted through the centralized procedure and is therefore valid throughout the EEA. The marketing authorization is valid for five years and once renewed is usually valid for an unlimited period thereafter. In December 2023, we submitted an application for renewal of the marketing authorization for this product. If a product approved under the centralized procedure is not marketed in at least one EU member state within three years of the grant of the marketing authorization, the marketing authorization lapses under the EU's sunset rules unless the deadline is extended. In December 2021, we received an extension of the sunset deadline for Inbrija to March 31, 2023. We have entered into distribution agreements with Esteve to commercialize Inbrija in Germany and Spain, respectively. Esteve launched Inbrija in Germany in June 2022 and launched in Spain in February 2023. Accordingly, we are in compliance with the sunset rules.

In the EU, innovator products approved on the basis of a complete and independent data package are usually entitled to a total of ten years of regulatory exclusivity from the date of first approval. For a period of eight years, EU authorities may not accept marketing authorization applications that rely on the safety and efficacy data contained in the marketing authorization dossier of the innovator product. At the end of that period, generic applicants may file and authorities may review such applications. The innovator product is protected by a further two years of market exclusivity before any generic product may launch, such that the innovator product benefits from total regulatory exclusivity period of ten years. The market exclusivity period may be extended by a further one year if, during the first eight years after a grant of marketing authorization, a new therapeutic indication with significant clinical benefit over existing therapies is authorized.

Inbrija received its EU marketing authorization on the basis of a complete and independent data package and therefore benefits from the 10-year regulatory exclusivity period described above (*i.e.*, eight years of data exclusivity plus two additional years of market exclusivity).

The fact that a product benefits from regulatory exclusivity does not prevent competitors from obtaining a marketing authorization based on their own independently generated data. EU regulatory authorities have stated that they consider levodopa, which is the active substance contained in Inbrija, to be a "known active substance." In principle, this means that generic competitors could – during Inbrija's regulatory exclusivity period – file and receive a marketing authorization referring, for example, to data from the dossiers of older, established products containing levodopa, supplemented with other data that the competitor generates itself (*e.g.*, demonstrating the safety and efficacy of the inhaled dosage form).

As the marketing authorization holder for Inbrija in the EU, we are required to comply with a number of requirements applicable to the manufacturing, marketing, promotion and sale of the medicinal products. In particular, a marketing authorization holder's obligations include complying with the EU's pharmacovigilance or safety reporting rules. All marketing authorizations include a Risk Mitigation Plan, or RMP, describing the risk mitigation measures that a marketing authorization holder must put in place, including post-authorization obligations such as additional safety monitoring or the conduct of post-authorization safety studies. RMPs are intended to be updated throughout the lifetime of a medicine, and marketing authorization holders are expected to submit updated RMPs as new information becomes available or at the request of EU regulatory authorities.

Other regulatory requirements relate, for example, to the manufacturing of products and active pharmaceutical ingredients in accordance with good manufacturing practice standards. The European Medicines Agency, or EMA, is responsible for coordinating inspections conducted by member state competent authorities to verify compliance with various aspects of the EU's medicines rules. In respect of inspecting manufacturing sites, in July 2019 the EU and U.S. implemented a mutual recognition agreement, or MRA, under which EU and U.S. regulators will now rely on each other's inspections for manufacturing sites for human medicines in their respective territories.

Non-compliance with EU requirements, particularly regarding safety monitoring or pharmacovigilance, can also result in the marketing authorization holder becoming subject to significant financial penalties. Inspections may be routine or triggered by issues arising during the assessment of the dossier or by other information, such as previous inspection experience. Inspections usually are requested during the initial review of a marketing authorization application, but could arise post-authorization. Regulatory authorities in the EU may suspend, revoke or vary a marketing authorization of a medicinal product if they consider that the product is harmful, lacks therapeutic efficacy, its risk-benefit balance is not favorable, its qualitative and quantitative composition is not as declared or for certain other reasons.

A marketing authorization holder may not delegate its ultimate legal responsibility for complying with its legal requirements nor any liability for failing to do so. However, the marketing authorization holder may delegate the performance of certain tasks to third parties, provided this is appropriately documented and managed. It is also possible to transfer a marketing authorization to a third party.

The EU's medicines rules do not require the launch of a product in a particular member state but do contain the sunset rules described above requiring that for a centrally-approved product, the product must be marketed in at least one member EEA state within three years of approval (unless that deadline is extended) or the marketing authorization may cease to be valid. However, once a medicinal product is launched in a particular member state, the marketing authorization holder is under a legal obligation to take steps to ensure it meets demand for the product in that country.

As in the U.S., EU law and the regulatory systems in EU member states tightly regulate the advertising and promotion of medicinal products. Unlike in the U.S., EU law prohibits the advertising of prescription-only medicinal products (such as Inbrija) directly to patients or the general public. Advertising to healthcare professionals is permitted, provided certain conditions are met. Certain activities fall outside the scope of EU medicines advertising rules, such as direct responses to requests for information and the dissemination of factual, informative non-promotional announcements and reference material. All advertising for a medicine must be consistent with the product's approved Summary of Product Characteristics, or SmPC, factual, accurate, balanced and non-misleading. Advertisements to healthcare professionals must adhere to certain specific requirements. For example, the provision of inducements to healthcare professionals designed to promote the prescription, supply, sale or consumption of medicinal products is not permitted, and some member states have expanded this prohibition to cover inducements to healthcare organizations. The promotion of a medicine pre-approval is prohibited as is the promotion of off-label use and promotion that is inconsistent with the product's SmPC. While EU law provides a framework for medicines advertising rules, national laws, guidance and regulatory codes (or self-regulatory codes) can lead to differences in approach at the national level.

We have entered into distribution and supply agreements with Esteve for the commercialization of Inbrija in Germany and Spain, and we may enter into similar transactions for the commercialization of Inbrija in other EU countries in the future. We have not transferred our EU marketing authorization to Esteve and do not intend on transferring the authorization to any other party with whom we may enter into such a transaction. Accordingly, if Esteve or another distributor or collaborator for Inbrija in the EU fails to comply with EU legal requirements, we may be subject to significant liability, including civil and administrative remedies as well as criminal sanctions, and there can be no assurance that contractual terms and conditions will provide us with adequate rights and remedies, and actions required to protect against enforcement actions or to enforce such rights could be costly and time consuming.

Products such as Inbrija that combine a drug and device co-packaged in a single presentation are regulated under the EU's medicines rules and medical device rules respectively. Additionally, Inbrija's marketing authorization requires that the medicinal product may only be used with the Inbrija inhaler, and so the inhaler device is a "referenced device." In order to be lawfully placed on the market, the device must be compliant with the relevant EU law on medical devices. As of May 26, 2021, the Medical Devices Regulation (EU) 2017/745 (MDR) implemented a harmonized medical devices regulatory framework in the EU. It repealed and replaced the Medical Devices Directive 93/42/EEC (MDD). The MDD and now the MDR and their associated guidance documents and harmonized standards govern, among other things, device design and development, preclinical and clinical or performance testing, premarket conformity assessment, registration and listing, manufacturing, labeling, storage, claims, sales and distribution, export and import, and post-market surveillance, vigilance, and market surveillance.

In order to be placed on the market in the EU, a medical device must undergo a conformity assessment procedure, to verify compliance with the relevant requirements (including the Essential Requirements set out in Annex I of the MDD, replaced by the General Safety and Performance Requirements (GSPRs) in Annex I of the MDR), and the manufacturer must affix the Conformité Européene mark, or CE Mark, to the product. The conformity assessment procedure depends on the risk class of the device. Medical devices in the EU are classified into one of four classes: I, IIa, IIb and III, with Class I being the lowest risk and Class III being the highest. Under the MDD, the Inbrija inhaler was a Class I device, for which the manufacturer may carry out its own conformity assessment procedure and self-certify compliance with the essential requirements, before affixing the CE mark.

However, under the MDR, the Inbrija inhaler is up-classified to a Class II product. The conformity assessment procedure for a Class II product must be conducted by a third-party organization designated to conduct conformity assessments, known as a Notified Body. The Notified Body issues a certificate of conformity, which entitles the manufacturer to affix the CE Mark to its devices after having prepared and signed a related EU Declaration of Conformity.

We completed the MDR conformity assessments throughout 2023 and received our MDR certification in November 2023. We subsequently have established a transition plan from MDD to MDR (including markings and labeling requirements) with expected implementation through Q1 2025.

Other Regulations

In the U.S., the research, manufacturing, distribution, sale, and promotion of drug and biological products, as well as medical devices, are potentially subject to regulation and oversight by various federal, state, and local authorities in addition to the FDA, including the Centers for Medicare & Medicaid Services ("CMS"), other divisions of the U.S. Department of Health and Human Services (e.g., the Office of Inspector General), the U.S. Department of Justice and individual U.S. Attorney offices within the Department of Justice, the Drug Enforcement Administration ("DEA"), and state and local governments. Controlled substances that are scheduled by the DEA are subject to additional regulatory requirements including, among other things, special security and handling requirements, and potential restrictions on manufacturing, distribution, sales, and marketing. Sales, marketing, scientific/educational grant programs, and other Acorda interactions with healthcare professionals must comply with the anti-kickback and fraud and abuse provisions of the Social Security Act and the False Claims Act, and may be affected by the privacy provisions of the Health Insurance Portability and Accountability Act, or HIPAA, and similar state laws. Pricing and rebate programs must comply with the Medicaid rebate requirements of the Omnibus Budget Reconciliation Act of 1990, and/or the Veterans Health Care Act of 1992 ("VHCA"). For products to be covered by Medicaid, drug manufacturers must enter into a rebate agreement with the Secretary of Health and Human Services on behalf of the states and must regularly submit certain pricing information to CMS. Under the VHCA, we are required to offer certain drugs at a reduced price to a number of federal agencies including the Veterans Administration and the Department of Defense, or DOD, the Public Health Service and certain private Public Health Service designated entities in order to participate in other federal health care programs including Medicare and Medicaid. In addition, discounted prices must also be offered for certain DOD purchases for its TRICARE retail pharmacy program via a rebate system. Participation under the VHCA requires submission of pricing data and calculation of discounts and rebates pursuant to complex statutory formulas, as well as the entry into government procurement contracts governed by the Federal Acquisition Regulations.

Several states have enacted legislation requiring pharmaceutical companies to establish marketing compliance programs, file periodic reports with the state, make periodic disclosures on sales, marketing, pricing, and other activities, and/or register their sales representatives, and to prohibit certain other sales and marketing practices. In addition, our activities are potentially subject to federal and state consumer protection and unfair competition laws.

Under the Sunshine Act provisions of the Affordable Care Act ("ACA"), pharmaceutical manufacturers are subject to federal reporting requirements with regard to payments or other transfers of value made to physicians, physician assistants, advance practice nurses, and teaching hospitals. Reports submitted under these requirements are placed on a public database. Pharmaceutical manufacturers are required to submit reports to CMS annually. Similarly, the ACA requires pharmaceutical manufacturers to annually report to FDA samples of prescription drugs requested by and distributed to healthcare providers. The law does not state whether these sample disclosures will be made publicly available, and the FDA has not provided any additional guidance as to how the data will be used. In addition, several states have their own Sunshine laws and regulations that require pharmaceutical manufacturers to report information with regard to payments or other transfers of value to physicians, physician assistants, advance practice nurses, and teaching hospitals. Some of the states' Sunshine laws require more information to be reported than the federal requirements.

Pharmaceutical research and development and manufacturing activities are subject to numerous environmental, health, and safety laws and regulations, including, among other matters, those governing: laboratory procedures and the use, generation, manufacture, distribution, storage, handling, treatment, remediation and disposal of hazardous substances; the exposure of persons to hazardous substances; the release of pollutants into the air and bodies of water; and the general health, safety and welfare of employees and members of the public. Pharmaceutical research and development and manufacturing activities and the activities of our third-party manufacturers involve the use of hazardous substances, and the risk of injury, contamination, or noncompliance with the applicable environmental, health and safety requirements cannot be eliminated. We may incur significant costs to comply with such laws and regulations now or in the future. Although compliance with such laws and regulations has not had a material effect on our capital expenditures, earnings or competitive position, environmental, health and safety laws and regulations have tended to become increasingly stringent and, to the extent legal or regulatory changes occur in the future, they could result in, among other things, increased costs to us. Although we assigned our Chelsea, Massachusetts manufacturing facility lease to Catalent in February 2021, we remain responsible for certain contingent environmental liabilities should an issue arise in the future relating to the operation of the facility prior to the assignment.

Reimbursement and Pricing Controls

In many of the markets where we or a collaborator or distributor markets or may potentially market one of our approved products, the prices of pharmaceutical products are subject to direct price controls, by law, and to drug reimbursement programs with varying price control mechanisms.

In the U.S., there has been an increased focus on drug pricing in recent years. Although there are currently no direct government price controls over private sector purchases in the U.S., federal legislation requires pharmaceutical manufacturers to pay prescribed rebates on certain drugs to certain public healthcare programs, such as Medicaid, in order for the drugs to be eligible for reimbursement under those programs. Various states have adopted further mechanisms under Medicaid and other programs that seek to control drug prices, including by disfavoring certain higher priced drugs and by seeking supplemental rebates from manufacturers. Managed care and pharmaceutical benefit managers have also become a potent force in the marketplace that increase downward pressure on the prices of pharmaceutical products. Heightened scrutiny of the prices of several drug products have led to numerous other proposals, at both the federal and state level, to address perceived issues related to drug pricing and drug transparency. Several other states have adopted or are considering adopting laws that require pharmaceutical companies to provide notice prior to raising pricing and other information related to price increases. The current U.S. administration has indicated an interest in measures designed to lower drug costs, and there continues to be political pressure at both the U.S. federal and state levels related to drug pricing and drug transparency that could result in legislative or administrative actions, or at a minimum continued scrutiny. We cannot predict the likelihood, nature or extent of adverse governmental regulation that might arise from future legislative or administrative action, either in the U.S. or abroad.

Under the reimbursement methodology set forth in the Medicare Modernization Act, or MMA, physicians are reimbursed for drugs they administer to Medicare beneficiaries based on a product's "average sales price," or ASP. This ASP-based reimbursement methodology has generally led to lower reimbursement levels. The MMA also established the Medicare Part D outpatient prescription drug benefit, which is provided primarily through private entities that attempt to negotiate price concessions from pharmaceutical manufacturers. The ACA, as amended, requires drug manufacturers to provide a 70% discount on prescriptions for branded products filled while the beneficiary is in the Medicare Part D coverage gap, also known as the "donut hole."

The Deficit Reduction Act of 2005 resulted in changes to the way average manufacturer price, or AMP, and best price are reported to the government and the formula for calculating required Medicaid rebates. The ACA increased the minimum basic Medicaid rebate for branded prescription drugs to 23.1% and requires pharmaceutical manufacturers to pay states rebates on prescription drugs dispensed to Medicaid managed care enrollees. In addition, the ACA increased the additional Medicaid rebate on "line extensions" (such as extended-release formulations) of solid oral dosage forms of branded products, revised the definition of AMP by changing the classes of purchasers included in the calculation, and expanded the entities eligible for discounts under a statutory program available to entities identified under Section 340B of the Public Health Service Act.

The ACA imposes a significant annual fee on companies that manufacture or import branded prescription drug products. The fee (which is not deductible for federal income tax purposes) is based on the manufacturer's market share of sales of branded drugs and biologics (excluding orphan drugs) to, or pursuant to coverage under, specified U.S. government programs. The ACA also contains a number of provisions, including provisions governing the way that healthcare is financed by both governmental and private insurers, enrollment in federal healthcare programs, reimbursement changes, increased funding for comparative effectiveness research for use in the healthcare industry, and enhancements to fraud and abuse requirements and enforcement.

Public and private healthcare payers control costs and influence drug pricing through a variety of mechanisms, including through negotiating discounts with the manufacturers and through the use of tiered formularies and other mechanisms that provide preferential access to certain drugs over others within a therapeutic class. Payers also set other criteria to govern the uses of a drug that will be deemed medically appropriate and therefore reimbursed or otherwise covered. In particular, many public and private healthcare payers limit reimbursement and coverage to the uses of a drug that are either approved by the FDA and/or appear in a recognized drug compendium. Drug compendia are publications that summarize the available medical evidence for particular drug products and identify which uses of a drug are supported or not supported by the available evidence, whether or not such uses have been approved by the FDA.

Different pricing and reimbursement schemes exist in other countries. There is extensive regulation of pharmaceutical pricing and reimbursement through health systems that fund a large part of the cost of such products to consumers. The grant of a marketing authorization in many jurisdictions does not necessarily guarantee that a product will be reimbursed in a particular jurisdiction. The approach taken varies by jurisdiction and in most cases a separate reimbursement approval is required. Some jurisdictions operate positive and/or negative list systems under which products may only be marketed once a reimbursement price has been agreed. Other countries allow companies to fix their own prices for medicines, but monitor and control company profits and may limit or restrict reimbursement based on the results of health economic assessments. Others control the price of pharmaceutical products through reference pricing approaches where the reimbursement price is determined by the price in other jurisdictions. The downward pressure on healthcare costs in general, particularly prescription drugs, has become very intense. As a result, increasingly high barriers are being erected to the entry of new products, as exemplified by the National Institute for Health and Care Excellence, or NICE, in the United Kingdom which evaluates the data supporting new medicines and passes reimbursement recommendations to the government. In addition, in some countries, cross-border imports from low-priced markets (parallel imports) exert commercial pressure on pricing within a country.

EMPLOYEES AND HUMAN CAPITAL MANAGEMENT

As of March 1, 2024, we had 102 full-time and no temporary employees. We also engage various consultants and contract workers, including approximately 27 sales representatives. We believe that we have a good relationship with our employees, consultants, and contract workers. In order to achieve our goals, it is crucial that we continue to attract and retain top talent and provide a safe and rewarding workplace, with opportunities for growth and career development, supported by competitive compensation, benefits, health and wellness programs. None of our employees are represented by a labor union or works council and none of our employees have entered into a collective bargaining agreement with us.

We believe that a diverse, equitable and inclusive workplace is critical to the Company. We take a comprehensive view of diversity, equity and inclusion across different races, ethnicities, tribes, religions, socioeconomic backgrounds, generations, abilities, and expressions of gender and sexual identity. As of March 1, 2024, 48% of our employees were female and 52% were male, and 24% identified as non-white and 72% as white with a relatively equal mix between female and male. We conduct annual pay equity analyses, with regard to gender and race/ethnicity to help ensure our base pay structures are fair and to identify and remediate potential issues or disparities. We strive to maintain an inclusive environment free from discrimination of any kind, including sexual or other discriminatory harassment. Our employees have multiple avenues available through which inappropriate behavior can be reported, including a confidential hotline.

We frequently benchmark our compensation practices and benefits programs against those of comparable industries and peer companies, and in the geographic areas where our facilities are located. We believe that our compensation and employee benefits are competitive and allow us to attract and retain qualified employees throughout our organization. In addition to salaries, employee benefits include annual discretionary bonuses, equity awards, a 401(k) plan, healthcare and insurance benefits, health savings and flexible spending accounts, paid time off, family leave, and flexible work schedules, among others.

Our success depends in large part upon our ability to attract and retain highly qualified personnel with the knowledge and experience needed for our business. We face intense competition in our hiring efforts with other pharmaceutical and biotechnology companies, as well as universities and nonprofit research organizations. We are increasingly relying on the services of contract sales representatives or other third-party marketing support in response to sales force attrition.

As a result of the Intended Chapter 11 Proceedings, we may experience employee attrition, and our employees may face considerable distraction and uncertainty. A loss of key personnel or material erosion of employee morale could adversely affect our business and results of operations. Our ability to engage, motivate and retain key employees or take other measures intended to motivate and incentivize key employees to remain with us through the pendency of the Intended Chapter 11 Proceedings is limited by certain restrictions on the implementation of incentive programs under the Code. However, we have implemented a program to provide severance and other compensation to certain employees and employees that are not offered employment with the Purchaser.

CORPORATE INFORMATION

We were incorporated in 1995 as a Delaware corporation. Our principal executive offices are located at 2 Blue Hill Plaza, 3rd Floor, Pearl River, New York 10965. Our telephone number is (914) 347-4300. Our common stock is listed on the Nasdaq Global Select Market under the symbol "ACOR," although our common stock is likely to be delisted from the Nasdaq Global Select Market within ten days of the commencement of the Intended Chapter 11 Proceedings.

Our website is www.acorda.com. The information contained on our website is not incorporated by reference into this Annual Report and should not be considered to be a part of this Annual Report. References to our website address in this report have been included as, and are intended to be, inactive textual references only that do not hyperlink to our website.

ADDITIONAL INFORMATION AND WHERE TO FIND IT

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available free of charge on our website (*www.acorda.com* under the "Investors" and then "SEC Filings" captions) as soon as reasonably practicable after we electronically file such material with, or furnish them to, the Securities and Exchange Commission ("SEC"). The SEC also maintains a website that contains the reports, proxy and information statements, and other information that we file electronically with the SEC at *www.sec.gov*. Also, the SEC allows us to "incorporate by reference" some information from our proxy statement for our 2024 Annual Meeting of Stockholders, rather than repeating that information in this Annual Report. We intend to file our 2024 Proxy Statement within 120 days after the end of our 2023 fiscal year, in accordance with SEC rules and regulations, and we recommend that you refer to the information that we indicate will be contained in our 2024 Proxy Statement.

Item 1A. Risk Factors.

You should carefully consider the risks described below, in addition to the other information contained in this Annual Report, before making an investment decision. Our business, financial condition or results of operations could be harmed by any of these risks. The risks and uncertainties described below are not the only ones we face. Additional risks not presently known to us, that we currently deem immaterial, or other factors not perceived by us to present significant risks to our business at this time also may impair our business operations. You also should consider the other information included in this Annual Report on Form 10-K as well as our other filings with the SEC.

Risk Factors Summary

An investment in our securities is subject to various risks, the most significant of which are summarized below.

- We are subject to significant risks and uncertainties associated with the Intended Chapter 11 Proceedings, including our ability to negotiate and confirm a sale of substantially all of our assets under Section 363 of the Code (or any plan of reorganization or liquidation); the high costs and related fees of Chapter 11 proceedings; our ability to obtain sufficient financing to allow us to operate our business during the course of the Intended Chapter 11 Proceedings; our ability to satisfy the conditions and milestones in the Restructuring Support Agreement; our ability to maintain our relationships with our suppliers, service providers, customers, employees and other third parties; our ability to maintain contracts that are critical to our operations; our ability to execute competitive contracts with third parties; the ability of third parties to seek and obtain court approval to terminate contracts and other agreements with us; our ability to retain our current management team and to attract, motivate and retain key employees; the ability of third parties to seek and obtain court approval to convert the Intended Chapter 11 Proceedings to a Chapter 7 proceeding; and the actions and decisions of our shareholders, creditors and other third parties who have interests in the Intended Chapter 11 Proceedings that may be inconsistent with our plans.
- We have a history of operating losses and may not be able to achieve or sustain profitability in the future; our prospects for achieving and sustaining profitability in the future will depend primarily on how successful we are in increasing Inbrija sales in the U.S. and establishing collaborations or distribution agreements to sell Inbrija in the EU and other territories outside the U.S., as well as the extent and timing of expected continuing Ampyra sales declines due to generic competition that commenced in 2018.
- Our business depends on our ability to attract and retain key management and other personnel, and maintain access to expert advisors and consultants; we have recently experienced workforce attrition in various functions across our business, we may not be able to adjust our operations in response to prevent disruption to our business, and we lack redundancy in important functions across our business.
- Our 2021 restructurings and associated organizational changes may not adequately reduce our expenses, may lead to additional workforce attrition, and may cause operational disruptions.
- We will not be able to repay our convertible senior secured notes when they mature in December 2024.
- The indenture governing our convertible senior secured notes due 2024 contains restrictions that may make it more difficult to execute our strategy or to effectively compete, and an event of default under the indenture could adversely affect our liquidity and our ability to retain title to our assets, including our intellectual property.
- We are substantially dependent on our ability to increase sales of Inbrija in the U.S. and to a lesser extent commercialize Inbrija in the EU or other countries outside the U.S.; the commercial success of Inbrija depends on market acceptance among physicians, patients and the medical community, adequate reimbursement by governmental and other third-party payors, and other factors; and Inbrija faces competition from other marketed products.
- We do not have the capabilities to commercialize products outside of the U.S.; we are dependent on our existing collaboration with Biogen for sales of Ampyra in the EU and other countries outside the U.S. where it is approved, and we are dependent on our existing distribution agreements with Esteve for commercialization of Inbrija in Germany and Spain, as well as Biopas Laboratories for the commercialization of Inbrija in Latin America, and we will need to enter into additional collaborations or distribution agreements to commercialize Inbrija in other countries outside the U.S.
- We rely on Catalent as our sole supplier of Inbrija and ARCUS inhaled therapeutic candidates that we may seek to develop; we rely on the Chelsea, Massachusetts manufacturing facility that we transferred to Catalent for the manufacture of Inbrija; our business could be harmed if Catalent does not maintain required regulatory approvals for the facility, if there is an interruption in operations, or if there is insufficient manufacturing capacity; and we have substantial long-term financial commitments under our global supply agreement with Catalent for Inbrija.
- We rely on Patheon as our sole supplier of Ampyra and our business could be harmed if Patheon does not maintain required regulatory approvals for the facility, if there is an interruption in operations, or if there is insufficient manufacturing capacity.

- We have no manufacturing capabilities for our products or product candidates, and we are dependent upon third parties to supply the materials for, and to manufacture, our other products and product candidates (and in many cases these are single source suppliers).
- We face risks related to health epidemics, such as the COVID-19 global pandemic, that could adversely affect our operations or financial results.
- We operate in the highly regulated industry, and our business could be harmed and we could incur substantial liabilities if we (or our contractors, partners, collaborators or distributors) fail to comply with stringent federal, state and foreign legal and regulatory requirements relating to matters such as pharmaceutical marketing and promotion, safety and adverse event monitoring and reporting, fraud and abuse, false claims, Medicare rebate and other governmental pricing programs, and reporting of payments of certain health care practitioners.
- The identification of new side effects from our products, or side effects that are more frequent or severe than in the past, could harm our business by leading to a significant decrease in sales or the withdrawal of marketing approval in the U.S., the EU, or other jurisdictions.
- We rely on specialty pharmacies to dispense our products, deliver customer support, and provide us with related services, and our business could be harmed, and we could be subject to liabilities if these services are performed inadequately or in a manner that does not comply with applicable laws and regulations.
- We do not have any active drug development programs and may never commercialize any new products; because of our limited financial resources, we previously suspended work on all research and development programs, and as part of our financial management efforts, we are allowing the intellectual property associated with certain of these programs to lapse; even if we were to recommence investment in drug development programs, drug development is highly risky and uncertain, and programs may never result in a commercialized product despite significant investment.
- Our business depends on our ability to maintain and protect our intellectual property and proprietary trade secrets and know how, avoiding infringing the intellectual property of other parties, and complying with third-party licenses to the intellectual property of others.
- We depend on sophisticated information technology systems to operate our business, and a cyberattack or other breach of these systems, or a system error, could have a material adverse effect on our business and results of operations.
- Our stock price may be volatile and you may lose all or part of your investment.
- Substantial dilution could result from future issuances of our common stock, shares underlying existing or future equity awards to employees and directors, the possible issuance of shares to holders of our 2024 Notes to settle all or a portion of our conversion or make-whole payment obligations under, and/or interest payments on, those notes, and/or the possible sale of shares pursuant to financing transactions.
- Certain provisions of Delaware law, our Certificate of Incorporation, and our Bylaws may delay or prevent an acquisition of us that stockholders may consider favorable or may prevent efforts by our stockholders to change our directors or our management, which could decrease the value of our shares.

Risks Related to the Intended Chapter 11 Proceedings

We are subject to risks and uncertainties associated with the Intended Chapter 11 Proceedings.

We intend to commence voluntary proceedings under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York (the "Court") shortly after filing this Annual Report. Our operations and ability to develop and execute our business plan, our financial condition, our liquidity and our continuation as a going concern, are subject to the risks and uncertainties associated with our bankruptcy. These risks include, but are not limited to, the following:

- our ability to negotiate and confirm a sale of substantially all of our assets under Section 363 (or any plan of reorganization or liquidation);
- the high costs of Chapter 11 proceedings and related fees;
- our ability to obtain sufficient financing to allow us to operate our business;

- our ability to satisfy the conditions and milestones in the Restructuring Support Agreement;
- our ability to maintain our relationships with our suppliers, service providers, customers, employees and other third parties;
- our ability to maintain contracts that are critical to our operations;
- our ability to execute competitive contracts with third parties while tainted with a bankruptcy legacy;
- the ability of third parties to seek and obtain court approval to terminate contracts and other agreements with us;
- our ability to retain our current management team and to attract, motivate and retain key employees;
- the ability of third parties to seek and obtain court approval to convert the Intended Chapter 11 Proceedings to a proceeding under Chapter 7; and
- the actions and decisions of our shareholders, creditors and other third parties who have interests in the Intended Chapter 11 Proceedings that may be inconsistent with our plans.

Delays in the Intended Chapter 11 Proceedings will likely increase the costs associated with our Chapter 11 process and make it possible that we will be unable to continue operations while in bankruptcy.

These risks and uncertainties could affect our business and operations in various ways. For example, negative events or publicity associated with the Intended Chapter 11 Proceedings could adversely affect our relationships with our suppliers, service providers, customers, employees and other third parties, which in turn could further adversely affect our operations and financial condition. Also, pursuant to the Code, we need the prior approval of the Court for transactions outside the ordinary course of business, which may limit our ability to respond timely to certain events or take advantage of certain opportunities. Because of the risks and uncertainties associated with the Intended Chapter 11 Proceedings, we cannot accurately predict or quantify the ultimate impact that events that occur during the Intended Chapter 11 Proceedings will have on our business, financial condition and results of operations, and there is no certainty as to our ability to continue as a going concern.

We have substantial liquidity needs and may not be able to obtain sufficient liquidity to complete a sale of substantially all of our assets under Section 363 (or any plan of reorganization or liquidation).

Although we have lowered our capital budget and plan to reduce the scale of our operations, our business remains capital intensive. In addition to the cash requirements necessary to fund ongoing operations, we have incurred significant professional fees and other costs in connection with the Intended Chapter 11 Proceedings and expect that we will continue to incur significant professional fees and costs throughout the Intended Chapter 11 Proceedings. We can provide no assurance that our current liquidity is sufficient to allow us to continue to operate our business, satisfy our obligations related to the Intended Chapter 11 Proceedings, allow us to proceed with the confirmation of a Section 363 sale (or any plan of reorganization or liquidation). We can provide no assurance that we will be able to secure additional post-petition financing sufficient to meet our liquidity needs or, if sufficient funds are available, offered to us on acceptable terms.

The Restructuring Support Agreement is subject to conditions and milestones that we may not be able to satisfy.

There are certain material conditions we must satisfy under the Restructuring Support Agreement, including the timely satisfaction of milestones in the Intended Chapter 11 Proceedings, which include the consummation of the Sale Transaction. Our ability to timely complete such milestones is subject to risks and uncertainties, many of which are beyond our control.

If the Restructuring Support Agreement is terminated, our ability to confirm and consummate the Sale Transaction could be materially and adversely affected.

The Restructuring Support Agreement contains a number of termination events, upon the occurrence of which certain parties to the Restructuring Support Agreement may terminate the agreement. If the Restructuring Support Agreement is terminated as to all parties thereto, each of the parties thereto will be released from its obligations in accordance with the terms of the Restructuring Support Agreement. Such termination may result in the loss of support for the proposed Section 363 sale by the parties to the Restructuring Support Agreement, which could adversely affect our ability to confirm and consummate the proposed Section 363 sale. If the proposed Section 363 sale is not consummated, there can be no assurance that the Cases would not be converted to Chapter 7 liquidation cases or that any alternative arrangement would be as favorable to holders of claims against the Debtors as contemplated by the Restructuring Support Agreement.

In certain limited instances, a Chapter 11 case may be converted to a case under Chapter 7.

Upon a showing of cause, which may include our inability to continue to fund the Company during the Intended Chapter 11 Proceedings, the Court may convert a Chapter 11 case to a Chapter 7 case. In such event, our business operations would generally cease and a Chapter 7 trustee would be appointed or elected to liquidate our assets for distribution in accordance with the priorities established by the Code.

As a result of the Intended Chapter 11 Proceedings, our historical financial information may not be indicative of our future performance, which may be highly volatile.

During the Intended Chapter 11 Proceedings, we expect our financial results to continue to be volatile as restructuring activities and expenses impact our consolidated financial statements. As a result, our historical financial performance is likely not indicative of our financial performance after the filing of the Intended Chapter 11 Proceedings. If a plan of reorganization is approved and implemented, our existing capital structure may be fundamentally altered. If we emerge from Chapter 11, the amounts reported in subsequent consolidated financial statements may materially change relative to our historical consolidated financial statements. In connection with the Intended Chapter 11 Proceedings, it is also possible that additional restructuring and related charges may be identified and recorded in future periods. Such charges could be material to our consolidated financial position, liquidity and results of operations.

We may be subject to claims that will not be discharged in the Intended Chapter 11 Proceedings, which could have a material adverse effect on our business, cash flows, liquidity, financial condition and results of operations.

The Code provides that the confirmation of a plan of reorganization discharges a debtor from, among other things, substantially all debts arising prior to consummation of a plan of reorganization. With few exceptions, all claims against us that arose prior to the filing of the Intended Chapter 11 Proceedings or before consummation of a plan of reorganization or liquidation (i) would be subject to compromise and/or treatment under such plan and/or (ii) would be discharged in accordance with the Code and the terms of such plan. Subject to the terms of such plan and orders of the Court, any claims not ultimately discharged could be asserted against us and may have an adverse effect on our business, cash flows, liquidity, financial condition and results of operations following the bankruptcy proceedings.

If we operate under the Court's protection for a long period of time, or for a longer period of time than expected, our business may be harmed.

The longer the proceedings related to the Intended Chapter 11 Proceedings continue, the less likely it may be that we can complete a sale of substantially all of our assets under Section 363 on terms that are favorable, or at all, and the more likely it is that our clients, investors, strategic partners and service providers will lose confidence in our ability to reorganize our businesses successfully and seek to establish alternative advisory and/or other commercial relationships, as applicable. Furthermore, so long as the Intended Chapter 11 Proceedings continue, we will be required to incur substantial costs for professional fees and other expenses associated with the administration of the Intended Chapter 11 Proceedings. We cannot predict the ultimate amount of all settlement terms for the liabilities that will be subject to any plan of reorganization or liquidation.

Adverse publicity in connection with the Intended Chapter 11 Proceedings or otherwise could negatively affect our businesses.

Adverse publicity or news coverage relating to us, including, but not limited to, publicity or news coverage in connection with the Intended Chapter 11 Proceedings, may negatively impact our efforts to promote a sale of substantially all of our assets under Section 363, to operate our business while the Intended Chapter 11 Proceedings are pending or to execute a plan of reorganization or liquidation as an alternative or in addition to such a sale process.

The Intended Chapter 11 Proceedings will limit the flexibility of our management team in running our business.

While we operate our business as debtor-in-possession under supervision by the Court, we are required to obtain the approval of the Court prior to engaging in activities or transactions outside the ordinary course of business. Court approval of non-ordinary course activities entails preparation and filing of appropriate motions with the Court, negotiation with the various other parties-in-interest and one or more hearings. Other parties-in-interest may be heard at any Court hearing and may raise objections with respect to these motions. This process may delay major transactions and limit our ability to respond quickly to opportunities and events. In addition, constraints on our activities as debtor-in-possession may place limitations and restrictions on our business activities and resources. Furthermore, in the event the Court does not approve a proposed activity or transaction, we would be prevented from engaging in activities and transactions that we believe are beneficial to us.

We may experience employee attrition as a result of the Intended Chapter 11 Proceedings.

As a result of the Intended Chapter 11 Proceedings, we may experience employee attrition, and our employees may face considerable distraction and uncertainty. A loss of key personnel or material erosion of employee morale could adversely affect our business and results of operations. Our ability to engage, motivate and retain key employees or take other measures intended to motivate and incentivize key employees to remain with us through the pendency of the Intended Chapter 11 Proceedings is limited by certain restrictions on the implementation of incentive programs under the Code. The loss of services of members of our senior management team could impair our ability to execute our business strategies and implement operational initiatives, which may have a material adverse effect on our business, cash flows, liquidity, financial condition and results of operations.

Risks Related to our Business

We have a history of operating losses and may not be able to achieve or sustain profitability in the future; we are substantially dependent on our ability to successfully market and sell Inbrija.

As of December 31, 2023, we had an accumulated deficit of approximately $1,189.1 million. We had a net loss of $252.9 million for the year ended December 31, 2023. We have historically been highly dependent on sales of Ampyra in the U.S., but have experienced a significant decline in Ampyra sales due to competition from several generic versions of Ampyra that began entering the market in the U.S. in late 2018. Additional manufacturers may market generic versions of Ampyra, and we expect our Ampyra sales will continue to decline over time.

Our prospects for achieving and sustaining profitability in the future will depend primarily on how successful we are in increasing Inbrija sales in the U.S. and establishing partnerships to sell Inbrija in the EU and other territories outside the U.S., as well as the extent and timing of continuing Ampyra sales declines due to generic competition. If we are not successful in executing our business plan, we may not achieve or sustain profitability and even if we do so, we may not meet sales expectations. Also, even if we are successful in executing our business plan, our ability to achieve and sustain profitability in the future will also depend on our ability to manage our operating costs, and profitability may fluctuate from period to period due to our level of investments in sales and marketing, research and development, and product and product candidate acquisitions.

Given our current cash position, cash flow forecast and the Intended Chapter 11 Proceedings we will not have sufficient cash flow from our business to continue to sufficiently fund our operations.

Our management must evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about our ability to continue as a going concern within one year after the date the financial statements are issued. At December 31, 2023, we had $30.6 million in cash and cash equivalents and restricted cash. During 2023, we incurred a net loss of $252.9 million and had net cash flows used in operating activities of $14.0 million.

Our current cash flow forecast for the one-year going concern look forward period estimates that we will not have sufficient capital available to fund our operations. The 2024 Notes are scheduled to mature on December 1, 2024, unless earlier converted in accordance with their terms. However, the commencement of the Intended Chapter 11 Proceedings will constitute an event of default under the Indenture governing the 2024 Notes, which will in turn result in the 2024 Notes becoming immediately due and payable, along with accrued and unpaid interest. At December 31, 2023, the principal balance outstanding under the 2024 Notes was $207.0 million. Additionally, for the duration of the Intended Chapter 11 Proceedings, our operations and our ability to develop and execute our business plan, our financial condition, our liquidity and our continuation as a going concern will be subject to a high degree of risk and uncertainty associated with the Intended Chapter 11 Proceedings. Management believes that, due to these conditions and events, substantial doubt exists regarding our ability to continue as a going concern through one year from the date that these financial statements are issued.

We will need to expend substantial resources for commercialization of our marketed products, including costs associated with the commercialization of Inbrija. In addition, our ability to make scheduled payments of the principal of, to pay interest on, or to refinance our indebtedness, including the 2024 Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to support our operations and service our debt and make necessary capital expenditures. Also, research and development programs will not generate any revenues for us for the foreseeable future, if ever, because they have been either suspended or are in early stages and are subject to numerous risks including those described elsewhere in these risk factors.

Our ability to meet our future operating requirements, repay our liabilities, and meet our other obligations, and continue as a going concern are dependent upon a number of factors, including our ability to generate cash from product sales, reduce planned expenditures, and obtain additional financing. In light of the Intended Chapter 11 Proceedings, we will be unable to generate sufficient cash flow from the sale of our products and will need to obtain a sufficient amount of liquidity under the DIP Credit Agreement or other financing arrangements, which will be subject to the approval of the Court. We may also have to reduce expenses, curtail certain operations, or obtain additional capital on terms that may be onerous and which are likely to be highly dilutive, or initiate liquidation proceedings under Chapter 7. Adequate financing may not be available when needed, at all, on terms acceptable to us or in compliance with the restrictions contained in our debt instruments.

Our restructurings and associated organizational changes may not adequately reduce our expenses, may lead to additional workforce attrition, and may cause operational disruptions.

We have recently experienced workforce attrition in various functions across our business, which may be attributable to our prior corporate restructurings, our current business circumstances, a combination of both, or other factors. Our efforts to adjust our operations with the reduced workforce may not be successful in preventing disruption to our business, and with the reduced workforce, we lack redundancy in important functions across our business. We are increasingly relying on the services of contract sales representatives and potentially third-party promotional partnerships or other similar arrangements in response to substantial sales force attrition. Further loss of one or more of our key employees, additional loss of multiple employees in particular functions, and/or our inability to attract replacement or additional qualified personnel could substantially impair our ability to operate our business and implement our business plan, particularly our efforts to successfully commercialize Inbrija and Ampyra.

We will not have the ability to raise the funds necessary to settle conversions of our convertible notes or to repurchase notes upon a fundamental change.

The 2024 Notes will become due and payable upon the commencement of the Intended Chapter 11 Proceedings. In addition, our common stock is likely to be delisted from Nasdaq within ten days of the commencement of the Intended Chapter 11 Proceedings, which would constitute a make-whole fundamental change that would provide holders of our 2024 Notes with the right to require us to repurchase their notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, if any. We do not have the cash to make such a payment. However, we expect that any efforts to enforce payment obligations under the 2024 Notes, including any rights to require us to repurchase the notes, will be automatically stayed as a result of the filing of the Intended Chapter 11 Proceedings.

The indenture governing our 2024 Notes contains restrictions that may make it more difficult to execute our strategy or to effectively compete.

Subject to certain exceptions and qualifications, the indenture governing our 2024 Notes restricts our ability and the ability of certain of our subsidiaries to, among other things, (i) pay dividends or make other payments or distributions on capital stock, or purchase, redeem, defease or otherwise acquire or retire for value any capital stock, (ii) make certain investments, (iii) incur indebtedness or issue preferred stock, other than certain forms of permitted debt, which includes, among other items, indebtedness incurred to refinance our convertible senior notes, (iv) create liens on assets, (v) sell assets, (vi) enter into certain transactions with affiliates or (vii) merge, consolidate or sell all or substantially all assets. The indenture also requires us to make an offer to repurchase the 2024 Notes upon the occurrence of certain asset sales. These restrictions may make it difficult to successfully execute our business strategy, including limiting our ability to engage in certain collaborations or transactions involving Inbrija and certain intellectual property, or effectively compete with companies that are not similarly restricted.

An event of default under the indenture governing our 2024 Notes could adversely affect our liquidity and our ability to retain title to our assets, including our intellectual property.

The indenture governing our 2024 Notes provides that a number of events will constitute an event of default, including, among other things, (i) a failure to pay interest for 30 days, (ii) failure to pay the convertible senior secured notes when due at maturity, upon any required repurchase, upon declaration of acceleration or otherwise, (iii) failure to convert the convertible senior secured notes in accordance with the indenture and the failure continues for five business days, (iv) not issuing certain notices required by the notes indenture within a timely manner, (v) failure to comply with the other covenants or agreements in the notes indenture for 60 days following the receipt of a notice of non-compliance, (vi) a default or other failure by us to make required payments under our other indebtedness or certain subsidiaries having an outstanding principal amount of $30.0 million or more, (vii) failure by us or certain subsidiaries to pay final judgments aggregating in excess of $30.0 million, (viii) certain events of bankruptcy or insolvency and (ix) the commercial launch in the U.S. of a product determined by the FDA to be bioequivalent to Inbrija. Certain of these potential events of default may occur as a result of factors beyond our control.

In the case of an event of default arising from certain events of bankruptcy or insolvency with respect to us, all outstanding 2024 Notes will become due and payable immediately without further action or notice. If any other event of default occurs and is continuing, the trustee or the holders of at least 25% in aggregate principal amount of the then outstanding 2024 Notes may declare all the notes to be due and payable immediately. Such acceleration of our debt could have a material adverse effect on our liquidity if we are unable to negotiate mutually acceptable terms with the holders of the 2024 Notes or if alternate funding is not available to us. Furthermore, if we are unable to repay the 2024 Notes upon an acceleration or otherwise, we would be forced into bankruptcy or liquidation and we would lose title to substantially all of our assets, including our intellectual property.

The 2024 Notes will become due and payable upon the commencement of the Intended Chapter 11 Proceedings. In addition, our common stock is likely to be delisted from Nasdaq within ten days of the commencement of the Intended Chapter 11 Proceedings, which would constitute a make-whole fundamental change that would provide holders of our 2024 Notes with the right to require us to repurchase their notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, if any. We do not have the cash to make such a payment. However, we expect that any efforts to enforce payment obligations under the 2024 Notes, including any rights to require us to repurchase the notes, will be automatically stayed as a result of the filing of the Intended Chapter 11 Proceedings.

The commercial success of Inbrija and any other future products are highly dependent on market acceptance among physicians, patients and the medical community, adequate reimbursement by governmental and other third-party payers, and other factors.

We face significant challenges in successfully commercializing our approved pharmaceutical products, including Inbrija. Generally, market acceptance of our products depends on the benefits of our products in terms of safety, efficacy, convenience, ease of administration and cost effectiveness and our ability to demonstrate these benefits to physicians, patients and third-party payers. Commercial success requires significant investment in sales, marketing and market access efforts, and is dependent on how well we develop and implement strategies for these efforts. Commercial success is also subject to numerous other risks, including those described below, some of which are described in further detail elsewhere in these risk factors:

- *Market Access*: Physicians may be discouraged from prescribing our products and/or patients may not fill or refill prescriptions for our products because of the reimbursement policies or decisions of third-party payers such as commercial insurance companies and government and government-sponsored payers such as Medicare. Our sales may suffer if Inbrija or other products are not listed on the preferred drug lists of third-party payers, or if Inbrija or other products do not receive a pricing or reimbursement approval, are on the preferred drug list but subject to unfavorable limitations or preconditions or in disadvantageous positions on tiered formularies. Preconditions or other reimbursement limitations imposed by third-party payers may discourage physicians from prescribing Inbrija or other products because of the time and effort that may be needed by the prescribing physician to overcome these hurdles. Even if physicians prescribe Inbrija or another product, patients may not fill or refill the prescription if their out-of-pocket cost is too high, for example because of inadequate or lack of reimbursement from their insurance company or Medicare.
- *Safety and Efficacy*: Physicians may not prescribe our products if they do not consider our products as safe and effective for their labeled indication, and patients may determine, for any reason, that our products are not useful to them. For example, physicians may not believe that the benefits of Inbrija or our future products that we may develop are meaningful for patients or, even if they do believe there is a potential benefit, they may stage or delay the use of Inbrija with patients or patient groups to evaluate patient feedback or for other reasons.
- *Side Effects*: Market acceptance of Inbrija or another product may be impeded by the occurrence of any side effects, adverse reactions, customer complaints or misuse (or any unfavorable publicity relating thereto) stemming from the use of the product or identified in ongoing or future studies. As further described below, FDA and EU-approved product labeling for Inbrija includes limitations, warnings and precautions, which may harm its market acceptance. For example, the Inbrija product label identifies cough as one of the most common adverse reactions observed in our clinical trials, and the risk of cough may discourage some patients from taking Inbrija, and the actual occurrence of cough has led some patients to discontinue Inbrija. Also, in 2020, we updated the Inbrija U.S. and EU-approved labels to add “sensation of choking immediately following administration” as a potential adverse reaction.
- *Competition*: The market for Inbrija may be adversely affected by the development of products that compete with or are an alternative to Inbrija or any future products that we may develop, the timing of market entry for competing or alternative products, the perceived advantages of competing or alternative therapies over our products, and the pricing of (and reimbursement available for) our products as compared to the pricing of (and reimbursement available for) competing or alternative products. For example, as further described below in these risk factors, Inbrija competes with Apokyn, an injectable formulation of apomorphine, as well as Kynmobi, a sublingual, or under the tongue, formulation of apomorphine, both of which are approved for the acute, intermittent treatment of OFF periods.
- *Intellectual Property*: The loss of intellectual property protection for our products would enable generic competition. Ampyra became subject to generic competition in the U.S. in late 2018, due to the invalidation of certain Ampyra patents, and our Ampyra sales have been declining since then and are expected to continue to decline over time.

Also, in the U.S., the federal government provides funding for comparative effectiveness research, which may compare our products with other treatments and may result in published findings that would, in turn, discourage use of our products by physicians and payments for our products by payers. Similar research is funded in other countries, including in some countries in Europe.

The failure of any of our products or product candidates, once approved, to achieve market acceptance would limit our ability to generate revenue and would harm our results of operations and could adversely affect our future prospects. If market acceptance of our products in the U.S., EU, or other countries does not meet expectations, our revenues or royalties from product sales would suffer and this could cause our stock price to decline.

We operate in the highly regulated pharmaceutical industry.

Pharmaceutical research, development, preclinical and clinical trial activities, as well as the manufacture and marketing of any products that we have developed or in the future may successfully develop, are subject to an extensive regulatory approval process by the FDA and other regulatory agencies and authorities abroad.

Both in the U.S. and foreign jurisdictions, the process of obtaining required regulatory approvals for drugs is lengthy, expensive and uncertain. Any regulatory approvals may be for fewer or narrower indications or other conditions of approval than we request, may include distribution restrictions, or may be conditioned on burdensome post-approval study or other requirements, including the requirement that we institute and follow a special risk evaluation and mitigation strategy, or REMS, to monitor and manage potential safety issues, all of which may eliminate or reduce the drug's market potential. Additional adverse events that could impact commercial success, or even continued regulatory approval, might emerge with more extensive post-approval patient use. In the U.S., investigational products that rely on device components to deliver drug to patients, such as Inbrija, are regulated as combination products and require that we satisfy FDA that both the drug and device component of the products satisfy FDA requirements. Failure to satisfy the FDA's requirements for either the drug or device component of such combination products could delay approval of these products or result in these products not receiving FDA approval. In the EU, where Inbrija has received a marketing authorization and is co-packaged with a medical device (the Inbrija inhaler), the overall product is regulated under the EU's medicines rules, but the device must be CE marked and comply with the EU's medical devices rules, as further described below in these risk factors. Failure to meet these requirements could adversely affect our ability to market Inbrija in the European Economic Area, or EEA.

Any product for which we currently have or may in the future obtain marketing approval is subject to continual post-approval requirements including, among other things, record-keeping and reporting requirements, packaging and labeling requirements, requirements for reporting adverse drug experiences, import/export controls, restrictions on advertising and promotion, current Good Manufacturing Practices (cGMP) requirements as well as, for example in the U.S., any other requirements imposed by our New Drug Application (NDA) or Biologics License Application (BLA). All of our products and operations are subject to periodic inspections by the FDA and other regulatory authorities. Regulatory approval of a product may be subject to limitations on the indicated uses for which the product may be marketed or to other restrictive conditions of approval that limit our ability to promote, sell or distribute a product. Furthermore, any approval may contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product. Post-market evaluation of a product could result in marketing restrictions or withdrawal from the market.

We may fail to comply with existing legal or regulatory requirements or be slow to adapt, or be unable to adapt, to new legal or regulatory requirements. We may encounter problems with manufacturing processes for our products, and we may discover previously unknown problems with our products. These circumstances could result in:

- voluntary or mandatory recalls;
- voluntary or mandatory patient or physician notification;
- withdrawal of product approvals;
- shut-down of manufacturing facilities;
- receipt of warning letters or untitled letters;
- product seizures;
- restrictions on, or prohibitions against, marketing our products;
- restrictions on importation of our product candidates;
- fines and injunctions;
- civil and criminal penalties;
- exclusion from participation in government programs; and

- suspension of review or refusal to approve pending applications.

In addition, we are subject to regulation under other state, federal and foreign laws and regulations, including requirements regarding occupational safety, laboratory practices, environmental protection and hazardous substance control, and controlled substances, and we may be subject to other local, state, federal and foreign regulations. We cannot predict the impact of those regulations on us, although they could impose significant restrictions on our business, and we may have to incur additional expenses to comply with them. We may rely on collaborators within or outside the U.S. for the manufacture, sale and/or marketing of our pharmaceutical products. The failure of these other companies to comply with laws and regulations applicable to them or the activities they perform for us could similarly harm our business.

We must obtain a CE mark for the Inbrija inhaler under the EU Medical Devices Regulation, otherwise we and any collaborators or distributors would have to cease marketing Inbrija in the EU until the CE mark is obtained.

In the EU, Inbrija is considered a medicinal product that is co-packaged with a medical device, the inhaler. This device is required to comply with the applicable EU medical device rules. Medical Devices Regulation (EU) 2017/745 (MDR) has applied from May 26, 2021 and repealed and replaced the Medical Devices Directive 93/42/EEC (MDD). For us or our collaborators or distributors to place the device on the market in the EU, the device must undergo the applicable conformity assessment and have a CE mark affixed. Under the MDD, as the Inbrija inhaler was a Class I device, we self-certified the conformity of the device against the MDD's requirements (including the Essential Requirements included in Annex I) and affixed a CE mark. Now under the MDR, the inhaler is a Class II device and so the conformity assessment procedure to confirm compliance with the MDR (including the General Safety and Performance Requirements included in Annex I) has to be carried out by a Notified Body (a third-party organization designated by a member state of the EEA to conduct conformity assessments) before we can affix a CE mark.

We completed our conformity assessment and received our MDR certification in November 2023. We subsequently and have agreed with our Notified Body to established a transition plan from MDD to MDR (including markings and labeling requirements) with expected to be implementation through Q1 2025.

We have no manufacturing capabilities for our products or product candidates, and we are dependent upon third parties to supply the materials for, and to manufacture, our products and product candidates.

We do not own or operate, and currently do not plan to own or operate, facilities for production and packaging of our products or product candidates. We rely and expect to continue to rely on third parties for the production and packaging, APIs, inactive ingredients, and finished dosage forms of our products and product candidates, and where relevant any medical devices that are part of our products or product candidates. We similarly expect to continue to rely on third parties for the supply of materials for research and development activities, particularly any clinical trials we may conduct in the future. In addition, due to the unique manner in which our products are manufactured, in many cases we rely on single source providers for our commercial and investigational products, or components of those products. This dependence on others may harm our ability to develop and commercialize our products on a timely and competitive basis. Any such failure may result in decreased product sales and lower product revenue, which would harm our business.

In 2021, we sold our Chelsea, Massachusetts manufacturing operations to Catalent and rely on Catalent for the manufacture and supply of Inbrija. As our Inbrija supplier, Catalent is responsible for all Inbrija components other than the inhaler and levodopa, the Inbrija API. We have relied, and we expect to continue relying, on third parties to supply the inhaler and levodopa. Also, we rely on a separate company to package the final Inbrija kits. Any failure or delay by a third-party manufacturer, packager, or supplier may delay or impair our ability to commercialize Inbrija or to complete any future clinical studies that may be needed. Although in some cases we have contracts for these requirements, we cannot be certain that those contracts will be renewed on commercially reasonable terms, if at all. This may be made more complex in certain circumstances if we do not have contracts with suppliers, such as in the case of Inbrija where we currently do not have a contract with the supplier of the API, which exposes us to the risk that they could discontinue supply at any time. Manufacturers, packagers or suppliers may choose not to conduct business with us at all, or may choose to discontinue doing business with us, for example if they determine that our particular business requirements would be unprofitable or otherwise not appropriate for their business. We do not control how Catalent sources the other components of Inbrija, but we are aware that they rely on a single supplier for a critical excipient used for Inbrija manufacturing and they could rely on single suppliers for other components. Our business could be similarly exposed to risk if and to the extent they rely on single source suppliers or do not have supply contracts.

We currently rely on a single third-party molding manufacturer for supply of the Inbrija inhalers. Our reliance on a third party for the manufacture of inhalers increases the risk that we will not have sufficient quantities of our inhalers or will not be able to obtain such quantities at an acceptable cost or quality, which could delay, prevent or impair our commercialization of Inbrija. If the inhaler supplier fails to provide sufficient inhaler supply, we would need to enter into alternative arrangements with a different supplier. Transition to a new inhaler supplier would be a lengthy and complex process. Among other things, we would have to revalidate the molding and assembly processes pursuant to any applicable Health Authority requirements and we would have to ensure that inhalers manufactured by the new supplier adhere to other applicable regulatory requirements.

Our reliance on third-party manufacturers, packagers, and suppliers subjects us to risks associated with their businesses and operations. For example, even if we have agreements with third parties, they may not perform their obligations to us and/or they may be unable or unwilling to establish or increase production capacity commensurate with our needs. Also, third-party manufacturers, packagers, and suppliers are subject to their own operational and financial risks that are outside of our control, and potentially their control also, that may cause them to suffer liquidity or operational problems and that could interfere with their business operations. For example, their operations and/or ability to source raw materials and other supplies may be interrupted by natural disasters, acts of war, terrorism, or disease outbreaks (such as the COVID-19 global pandemic). In addition, the manufacture and distribution of our products and product candidates, including product components such as API, and the manufacture of medical devices, are highly regulated, and any failure to comply with regulatory requirements could adversely affect our supply of products or our access to materials needed for product development. The third parties we rely on are subject to regulatory review, and any regulatory compliance problems could significantly delay or disrupt commercialization of our products. U.S. and foreign governments and regulatory authorities continue to propose legislative and other measures relating to the manufacture or distribution of pharmaceutical products, including revisions to current good manufacturing practices, or cGMPs. Third-party manufacturers may be unable or unwilling to comply with new legislative or regulatory measures, and/or compliance with new requirements could increase the price we must pay for our products.

The manufacturing facilities used to produce our products, including those of our third-party manufacturers, packagers and suppliers, must comply with cGMPs and will likely have to pass a pre-approval FDA inspection and potentially other inspections required by other regulatory authorities. Third-party manufacturers, packagers and suppliers are also subject to periodic inspections for cGMP compliance from the FDA and potentially other regulatory authorities. Failure to pass such inspections and otherwise satisfactorily complete the requisite approval regimen with respect to our products or product candidates may result in regulatory actions by the FDA and other regulatory authorities, such as the issuance of FDA Form 483 notices of observations, warning letters, injunctions, facility shut-downs, product seizures, loss of operating licenses, and other civil and criminal penalties. Based on the severity of the regulatory action, our clinical or commercial supplies could be interrupted or limited, which could have a material adverse effect on our business. In some cases, these third-party manufacturers may also be subject to GMP inspections by foreign regulatory authorities. Failure to pass such inspections by foreign regulatory authorities could impede our ability to manufacture product needed for clinical trials or impede our ability to secure product approvals.

If any of our third-party manufacturers, packagers or suppliers fails to perform their obligations to us or otherwise have an interruption in or discontinue supply to us, we may be forced to seek a different third-party manufacturer, packager or supplier. In such event, we may experience significant delays associated with finding an alternative manufacturer, packager or supplier that is both available on commercially acceptable terms and conditions, and also properly qualified in accordance with our specifications and the requisite regulatory requirements, such as those of the FDA and other regulatory authorities. This transition may require time consuming and complex operational, testing, and regulatory approval requirements, and the process could interfere with product sales because of inadequate supply or cause interruptions of, or delays in, research and development programs. We may not be able to establish arrangements with an alternative manufacturer, packager or supplier on reasonable terms, if at all. In some cases, the technical skills required to manufacture our products or product candidates or the API, excipients or other components of such products or product candidates may be unique or proprietary to the original manufacturer or supplier and we may have difficulty, or there may be contractual restrictions prohibiting us from, transferring such skills to a backup or alternative supplier, or we may be unable to transfer such skills at all.

Until October 2022, we relied on Alkermes to supply us with our requirements for Ampyra. Following the arbitration panel decision described elsewhere in this Annual Report, we were free to use alternative sources of supply for Ampyra. We have since engaged with Patheon to supply our future Ampyra needs at a significantly reduced cost. We and our suppliers also rely on a single third-party manufacturer to supply dalfampridine, the API in Ampyra, and also a single supplier for a critical excipient used in the manufacture of Ampyra. If these companies experience any disruption in their operations, our supply of Ampyra could be delayed or interrupted until the problem is solved or we locate another source of supply or packager, which may not be available. We may not be able to enter into alternative supply or packaging arrangements on terms that are commercially reasonable, if at all. Any new supplier or packager would also be required to qualify under applicable regulatory requirements. Because of these and other factors, we could experience substantial delays before we are able to obtain qualified replacement products or services from any new supplier or packager.

We rely on Catalent as our sole supplier for the manufacture of Inbrija and any ARCUS product candidates we may seek to further develop.

In connection with the sale of the Chelsea manufacturing operations in 2021, we entered into a long-term global supply agreement under which a Catalent affiliate will manufacture Inbrija on an exclusive basis (other than for sale in China). As described elsewhere in this Annual Report, on December 31, 2022, we terminated the existing supply agreement with Catalent and effective January 1, 2023 entered into a new supply agreement with more favorable terms. We are reliant on Catalent for all of our Inbrija supply and supply of other ARCUS inhaled therapeutic product candidates. Although Catalent has significant experience in commercial manufacturing, given applicable regulatory requirements and the complexity of the manufacturing processes for pharmaceuticals, Catalent may be unable or otherwise not successful in passing any required regulatory inspection as a condition to manufacturing, carrying out its contractual duties, meeting expected deadlines or effectively manufacturing or releasing Inbrija in a timely manner in accordance with our contractual arrangements, current good manufacturing practices and other regulatory requirements. If we are unable to obtain adequate supplies of Inbrija under our supply agreement with Catalent, or if the supplies we receive do not meet quality and safety standards, we could face supply shortages, significant additional costs, product liability claims and reputational harm. Any of these factors, alone or in combination, could materially harm our business, financial condition, results of operations and prospects.

We continue to discuss potential ARCUS collaborations with other companies that express interest in formulating their novel molecules using ARCUS, and have already performed feasibility studies for a number of these opportunities. However, currently we are not investing in any proprietary ARCUS research and development programs. Also, due to the corporate restructurings, employee attrition, and the 2021 sale of our Chelsea manufacturing operations, we may need to hire replacement personnel or engage consultants to continue with ARCUS research and development work beyond feasibility and similar early-stage studies.

Establishing our global supply agreement with Catalent required that we share proprietary trade secrets and know-how relating to Inbrija and our ARCUS platform. We have sought to protect that information pursuant to various operational safeguards and confidentiality and other requirements set forth in the global supply agreement. We are reliant on Catalent's compliance with those provisions, and even if Catalent does comply with those provisions, they may not provide adequate protection or prevent the unauthorized use or disclosure of the information. The unauthorized use or disclosure of our proprietary information could harm its value by enabling others to copy or use our information for their own products, methods or technologies, and we may not have an adequate remedy against Catalent or any other party for the harm caused.

Our new global supply agreement with Catalent contains substantial long-term financial commitments.

Under the New MSA, Catalent will continue to manufacture Inbrija through 2030, with reduced minimum annual commitments through 2024 and significantly lower pricing thereafter. The New MSA provides for the scale-up of new spray drying equipment ("PSD-7"), which will provide expanded capacity for the long-term world-wide manufacturing requirements of Inbrija, which is expected to operational in 2026. In 2023, we satisfied our purchase commitment under the New MSA and purchased 15 batches of Inbrija at a total cost of $10.5 million. We are subject to a purchase commitment in 2024 of 24 batches of Inbrija at a total cost of $15.5 million. Thereafter, in 2025, we will pay Catalent a fixed per capsule fee based on the amount of Inbrija that is delivered for sale in the U.S. and other markets. In addition, we have agreed to a minimum purchase requirement of at least three batches per year on the PSD-7 equipment. In addition, we will be obligated to pay Catalent in connection with certain activities relating to the operational readiness of the PSD-7 and we will provide up to $1 million in each of 2023 and 2024 for capital expenditures to assist in the capacity expansion efforts. While we believe these purchase commitments are sufficient for our forecasted supply needs for Inbrija, we cannot provide assurance that our currently projected needs will be reached or exceeded, depending on global demand for Inbrija. If we are forced to obtain Inbrija from another supplier because Catalent is unable or unwilling to provide adequate Inbrija supply, we may be unable to offset the costs of alternate supply against our purchase commitments under the new MSA.

We rely on Catalent's Chelsea, Massachusetts manufacturing facility for the manufacture of Inbrija, and our business could be harmed if Catalent does not maintain required regulatory approvals to manufacture commercial product at that facility, if there is an interruption in operations at the facility, or if the facility does not have manufacturing capacity needed to meet product demand.

All commercial supply of Inbrija is currently manufactured at Catalent's Chelsea, Massachusetts manufacturing facility. Under our long-term global supply agreement with Catalent, Inbrija will be exclusively manufactured by Catalent at this manufacturing facility (other than for sale in China, which is not covered by the exclusivity provisions of the agreement). Catalent may need expanded manufacturing capacity at the Chelsea facility to meet demand depending on the timing and extent of sales growth. Catalent's inability to complete any needed expansion of the facility in a timely manner or unexpected demand for commercial quantities of Inbrija could cause a supply shortage that would harm our commercialization of Inbrija in the U.S. and any foreign jurisdictions where we seek to commercialize Inbrija. Any such supply shortages could lead to a breach of our legal obligations to supply Inbrija for our collaboration partners.

Furthermore, if Catalent were to lose the use of the facility or equipment, the manufacturing facility and manufacturing equipment would be difficult to replace and could require substantial replacement lead time and substantial additional funds. The facility may be affected by natural disasters, such as floods or fire, or Catalent may lose the use of the facility due to manufacturing issues that arise, such as contamination or regulatory concerns following a regulatory inspection of the facility. Catalent may also unexpectedly experience manufacturing issues as the unintended result of activities occurring at the facility unrelated to Inbrija manufacture. In the event of a loss of the use of all or a portion of the facility or equipment for the reasons stated above or any other reason, Catalent would be unable to manufacture Inbrija until such time as the facility or equipment could be repaired or rebuilt or they are able to address other manufacturing issues at the facility. Any such interruptions in their ability to manufacture Inbrija would harm our business. Even if Catalent does not suffer a loss of the facility or equipment within the facility, manufacturing operations can experience intermittent interruptions due to the need for routine or unexpected maintenance, inspection and repairs of the facility or the equipment, and, depending on their frequency and duration, these intermittent interruptions could also harm our business. While we have the right to use alternative sources of supply in certain circumstances, this is an expensive and lengthy process and there can be no assurance that alternative sources of supply can be arranged on favorable terms, if at all, or in a timely manner to avoid supply interruptions and product distribution delays.

We do not have back-up manufacturing capability for Inbrija or any ARCUS product candidates, and if Catalent fails to timely perform under our global supply agreement our business, financial condition, results of operations and prospects could be harmed.

If we are unable to obtain adequate supplies of Inbrija under our supply agreement with Catalent, or if the supplies we receive do not meet quality and safety standards, we could face supply shortages, significant additional costs, product liability claims and reputational harm. Also, if we decide to make further investments in any ARCUS product development programs, we would be unable to advance those programs unless we could obtain adequate supply of the inhaled therapeutic product candidate from Catalent or another third-party manufacturer and on commercially reasonable terms.

We do not currently have back-up manufacturing capability at another facility and there are only limited third-party manufacturers that we believe would be capable of manufacturing Inbrija or other ARCUS inhaled therapeutic products or product candidates. If the need arises to obtain supply from another third-party manufacturer, there can be no assurance that we could identify a third party that would be capable and willing to manufacture for us on commercially reasonable terms, if at all, or that they could supply us in sufficient quantities on a timely basis to meet our needs.

Engaging a third-party manufacturer to supply ARCUS products or product candidates would likely be a lengthy process due to the complexity and substantial regulation of the manufacturing processes involved. Also, engaging a third party would require the sharing of proprietary information, which increases the risk of the unauthorized use or disclosure of that information and potential harm to our business for which we may not have an adequate remedy. If we are successful in engaging a third-party manufacturer, they may not perform their obligations to us and/or they may be unable or unwilling to establish or increase production capacity commensurate with our needs. Also, third-party manufacturers and suppliers are subject to their own operational and financial risks that are outside of our control, including macro-economic conditions that may cause them to suffer liquidity or operational problems and that could interfere with their business operations.

Catalent may not successfully complete the expansion of the Chelsea, Massachusetts manufacturing facility.

The New MSA provides for the scale-up of PSD-7 spray drying equipment, which will provide expanded capacity for the long-term world-wide manufacturing requirements of Inbrija. We will be obligated to pay Catalent in connection with certain activities relating to the operational readiness of the PSD-7 and will provide up to $1 million in each of 2023 and 2024 for capital expenditures to assist in the capacity expansion efforts. The new size 7 spray dryer manufacturing production line for Inbrija and other ARCUS products that has greater capacity than the existing size 4 spray dyer manufacturing production line, and will create additional warehousing space for manufactured product. This expansion will require approvals from the FDA and other regulatory authorities before the PSD-7 can be used to manufacture Inbrija. Also, manufacturing scale-up generally is subject to significant risks related to process development and manufacturing yields, which is especially true for the manufacture of a product such as Inbrija that involves a highly specialized spray drying and capsule filling process. Lastly, the expanded Chelsea facility will have to continue to comply with cGMP requirements, as described above in these risk factors, as well as other applicable environmental, safety, and other governmental permitting requirements. This expansion project is critically important to our business, and any significant delay or disruption in planned completion could have a material adverse effect on our ability to meet anticipated demand for Inbrija in the future.

The challenges described above could delay or prevent Catalent from successfully completing the expansion of the Chelsea manufacturing capacity. If we need the expanded capacity but Catalent is delayed in or prevented from completing the expansion and obtaining necessary regulatory approvals, we may need to seek another party to manufacturer additional Inbrija supply for us. As described above in these risk factors, there can be no assurance that we could identify a third party that would be capable and willing to manufacture for us on commercially reasonable terms, if at all, or that they could supply us with product in sufficient quantities on a timely basis to meet our needs. If we cannot obtain increased supply of Inbrija from expanded capacity at the Chelsea facility or engaging another third-party manufacturer, we may not be able to meet demand for Inbrija and this could harm our ability to commercialize Inbrija in the U.S. and any foreign jurisdictions where we seek to commercialize Inbrija. An inability to meet demand in an EU member state or another foreign jurisdiction could lead to a breach of our legal obligations to supply Inbrija and potentially result in regulatory violations by our collaboration partners in certain jurisdictions that require adequate supply of commercial products based on patient need.

We may incur significant liability if we or our contract sales representatives, promotional partners, distributors, or collaborators fail to comply with stringent U.S. FDA and foreign marketing and promotion regulations.

The advertising and promotion activities for our products are subject to stringent rules and requirements both in the U.S. and other jurisdictions, which are enforced and overseen by the FDA and other regulatory authorities in other jurisdictions. These rules and requirements vary from country to country, and promotional practices and materials that are acceptable in one country may not be so in another. Importantly, unlike in the U.S., EU law prohibits the advertising of prescription-only medicinal products (such as Inbrija) directly to patients or the general public. Advertising to healthcare professionals is permitted, provided certain conditions are met.

Among other requirements, in the U.S. and EU, advertising and promotional materials for our products must not be false or misleading in any respect, and must be appropriately substantiated and fairly balanced with information on the safety risks and limitations of our products. In the U.S., we must submit all promotional materials to the FDA by the time of their first use. Some other jurisdictions require government pre-approval of promotional materials. If the FDA or other regulators raise concerns regarding promotional materials or messages for our products, we or our contract sales representatives, promotional partners, distributors or collaborators may be required to modify or discontinue using them and may be required to provide corrective information. Should we or our contract sales representatives, promotional partners, distributors or collaborators fail to comply with the relevant requirements, in the U.S. or other countries, we may be subject to significant liability, including civil and administrative remedies as well as criminal sanctions. In the case where our contract sales representatives or one of our promotional partners, distributors, or collaborators has failed to comply with legal requirements, there can be no assurance that contractual terms and conditions intended to protect our rights and mitigate our risk relating to their misconduct will provide us with adequate rights and remedies, and actions required to protect against enforcement actions or to enforce such rights could be costly and time consuming.

Each of our products is approved with specific indications and other conditions of use that inform our ability, and the ability of our contract sales representatives, promotional partners, distributors, and collaborators, to promote our products. For example, in the U.S., Inbrija is indicated "for the intermittent treatment of OFF episodes in people with Parkinson's disease treated with carbidopa/levodopa." The approved Summary of Product Characteristics, or SmPC, in the EU marketing authorization contains a similar indication. The approved labeling in the U.S. and the EU SmPC also contain other limitations on use and warnings and precautions, the most common adverse reactions, and contraindications for risks. If potential purchasers or those influencing purchasing or prescribing decisions, such as physicians and pharmacists, third-party payers or reimbursement authorities, react negatively to Inbrija or other products because of their perception of the limitations or safety risks in the approved product labeling, it may result in lower product acceptance and lower product revenues.

In the U.S., EU and many other jurisdictions, we face significant risks if we or our contract sales representatives, promotional partners, distributors, or collaborators promote our drugs "off-label," i.e., for uses other than those approved by the appropriate regulatory authority in a territory (e.g., the FDA in the U.S.). Physicians may prescribe drug products for uses that are not described in the product's labeling and that differ from those approved by the FDA. Similar rules apply in many countries outside the U.S. Off-label uses are common across medical specialties. In the U.S., although the FDA does not regulate a physician's choice of treatments, it traditionally has prohibited companies from promoting their drugs for off-label uses. Several federal court cases, based on First Amendment principles, have called into question the FDA's ability to enforce against companies solely on the basis of truthful and non-misleading off-label promotion of their drugs. It is unclear, however, how the courts ultimately will resolve this issue or how the FDA's policies may (or may not) change in light of developing case law. Furthermore, off-label promotion of our products could violate advertising and promotion requirements such as the prohibition against false or misleading advertising and/or labeling, or the requirement that approved labeling bear "adequate directions" for all of the product's "intended uses." Similarly, although EU law does not in general restrict the off-label use of a product by healthcare professional, it is unlawful to promote the off-label use of a product or promotion that is inconsistent with the product's SmPC. Accordingly, we potentially face significant risk of enforcement should we or our contract sales representatives, promotional partners, distributors, or collaborators promote Inbrija, Ampyra or any other products in the U.S., EU and potentially other countries for any uses that are not consistent with the products' approved labeling in the relevant territory. The FDA and other regulatory and enforcement authorities actively enforce laws and regulations regulating promotion of approved drugs as well as the promotion of products for which marketing approval has not been obtained. A company that is found to have violated these requirements may be subject to significant liability, including civil and administrative remedies as well as criminal sanctions, both in the U.S. and potentially other jurisdictions.

Notwithstanding the above-described regulatory restrictions, the FDA and other applicable regulatory authorities and EU medicines laws allow companies to engage in truthful, non-misleading, and non-promotional scientific exchange concerning their products. We engage in medical education activities and communicate with investigators and potential investigators regarding our clinical trials. Although we believe that all of our communications regarding our marketed and investigational products are in compliance with applicable advertising and promotional regulations, and we seek to ensure that the activities of our contract sales representatives, promotional partners, distributors and collaborators are similarly compliant, the FDA or another regulatory or enforcement authority may disagree.

Any free samples we distribute to physicians must be carefully monitored and controlled, and, in the U.S., must otherwise comply with the requirements of the Prescription Drug Marketing Act, as amended, and FDA regulations.

The identification of new side effects from Inbrija or any other marketed drug products, or side effects from those products that are more frequent or severe than in the past, could harm our business by leading to a significant decrease in sales or to the withdrawal of marketing approval in the U.S., EU and/or other jurisdictions.

Based on our clinical trials, the most common adverse reactions with Inbrija (at least 5% and greater than placebo) include cough, upper respiratory tract infection, nausea and discolored sputum. We constantly monitor Inbrija adverse event reports for signals regarding potential additional adverse events.

If we or others identify previously unknown side effects, if known side effects are more frequent or severe than in the past, or if we or others detect unexpected safety signals for Inbrija or any products perceived to be similar to Inbrija, then in any of these circumstances:

- we may decide to, or be required to, send product warning letters or field alerts to physicians, pharmacists and hospitals;
- we may be required to make product label changes; for example, in September 2020, we updated the Inbrija label to add "sensation of choking immediately following administration" as a potential adverse reaction;
- healthcare practitioners, regulatory authorities, third-party payers or patients may perceive or conclude that the risks associated with use of Inbrija outweigh the benefits, which could cause regulatory authorities such as the FDA or authorities in the EU to seek to suspend, vary or revoke Inbrija's regulatory approvals or impact the availability of adequate reimbursement by third-party payers or reimbursement authorities;
- we may be required to reformulate the product, conduct additional preclinical or clinical studies, or make changes in labeling or changes to or re-approvals of manufacturing facilities;
- regulatory authorities such as the FDA or those in the EU may take additional risk mitigation measures, such as imposing a risk evaluation and mitigation strategy (in the U.S.) or requiring an updated risk mitigation plan, detailing additional requirements to be fulfilled to manage risks (in the EU);
- our reputation in the marketplace may suffer; and
- government investigations and lawsuits, including class-action lawsuits, may be brought against us.

The above occurrences could impair our business by harming or possibly preventing sales of Inbrija, causing sales to fall below projections, and increasing our expenses. The same risks apply to our other marketed product Ampyra.

Regulatory approval of our products could be withdrawn and our business could be harmed if we fail to comply with safety and adverse event monitoring, documentation, investigation and reporting requirements.

Under FDA and EU rules and regulations, we are required to monitor the safety of Inbrija and Ampyra, as applicable, and, in the case of Ampyra inform healthcare professionals about the risks of drug-associated seizures with Ampyra. We are required to document and investigate reports of adverse events, and to report them to the FDA and EU authorities in accordance with regulatory timelines based on the severity and expectedness of any adverse events. These requirements are applicable to all medicinal products marketed in the relevant territory, including Inbrija and Ampyra. Failure to make timely safety reports and to establish and maintain related records could result in the withdrawal of marketing authorization or other regulatory action, civil actions against us, or criminal or financial penalties, any of which could harm our business. If specialty pharmacies, promotional partners, distributors, or collaborators fail timely to report adverse events and product complaints to us, or if we do not meet the requirements for safety reporting, our business may be harmed.

We are subject to periodic unannounced inspections by the FDA and other regulatory authorities related to other regulatory requirements that apply to drugs manufactured or distributed by us.

If we receive a notice of inspectional observations or deficiencies from the FDA or from foreign regulatory authorities, we may be required to undertake corrective and preventive actions in order to address the relevant regulatory authority's concerns, which could be expensive and time-consuming to complete and could impose additional burdens and expenses. Failure to adequately address any such concerns could expose us to enforcement and a range of potential sanctions.

In addition, our third-party suppliers' drug product manufacturing sites are subject to inspection by the FDA. Some of these sites have been inspected by the FDA and could be inspected by the FDA in the future. If the FDA inspects the process validation efforts and manufacturing process at these sites, the FDA might find what it considers to be deficiencies in the manufacturing process or process validation efforts, which could negatively impact the availability of product supply or, in the case of a potential new product, delay or prevent commercial launch of that product. Our third-party suppliers' drug manufacturing sites may also be subject to inspection by FDA or foreign regulatory authorities. We face similar risks to our business if those third-party manufacturers are unable to comply with FDA or foreign regulatory requirements. We and our third-party suppliers are generally required to maintain compliance with cGMPs and are subject to inspections by the FDA or comparable authorities in other jurisdictions to confirm such compliance. This may be made more complex in certain circumstances if we do not have contracts with suppliers, such as in the case of Inbrija, where we currently do not have a contract with the supplier of levodopa, the active pharmaceutical ingredient. In addition, the FDA and other relevant regulatory authorities must approve certain changes to our suppliers or manufacturing methods. If we or our third-party suppliers cannot demonstrate ongoing cGMP compliance, we may be required to withdraw or recall products and interrupt commercial supply of our products. Any delay, interruption or other issues that arise in the manufacture, fill-finish, packaging, or storage of our products as a result of a failure of our facilities or the facilities or operations of our third-party suppliers, to pass regulatory agency inspection could significantly impair our ability to develop and commercialize our products. Significant noncompliance could also result in the imposition of monetary penalties, shut-down of manufacturing facilities, or other civil or criminal sanctions. Non-compliance could increase our costs, cause us to lose revenue, and damage our reputation. In addition, a delay or interruption in supply of our products could lead to claims against us by our distributors and collaborators to whom we are obligated to supply product.

Even if our suppliers or manufacturing methods are in compliance with applicable requirements, we may encounter problems with the manufacture of our products. To investigate and/or resolve these problems, we may be required to withdraw or recall products and interrupt commercial supply of our products. These events could increase our costs, cause us to lose revenue, damage our reputation, and potentially lead to claims against us by distributors or collaborators to whom we are obligated to supply product. If we learn of certain reported problems with our products, we are required to submit field alert reports to the FDA and quality defect reports to the relevant EU authorities, such as the EMA, and we are required to investigate the causes of the reported problems. Issues identified in field alerts could lead to product recalls and interruption of supplies, which in turn could harm our business.

Also, the Federal Food, Drug & Cosmetic Act requires that our manufacturers, repackagers, wholesale distributors, and dispensers, take certain actions when product in their possession or control is suspect product, meaning there is reason to believe the product is: counterfeit; diverted; stolen; intentionally adulterated such that the product would result in serious adverse health consequences or death to humans; is the subject of a fraudulent transaction; or appears otherwise unfit for distribution such that the product would be reasonably likely to result in serious adverse health consequences to humans. The suspect product is required to be quarantined while an investigation is promptly conducted to determine whether the product is illegitimate, meaning credible evidence shows that it meets any of the above criteria. If a product is deemed an illegitimate product, additional requirements apply such as notifying the FDA and all immediate trading partners in the supply chain within 24 hours and quarantining the product until it is dispositioned. Similar requirements exist under EU law, particularly pursuant to the Falsified Medicines Directive (Directive 2011/62/EU). The notification, quarantine and/or dispositioning of product during an investigation could impact product availability for commercial distribution and harm our business.

We rely on specialty pharmacies to dispense our products, deliver customer support, and provide us with related services, and our business could be harmed and we could be subject to liabilities if these services are performed inadequately or in a manner that does not comply with applicable laws and regulations.

A specialty pharmacy is a pharmacy that specializes in the dispensing of injectable, infused, or certain other medications typically for complex or chronic conditions, including Parkinson's disease and multiple sclerosis, which often require a high level of patient education and ongoing management. Most of our Inbrija and Ampyra sales are sold through specialty pharmacies, and sales of these products are highly dependent on the performance of these specialty pharmacies.

The use of specialty pharmacies involves risks, including, but not limited to, risks that these specialty pharmacies:

- do not provide us with accurate or timely information regarding their inventories or the number of patients who are using Inbrija or Ampyra;
- fail to provide timely and accurate information regarding product adverse events or product complaints;

- fail to properly administer copay mitigation programs;
- do not effectively dispense or support Inbrija or Ampyra;
- reduce their efforts or discontinue dispensing or supporting Inbrija or Ampyra;
- do not devote the resources necessary to dispense Inbrija or Ampyra in a manner that meets patient needs;
- are unable to satisfy financial obligations to us or others; or
- lose the required licenses to distribute drugs; or cease operations.

If our specialty pharmacies do not fulfill their contractual obligations to us or fail to adequately dispense our products and deliver customer support, our product sales and business could be harmed or we could be subject to legal or regulatory liabilities or sanctions.

Furthermore, arrangements between manufacturers and specialty pharmacies can be subject to government scrutiny and challenge under fraud and abuse laws if not structured properly.

We are dependent on third parties such as through collaboration and distribution agreements to develop and commercialize products outside of the U.S.

We do not currently have the capabilities to develop and commercialize products outside of the U.S. without reliance on another party. Ampyra is marketed as Fampyra outside the U.S. by Biogen under the Collaboration Agreement. In January 2024, we received notice of termination from Biogen of the Collaboration Agreement and, accordingly, the agreement will terminate effective as of January 1, 2025. We plan to assume commercialization responsibilities during 2024 as marketing authorization transfers and distribution arrangements are finalized for each territory and we expect to enter into additional collaborations and distribution arrangements with third parties to transition commercialization of Fampyra. In 2021, we entered into distribution and supply agreements with Esteve for commercialization of Inbrija in Germany and Spain and with Biopas for commercialization of Inbrija in Latin America, and we are relying on Esteve and Biopas, among other things, to obtain necessary country-specific approvals needed for the sale of and reimbursement for Inbrija in those countries. We expect that we will need to enter into additional collaborations or distribution arrangements with third parties to commercialize Inbrija in other countries. We would similarly need to rely on third parties for developing and commercializing any other potential products outside of the U.S. We cannot provide any assurance that we will be able to identify suitable collaborators or distributors in addition to our existing agreements, or that we will be able to enter into additional collaboration or distribution agreements with third parties on commercially reasonable terms, if at all. Our inability to identify collaborators or distributors and enter into agreements with them could harm or delay our efforts to develop and commercialize Inbrija or other potential products outside of the U.S.

Our dependence on third parties such as collaborators and distributors for development and commercialization of products outside the U.S., does and will subject us to a number of risks, including:

- we may not be able to control the amount and timing of resources that our collaborators or distributors devote to the development or commercialization of product candidates or to their marketing and distribution;
- our collaborators or distributors may fail to comply with laws and regulations applicable to the development, or commercialization of products or product candidates;
- our collaborators or distributors may not be successful in their efforts to obtain or maintain regulatory approvals or adequate product reimbursement in a timely manner, or at all, as discussed further in these risk factors;
- disputes may arise between us and our collaborators or distributors that result in the delay or termination of the research, development, or commercialization of our product candidates or that result in costly litigation or arbitration that diverts management's attention and resources;
- our collaborators or distributors may not properly maintain or defend our intellectual property rights or may use our proprietary information in such a way as to invite litigation that could jeopardize or invalidate our proprietary information or expose us to potential litigation;
- our collaborators or distributors may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a product candidate, repeat or conduct new clinical trials or require a new formulation of a product candidate for clinical testing;

- business combinations or significant changes in our collaborator's or distributor's business strategy may also adversely affect a collaborator's willingness or ability to complete its obligations under any arrangement;
- our collaborator or distributor could independently move forward with a competing product candidate developed either independently or in collaboration with others, including our competitors;
- collaborations or distribution arrangements may be terminated or allowed to expire, which would delay the development and may increase the cost of developing our product candidates;
- our collaborators or distributors may experience financial difficulties; and
- our ability to enter into additional collaboration agreements or distribution arrangements may be limited by the restrictive covenants contained in the indenture that governs our 2024 Notes.

While we seek contractual terms and conditions intended to protect our rights and mitigate our risk relating to circumstances listed above, there can be no assurance that these terms will provide us with adequate rights and remedies, and actions required to enforce such rights could be costly and time consuming.

Our collaborators and distributors will need to obtain and maintain regulatory approval in foreign jurisdictions where they seek to market or are currently marketing our products.

In order to market our products in the EU and other foreign jurisdictions, separate regulatory approvals must be obtained and maintained and numerous and varying regulatory requirements must be complied with. Approval procedures vary among countries and can involve additional clinical and non-clinical testing as well as additional regulatory agency inspections. The time required to obtain approval may differ from that required to obtain FDA approval. We and our collaborators or distributors may fail to obtain foreign regulatory approvals on a timely basis, if at all. In addition, individual countries, within the EU or elsewhere, may require additional steps after regulatory approval to gain access to national markets, such as agreements with pricing authorities and other agencies, that may harm the ability of us or our collaborators or distributors to market and sell our products outside the U.S. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. Inability to obtain or maintain necessary regulatory approvals to commercialize Inbrija, Fampyra or other products or product candidates in foreign markets could materially harm our business prospects. In addition, we may face adverse legal and business consequences if our collaborators or distributors fail to comply with legal and regulatory requirements.

We do not have any active drug development programs and may never commercialize any new products.

Because of our limited financial resources, we previously suspended work on all research and development programs, and deferred consideration of further investment. Furthermore, as part of our financial management efforts, we are allowing the intellectual property associated with certain of these programs to lapse. Future growth of our business may depend, in part, on our ability to identify new product development candidates, complete preclinical development of these product candidates, and advance them to and through clinical trials.

Even if we were to recommence investment in drug development programs, our suspended programs are all early-stage and either have not advanced to clinical trials or are only in Phase 1 trials. Early-stage product candidates in particular would require significant development, preclinical studies and clinical trials, regulatory clearances and substantial additional investment before they could be commercialized, if at all. Pharmaceutical research and development programs are subject to the risks and uncertainties associated with drug development described elsewhere in these risk factors and in general experience a high rate of failure. For example, we may fail to identify promising product candidates, product candidates may fail to be safe and effective in preclinical tests or clinical trials, or we may have inadequate financial or other resources to pursue discovery and development efforts for new product candidates. Also, as a result of reductions in force, we previously terminated substantially all of our research and development and clinical development workforce, and accordingly we lack personnel necessary to advance development programs unless and until we can hire qualified replacements.

Our research and development programs have included exploration of opportunities for proprietary products, in addition to Inbrija, in which inhaled delivery of medicine using our ARCUS drug delivery technology can provide a significant therapeutic benefit to patients. Although our suspension of research and development investment impacted these efforts, we continue to discuss potential ARCUS collaborations with other companies that express interest in formulating their novel molecules using ARCUS, and have already performed feasibility studies for a number of these opportunities. However, there can be no assurance that these companies will want to further pursue, or would agree to commercially reasonable terms and conditions for, such collaborations. Even if we enter into an ARCUS collaboration for a third-party molecule, the development of the ARCUS formulation would be subject to the risks and uncertainties associated with drug development described elsewhere in these risk factors and may never be commercialized. For example, the third party could discontinue the development program for financial reasons, or safety or efficacy concerns could prevent the ARCUS formulation from receiving regulatory approval.

Drug products in development must undergo rigorous clinical testing, the results of which are uncertain and could substantially delay or prevent us from bringing them to market.

Before any product candidate can receive regulatory approval, the product candidate must be subjected to extensive clinical testing in humans to demonstrate safety and efficacy to the satisfaction of the FDA, EU regulatory authorities, and other regulatory agencies. Clinical trials of new product candidates sufficient to obtain regulatory marketing approval are expensive and take years to complete, and the outcome of such trials is uncertain. Clinical development of any product candidate that we or a collaboration partner determine to take into clinical trials may be curtailed, redirected, delayed or eliminated at any time for some or all of the following reasons:

- negative or ambiguous results regarding the efficacy of the product candidate;
- undesirable side effects that delay or extend the trials, or other unforeseen or undesirable safety issues that make the product candidate not medically or commercially viable;
- inability to locate, recruit and qualify a sufficient number of patients for our trials;
- difficulty in determining meaningful end points or other measurements of success in our clinical trials;
- regulatory delays or other regulatory actions, including changes in regulatory requirements by the FDA and similar regulatory authorities in other countries;
- difficulties in obtaining sufficient quantities of our product candidates, or where applicable comparator product or other ancillary materials needed, manufactured under cGMP;
- delays, suspension or termination of the trials imposed by us or our collaboration partner, an independent institutional review board (or ethics committee), or a data safety monitoring board, or clinical holds placed upon the trials by the FDA or similar regulatory authorities in other countries;
- approval by FDA and/or foreign regulatory authorities of new drugs that are more effective than our or our collaboration partner's product candidates;
- change in the focus of our development efforts or a re-evaluation of our or our collaboration partner's clinical development strategy; and
- change in our or our collaboration partner's financial position.

A delay in or termination of any of a clinical development program that we or a collaboration partner may conduct in the future could harm our business.

Clinical trials are subject to oversight by institutional review boards (or similar ethics committees), data safety monitoring boards, the FDA and similar regulatory authorities in other countries to ensure compliance with good clinical practice requirements, as well as other requirements for the protection of clinical trial participants. If we were to conduct any clinical trials, we would depend, in part, on third-party laboratories and medical institutions to conduct preclinical studies and clinical trials and other third-party organizations to perform data collection and analysis, all of which must maintain both good laboratory and good clinical practices required by regulators. If any of those standards are not complied with in a clinical trial, the resulting data from the clinical trial may not be usable or we, an institutional review board, the FDA or a similar regulatory authority in another country may suspend or terminate a trial, which would severely delay our development and possibly end the development of the product candidate.

If we proceed with research and development programs, we will rely on third-party contract research organizations, medical centers and others to perform preclinical and non-clinical testing and clinical trials, and research and development programs could be harmed if these third parties do not perform in an acceptable and legally compliant manner.

If we recommence investment in research and development programs, we would rely on clinical investigators, third-party contract research organizations, and consultants to perform some or all of the functions associated with preclinical and non-clinical testing and clinical trials. Additionally, we have historically conducted clinical trials in the U.S., Canada, and to a lesser extent other jurisdictions, particularly Europe. Because we have limited experience conducting clinical trials outside the U.S. and Canada, we would place even greater reliance on third-party contract research organizations to manage, monitor and carry out clinical trials in these other jurisdictions. The failure of any of these parties to perform in an acceptable and timely manner in the future, including in accordance with any applicable U.S. or foreign regulatory requirements, such as good clinical and laboratory practices, or preclinical testing or clinical trial protocols, could cause a delay or other adverse effect on preclinical or non-clinical testing or clinical trials and ultimately on the timely advancement of research and development programs. Similarly, we would rely on medical centers to conduct clinical trials, and if they fail to comply with applicable regulatory requirements or clinical trial protocols, our research and development programs could be harmed.

If we or our contract sales representatives, promotional partners, collaborators or distributors market products in a manner that violates healthcare fraud and abuse laws, if we or any of them violate false claims laws, or if we fail to comply with our reporting and payment obligations under the Medicaid drug rebate program or other governmental pricing programs, or other applicable legal requirements, we may be subject to civil or criminal penalties or additional reimbursement requirements and sanctions, which could harm our business, financial condition, results of operations and growth prospects.

The distribution, sale and promotion of drug and biological products in the U.S. and in foreign markets are subject to numerous laws and regulations. In the U.S., this includes regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare and Medicaid Services, other divisions of the U.S. Department of Health and Human Services, the Federal Trade Commission, the U.S. Department of Justice and individual U.S. Attorney offices within the Department of Justice, and state and local governments. For example, sales, marketing and scientific/educational grant programs must comply with the anti-kickback and fraud and abuse provisions of the Social Security Act, as amended, the False Claims Act, as amended, and are affected by the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act, as amended, and similar state laws. Because of the breadth of these laws and the narrowness of safe harbors under these laws, it is possible that some of our business activities could be subject to challenge under one or more of these laws. All of these activities are also subject to federal and state consumer protection and unfair competition laws and regulations.

The U.S. federal healthcare program anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for, purchasing, leasing, ordering or arranging for the purchase, lease or order of any healthcare item or service reimbursable under Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, purchasers, patients, and formulary managers on the other. Industry relationships with specialty pharmacies have also been scrutinized under these provisions. There are several statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, but the exemptions and safe harbors are drawn narrowly, and our practices may not in all cases meet all of the criteria for exemptions or safe harbors. Practices that involve remuneration for performing activities that we believe are legitimate in support of the distribution of our products may be subject to scrutiny, particularly if they do not qualify for an exemption or safe harbor, and they may be found to be improperly intended to induce or facilitate the prescribing, purchasing or recommending of our products even though we believe these practices to be in compliance with applicable laws and regulations.

Federal false claims laws in the U.S. prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government or knowingly making, or causing to be made, a false statement to get a false claim paid. By statute, a violation of the federal anti-kickback statute may serve as the basis for a false claim under the false claims act. Numerous pharmaceutical and other healthcare companies have been prosecuted under these laws for a variety of alleged promotional and marketing activities, such as: allegedly providing kickbacks, such as free trips, free goods, sham consulting fees, and grants and other monetary benefits to prescribers; reporting to pricing services inflated average wholesale prices that were then used by federal programs to set reimbursement rates; and engaging in off-label promotion that caused claims to be submitted to Medicaid for non-covered, off-label uses. Most states also have statutes or regulations similar to the federal anti-kickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payer.

Sanctions under these federal and state laws may include requirements to make payments to government-funded health plans to correct for insufficient rebates paid by us or overpayments made to us, civil monetary penalties, exclusion of our products from reimbursement under government programs, criminal fines and imprisonment. We may also be subject to a corporate integrity agreement, deferred prosecution agreement, or similar arrangement.

Under the federal Sunshine Act, pharmaceutical manufacturers are required to collect information on payments or other transfers of value made to "covered recipients," which are defined as physicians, teaching hospitals, physician assistants and advance practice nurses. Similarly, the Affordable Care Act requires pharmaceutical manufacturers to annually report samples of prescription drugs requested by and distributed to healthcare providers. The law does not state whether these disclosures regarding samples will be made publicly available, and the FDA has not provided any guidance. In addition, several states have their own Sunshine laws and regulations that require pharmaceutical manufacturers to report information with regard to payments or other transfers of value to physicians, physician assistants, advance practice nurses, and teaching hospitals. Some of the states' Sunshine laws require more information to be reported than the federal requirements. If we fail to submit these reports, or if the reports we submit are not accurate, we could be subject to significant penalties.

We participate in the federal Medicaid drug rebate program established by the Omnibus Budget Reconciliation Act of 1990, as well as several state supplemental rebate programs. Under the Medicaid drug rebate program, we pay a rebate to each state Medicaid program for utilization of our products that are reimbursed by those programs. Federal law requires that any company that participates in the Medicaid drug rebate program extend comparable discounts to qualified purchasers under the Public Health Service Act pharmaceutical pricing program, which requires us to sell our products to certain customers at prices lower than we otherwise might be able to charge. The minimum basic Medicaid rebate for branded prescription drugs is 23.1% of average manufacturer price, and pharmaceutical manufacturers must pay states rebates on prescription drugs dispensed to Medicaid managed care enrollees. In addition, manufacturers must pay an additional Medicaid rebate on "line extensions" (such as extended-release formulations) of solid oral dosage forms of branded products or products where the average manufacturer price has increased faster than the inflation rate.

For products to be made available to authorized users of the Federal Supply Schedule, additional pricing laws and requirements apply, as do certain obligations imposed by the Federal Acquisition Regulations. Under the Veterans Health Care Act of 1992, as amended ("VHCA"), we are required to offer certain drugs at a reduced price to a number of federal agencies, including the Veterans Administration, the Department of Defense (DOD), the Public Health Service and certain private Public Health Service designated entities, in order to participate in other federal funding programs including Medicare and Medicaid. Participation under the VHCA requires submission of pricing data and calculation of discounts and rebates pursuant to complex statutory formulas, as well as the entry into government procurement contracts governed by the Federal Acquisition Regulations.

Pharmaceutical companies have been prosecuted under federal and state false claims laws for manipulating information submitted to the Medicaid drug rebate program or for knowingly submitting or using allegedly inaccurate pricing information in connection with federal pricing and discount programs.

Pricing and rebate calculations vary among products and programs. The laws and regulations governing the calculations are complex and are often subject to interpretation by us or our contractors, governmental or regulatory agencies and the courts. Our methodologies for calculating these prices could be challenged under false claims laws or other laws. We or our contractors could make a mistake in calculating reported prices and required discounts, revisions to those prices and discounts, or determining whether a revision is necessary, which could result in retroactive rebates (and interest and penalties, if any). Governmental agencies may also make changes in program interpretations, requirements or conditions of participation, some of which may have implications for amounts previously estimated or paid. If we make these mistakes or if governmental agencies make these changes, we could face, in addition to prosecution under federal and state false claims laws, substantial liability and civil monetary penalties, exclusion of our products from reimbursement under government programs, criminal fines or imprisonment, and prosecutors may impose a corporate integrity agreement, deferred prosecution agreement, or similar arrangement.

Under the Affordable Care Act, or ACA, as amended, drug manufacturers are required to provide a 70% discount on prescriptions for branded products filled while the beneficiary is in the Medicare Part D coverage gap, also known as the "donut hole." In addition, the ACA imposes a significant annual fee on companies that manufacture or import branded prescription drug products. The fee (which is not deductible for federal income tax purposes) is based on the manufacturer's market share of sales of branded drugs and biologics (excluding orphan drugs) to, or pursuant to coverage under, specified U.S. government programs.

Outside the U.S., the distribution, sale and promotion of our products is subject to a variety of rules and requirements. In the EU, these vary from country to country, and we must comply with all applicable rules in each relevant market. In many jurisdictions, these include both general anti-bribery rules and specific rules prohibiting the provision of inducements to healthcare professionals under medicines advertising laws and self-regulatory codes of conduct and guidelines. In many EU countries, the applicable industry self-regulatory codes of conduct require companies to disclose publicly any transfers of value to healthcare professionals or healthcare organizations, and disclosure laws comparable to the U.S. Sunshine Act have been adopted in some EU member states. Failure to adhere to such rules and regulations could result in any number of possible sanctions, including fines and criminal prosecutions as well as reputational damage to us and our products.

In the U.S., we supplement our own sales activities with the services of contract sales representatives and may enter into promotional partnerships or other similar arrangements. Outside the U.S., we rely on collaborators and distributors to market our products. Although these are independent companies, under applicable laws and regulations we can in some cases be held directly responsible for the acts or omissions of these companies because they are marketing our products. While we seek contractual terms and conditions intended to protect our rights and mitigate our risk relating to the misconduct of other parties, contractual rights would not protect us against governmental prosecution or enforcement, there can be no assurance that contractual financial remedies would be adequate to cover associated liabilities, and the actions required to protect against enforcement actions or to enforce such rights could be costly and time consuming.

Legislative or regulatory reform of the healthcare system may affect our ability to sell our products profitably.

The current administration has indicated an interest in measures designed to lower drug costs and there continues to be political pressure at both the U.S. federal and state levels related to drug pricing and drug transparency that could result in legislative or administrative actions, or at a minimum continued scrutiny. We cannot predict the likelihood, nature or extent of adverse governmental regulation that might arise from future legislative or administrative action, either in the U.S. or abroad.

Healthcare systems outside the U.S. are varied and in the EU differ from country to country. In general, in many EU countries there is a growing pressure to lower overall expenditure on medicines and a range of government initiatives are in place or being proposed with this aim. These include measures to lower the prices of medicines, restrictions on reimbursement, and a range of substitution, procurement and prescribing initiatives. The state of healthcare legislation and regulation in the EU is also unclear and difficult to predict.

Changes in the law or regulatory framework that reduce our revenues or increase our costs could also harm our business, financial condition and results of operations and cash flows.

Our existing or potential products may not be commercially viable in the U.S. if we fail to obtain or maintain an adequate level of reimbursement for these products by Medicaid, Medicare or other third-party payers.

Our ability to sell our products in the U.S. and be profitable is substantially dependent on third-party payers, such as government or government-sponsored health administrative authorities, including Medicaid and Medicare Parts B and D, private health insurers and other such organizations, agreeing to reimburse patients for the cost of our products. Third-party payers are increasingly challenging the pricing of medical products and services and their reimbursement practices may affect the price levels for Inbrija or other potential products we may develop in the future. Our business could be materially harmed if the Medicaid program, Medicare program or other third-party payers were to deny reimbursement for our products or provide reimbursement only on unfavorable terms. Our business could also be harmed if the Medicaid program, Medicare program or other reimbursing bodies or payers 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.

Third-party payers frequently require that drug companies negotiate agreements with them that provide discounts or rebates from list or wholesale prices. We have agreed to provide such discounts and rebates to some third-party payers in relation to Inbrija and Ampyra, and we expect that obtaining agreements with other third-party payers to provide access to, and reimburse patients for, our products, if possible, will similarly require that we provide such discounts and rebates. We have experienced increasing pressure to offer larger discounts and discounts to a greater number of third-party payers to maintain acceptable reimbursement levels and access for patients at copay levels that are reasonable. There is no guarantee that we would be able to negotiate agreements with third-party payers at price levels that are profitable to us, or at all. Many third-party payers have implemented utilization management techniques for Inbrija and Ampyra, such as prior authorization and/or quantity limits. Patients who cannot meet the conditions of prior authorizations are often prevented from obtaining the prescribed medication, because they cannot afford to pay for the medication without reimbursement. If we are unsuccessful in maintaining reimbursement for our products at acceptable levels, or if reimbursement for our products by third-party payers is subject to overly restrictive utilization management, our business will be harmed. In addition, if our competitors reduce the prices of their products, or otherwise demonstrate that they are better or more cost effective than our products, this may result in a greater level of reimbursement for their products relative to our products, which would reduce our sales and harm our results of operations. Both federal healthcare programs and commercial insurers are increasingly conditioning coverage, formulary placement, and/or reimbursement rates on the ability of a manufacturer to present favorable health economics and outcomes data.

The Medicare Part D outpatient prescription drug benefit is provided primarily through private entities, which attempt to negotiate price concessions from pharmaceutical manufacturers. These negotiations increase pressure to lower prescription drug prices or increase rebate payments to offset price. While the law specifically prohibits the U.S. government from interfering in price negotiations between manufacturers and Medicare drug plan sponsors, some members of the U.S. Congress support legislation that would permit the U.S. government to use its enormous purchasing power to demand discounts from pharmaceutical companies. While this is a priority for the current U.S. administration, we cannot predict whether such legislation will pass. In addition, the ACA contains triggers for Congressional consideration of cost containment measures for Medicare in the event Medicare cost increases exceed a certain level. These cost containment measures could include limitations on prescription drug prices. The ACA requires drug manufacturers to provide a 70% discount on prescriptions for branded products filled while the beneficiary is in the Medicare Part D coverage gap, also known as the “donut hole.” Legislative or regulatory revisions to the Medicare Part D outpatient prescription drug benefit, as well as additional healthcare legislation that may be enacted at a future date, could reduce our sales and harm our results of operations.

The success of our existing and potential products in the EU substantially depends on achieving adequate government reimbursement.

The commercial success in the EU of products approved there primarily depends on obtaining and maintaining government reimbursement because, in many European countries, patients may not have access to prescription drugs that are not reimbursed by their governments. In addition, participation in pricing and reimbursement procedures and negotiating prices with government authorities can delay commercialization. Even if reimbursement is available, reimbursement policies may negatively impact revenue from sales of our products and therefore our ability or that of Biogen, our collaborator for Fampyra, Esteve, our distribution partner for Inbrija, or any future collaborator or distributor to sell our products on a profitable basis. Furthermore, cross-border imports from lower-priced markets (parallel imports) into higher-priced markets could harm sales of products by us or our collaborators or distributors and exert commercial pressure on pricing within a country.

Governments in a number of international markets have announced or implemented measures aimed at reducing healthcare costs to constrain the overall level of government expenditures. This includes some of the largest markets in the EU, where Biogen markets Fampyra and Esteve has agreed to distribute Inbrija, and where we may seek to market Inbrija through other collaborators or distributors. The measures vary by country and include, among other things, mandatory rebates and discounts, clinical benefit and cost-effectiveness assessments, reimbursement limitations and reference pricing, price reductions and suspensions on pricing increases on pharmaceuticals. These measures may negatively impact net revenue from Biogen's sales of Fampyra and therefore both the timing of when we receive any further royalty revenue from Biogen. Furthermore, the adverse financial impact of these measures in any particular country, in addition to related reimbursement or regulatory constraints, could prevent the commercial launch or continued commercialization of Inbrija or Fampyra in that country.

The United Kingdom's withdrawal from the European Union, generally referred to as "Brexit," could have adverse effects on our business.

As of January 1, 2021, the UK formally left the EU and the UK and EU are now operating separate pharmaceutical regulatory regimes. The UK and EU announced on December 24, 2020 that they had agreed on a Trade and Cooperation Agreement ("TCA") to govern their future relationship. The TCA sets out the arrangements for trade of goods, including medicines and medical devices, which aims to ensure goods continue to flow between the EU and the UK and also has implications for product regulation and mutual recognition.

Following the exit of the UK from the EU, we were granted a grandfathered Marketing Authorization (MA) for Inbrija by the Medicines and Healthcare Products Regulatory Agency (MHRA) in the UK that was made effective in January 2021 and formally approved in November 2021. In order to maintain the grandfathered marketing authorization in the UK and not trigger the sunset clause, we were required to begin marketing in the UK by January 2024. In August 2023 we requested an extension of the UK sunset clause that was granted until January 2027. We will also be required to retain the services of a qualified person for pharmacovigilance. Moreover, if we are to market Inbrija in the UK in the future, the movement of finished pharmaceutical products into the UK is treated as an import from a third country post-Brexit. The UK has made permanent the decision to unilaterally waive batch testing requirements for imports of products from the EU.

In addition, although the TCA provides some clarity regarding the future relationship between the EU and UK, the impact of Brexit on the fiscal, monetary and regulatory landscape in the UK remains uncertain, and it could have a material impact on its economy and the future growth of its various industries, including the pharmaceutical and biotechnology industries. Given the lack of comparable precedent, it remains unclear what financial, trade, regulatory and legal implications the withdrawal of the UK from the EU may have and how such withdrawal would affect us.

If our competitors develop and market products that are more effective, safer or more convenient than our approved products, or obtain marketing approval before we obtain approval of future products, our commercial opportunity will be reduced or eliminated.

Competition in the pharmaceutical and biotechnology industries is intense and is expected to increase. Many biotechnology and pharmaceutical companies, as well as academic laboratories, are engaged in research, development, and/or marketing of therapeutics for various neurological conditions, including Parkinson's disease and multiple sclerosis.

Our competitors may succeed in developing products that are more effective, safer or more convenient than our products or the ones we have under development or that render our approved or proposed products or technologies noncompetitive or obsolete. In addition, our competitors may achieve product commercialization before we do. If any of our competitors develops a product that is more effective, safer or more convenient for patients, or is able to obtain FDA approval for commercialization before we do, we may not be able to achieve market acceptance for our products, which would harm our ability to generate revenues and recover the substantial development costs we have incurred and will continue to incur.

Our products may be subject to competition from lower-priced versions of such products and competing products imported into the U.S. from Canada, Mexico and other countries where there are government price controls or other market dynamics that cause the products to be priced lower.

Inbrija/Parkinson's Disease. Inbrija competes against other therapies approved for intermittent, or as needed, use that aim to specifically address Parkinson's disease symptoms. Apokyn, an injectable formulation of apomorphine, is approved for the treatment of OFF episodes. Apokyn was approved for this use in the U.S. in 2004 and in Europe in 1993, and in 2022 the FDA approved a generic version of Apokyn.

The standard of care for the treatment of Parkinson's disease is oral carbidopa/levodopa, but oral medication can be associated with wide variability in the timing and the amount of absorption and there are significant challenges in creating a regimen that consistently maintains therapeutic effects as Parkinson's disease progresses. Inbrija may face competition from therapies that can limit the occurrence of OFF periods. Approaches to achieve consistent levodopa plasma concentrations include new formulations of carbidopa/levodopa, such as extended-release and intestinal infusions, and therapies that prolong the effect of levodopa. Amneal Pharmaceuticals, Inc. markets RYTARY, an extended-release formulation of oral carbidopa/levodopa, and extended-release formulations of oral and patch carbidopa/levodopa are being developed by others including Intec Pharma and Mitsubishi Tanabe Pharma Corporation. Also, AbbVie Inc. has developed a continuous administration of a gel-containing levodopa through a tube that is surgically implanted into the intestine. This therapy, known as Duopa, and PRODUODOPA (foslevodopa/foscarbidopa), a subcutaneous 24-hour infusion of levodopa-based therapy, has been approved by the FDA and EU health authorities.

One or more of our competitors may utilize their expertise in pulmonary delivery of drugs to develop and obtain approval for pulmonary delivery products that may compete with Inbrija and any other ARCUS drug delivery technology product candidates that we may develop in the future. These competitors may include smaller companies such as Alexza Pharmaceuticals, Inc., Pulmatrix, Inc., Vectura Group plc, and PureIMS B.V. and larger companies such as Allergan, Inc., GlaxoSmithKline plc, MannKind Corporation, and Novartis AG, among others. If approved, our product candidates may face competition in the target commercial areas for these pulmonary delivery products. Also, we are aware that at least one company, Impel Neuropharma, is developing intranasally-delivered levodopa therapies which, if approved, might compete with Inbrija.

Ampyra/MS. Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse court ruling that invalidated certain Ampyra Orange Book-listed patents. We have experienced a significant decline in Ampyra sales due to competition from several generic versions of Ampyra. Additional manufacturers may market generic versions of Ampyra, and we expect our Ampyra sales will continue to decline over time.

Current disease management approaches to MS are classified either as relapse management, disease course management, or symptom management approaches. For relapse management, the majority of neurologists treat sudden and severe relapses with a four-day course of intravenous high-dose corticosteroids. Many of these corticosteroids are available generically. For disease course management, there are a number of FDA-approved MS therapies that seek to modify the immune system. These treatments attempt to reduce the frequency and severity of exacerbations or slow the accumulation of physical disability for people with certain types of MS, though their precise mechanisms of action are not known. These products include Avonex, Tysabri, Plegridy and Tecfidera from Biogen, Zinbryta from Biogen and AbbVie, Betaseron from Bayer AG, Copaxone from Teva Pharmaceutical Industries, Ltd., Rebif from Merck Serono, Gilenya and Extavia from Novartis AG, Aubagio and Lemtrada from Genzyme Corporation (a Sanofi company), Glatopa from Sandoz International GmbH (a Novartis AG company), Rituxan from F. Hoffman-La Roche AG, Ponvory from Janssen Pharmaceutical Companies of Johnson & Johnson, and Zeposia from Bristol-MyersSquibb.

Several biotechnology and pharmaceutical companies, as well as academic laboratories, are involved in research and/or product development for various neurological diseases, including MS. Other companies also have products in clinical development, including products approved for other indications in MS, to address improvement of walking ability in people with MS. Furthermore, several companies are engaged in developing products that include novel immune system approaches and cell therapy approaches to remyelination for the treatment of people with MS. These programs are in early stages of development and may compete in the future with Ampyra or some of our product candidates. In addition, in certain circumstances, pharmacists are not prohibited from formulating certain drug compounds to fill prescriptions on an individual patient basis, which is referred to as compounding. We are aware that at present compounded dalfampridine is used by some people with MS and it is possible that some people will want to continue to use compounded formulations even though Ampyra and generic versions of Ampyra are commercially available.

State pharmaceutical compliance and reporting requirements may expose us to regulatory and legal action by state governments or other government authorities.

Many states have enacted laws governing the licensure of companies that manufacture and/or distribute prescription drugs, although the scope of these laws varies, particularly where out-of-state distributors are concerned. We have obtained licenses in all of the jurisdictions in which we believe we are required to be licensed. However, there can be no assurance that one or more of these states will not take action under these licensure laws.

Several states have also enacted legislation regarding promotional and other activities conducted by pharmaceutical companies. The specifics of these laws vary, but in general they require companies to establish marketing compliance programs; disclose various sales and marketing expenses and pricing information; refrain from providing certain gifts or other payments to healthcare providers; and/or ensure that their sales representatives in that state are licensed. Some states, including California, Connecticut, Massachusetts, Minnesota, and Vermont, and the District of Columbia, have passed laws of varying scope that ban or limit the provision of gifts, meals and certain other payments to healthcare providers and/or impose reporting and disclosure requirements upon pharmaceutical companies pertaining to drug pricing, payments and/or costs associated with pharmaceutical marketing, advertising and other promotional activities. Other states also have laws that regulate, directly or indirectly, various pharmaceutical sales and marketing activities, and new legislation is being considered in many states.

Many of the state requirements continue to evolve, and the manner in which they will be enforced going forward is uncertain. In some cases, the penalties for failure to comply with these requirements are unclear. We are continually updating our compliance infrastructure and standard operating procedures to comply with such laws, but we cannot eliminate the risk created by these uncertainties. Unless we are in full compliance with these laws, we could face enforcement action, fines and other penalties, including government orders to stop selling drugs into a state until properly licensed, and could receive adverse publicity.

Our inability to attract and retain key management and other personnel, or maintain access to expert advisors, may hinder our ability to execute our business plan.

We are highly dependent on the services of Dr. Ron Cohen, our President and Chief Executive Officer, as well as the other principal members of our management and scientific, regulatory, manufacturing and commercial personnel. Our success depends in large part upon our ability to attract and retain highly qualified personnel with the knowledge and experience needed for these and other areas of our business. We do not maintain “key man” life insurance policies on the lives of our officers, directors, or employees.

We face intense competition in our hiring efforts with other pharmaceutical and biotechnology companies, as well as universities and nonprofit research organizations. We may be unable to attract or retain qualified personnel because their competitive salaries and other compensation may increase to levels that we are unwilling or unable to provide. In addition, material adverse developments with our business, including the 2017 adverse patent decision relating to our Orange Book-listed Ampyra patents, the termination or suspension of research and development programs, four reductions in force since 2017, and the current progress of our Inbrija commercial launch, may impede our ability to attract and retain highly qualified personnel. We have recently experienced workforce attrition in various functions across our business, which may be attributable to one or more of the factors described above or other factors. Our efforts to adjust our operations with the reduced workforce may not be successful in preventing disruption to our business, and with the reduced workforce we lack redundancy in important functions across our business. We are increasingly relying on the services of contract sales representatives or other third-party marketing support in response to substantial sales force attrition. Further loss of one or more of our key employees, additional loss of multiple employees in particular functions, and/or our inability to attract replacement or additional qualified personnel could substantially impair our ability to operate our business and implement our business plan, particularly our efforts to successfully commercialize Inbrija. Also, due to the recent attrition, four reductions in force since 2017, and the 2021 sale of our Chelsea manufacturing operations, we believe we lack personnel needed for, and would need to hire replacements before continuing with, research and development and clinical programs. Our inability to attract qualified replacements needed for research and development and clinical programs could substantially impair our ability to advance those programs, if we determine to make further investments in those programs.

We also have scientific, medical, clinical, marketing and other advisors who assist us in our research and development, clinical, and commercial strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us. Similarly, they may have arrangements with other companies to assist in the development and commercialization of products that may compete with ours. Burkhard Blank, M.D., our former Chief Medical Officer, transitioned into a consulting role effective January 1, 2022, and, to our knowledge, has commenced a full-time role as an executive at another biopharmaceutical company. We cannot be sure whether and for how long we will have continuing access to Dr. Blank's expertise for our business, and currently we have not identified any individual with comparable expertise to replace Dr. Blank.

We and our third-party contract manufacturers must comply with environmental, health and safety laws and regulations, and failure to comply with these laws and regulations could expose us to significant costs or liabilities.

Biopharmaceutical research and development activities are subject to numerous and increasingly stringent environmental, health and safety laws and regulations, including those which govern laboratory procedures and the use, generation, manufacture, distribution, storage, handling, treatment, remediation and disposal of hazardous substances. We may incur substantial costs in order to comply with current or future such laws and regulations, which may also impair research and development efforts that we may be engaged in. We cannot completely avoid the risk of contamination or injury in connection with research and development activities, and in such cases of contamination or injury, or in cases of failure to comply with environmental, health and safety laws and regulations, we could be held liable, and in some cases strictly liable, for any resulting damages.

Also, the existence, investigation and/or remediation of contamination at properties currently or formerly owned, leased or operated by us may result in costs, fines or other penalties. Furthermore, our third-party manufacturers are subject to the same or similar environmental, health and safety laws and regulations as those to which we are subject. It is possible that if our third-party manufacturers fail to operate in compliance with the applicable environmental, health and safety laws and regulations or properly dispose of wastes associated with our products, we could be held liable for any resulting damages and/or experience a disruption in the manufacture and supply of our product candidates or products. Any such liability may result in substantial civil or criminal fines, penalties or other sanctions, which could exceed our assets and resources, as well as reputational harm.

Although we assigned our Chelsea, Massachusetts manufacturing facility lease to Catalent in February 2021, we remain responsible for certain contingent environmental liabilities should an issue arise in the future relating to the operation of the facility prior to the assignment.

Risks Related to our Intellectual Property

If we cannot protect, maintain and, if necessary, enforce our intellectual property, our ability to develop and commercialize our products will be severely limited.

Our success will depend in part on our and our licensors' ability to obtain, maintain and enforce patent and trademark protection for the technologies, compounds and products, if any, resulting from our licenses and research and development programs. Without protection for the intellectual property we use or intend to use, other companies could offer substantially identical products for sale without incurring the sizable discovery, research, development and licensing costs that we have incurred. Our ability to recover these expenditures and realize profits upon the sale of products could be diminished.

We have patent portfolios relating to Inbrija and our ARCUS drug delivery technology. For some of our proprietary technologies, for example our ARCUS drug delivery technology, we rely on a combination of patents, trade secret protection and confidentiality agreements to protect our intellectual property rights. Our intellectual property also includes copyrights and a portfolio of trademarks.

The process of obtaining patents and trademarks can be time consuming and expensive with no certainty of success. Even if we spend the necessary time and money, a patent or trademark may not issue, it may not issue in a timely manner, or it may not have sufficient scope or strength to protect the technology it was intended to protect or to provide us with any commercial advantage. We may never be certain that we were the first to develop the technology or that we were the first to file a patent application for the particular technology because patent applications are confidential until they are published, and publications in the scientific or patent literature lag behind actual discoveries. The degree of future protection for our proprietary rights will remain uncertain if our pending patent applications are not allowed or issued for any reason or if we are unable to develop additional proprietary technologies that are patentable. Furthermore, third parties may independently develop similar or alternative technologies, duplicate some or all of our technologies, design around our patented technologies or challenge our issued patents or trademarks or the patents or trademarks of our licensors. For example, Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse court ruling that invalidated certain Ampyra Orange Book-listed patents. We have experienced a significant decline in Ampyra sales due to competition from several generic versions of Ampyra. Additional manufacturers may market generic versions of Ampyra, and we expect our Ampyra sales will continue to decline over time.

Also, the validity of our patents can be challenged by third parties pursuant to procedures introduced by American Invents Act, specifically *inter partes* review and/or post grant review before the U.S. Patent and Trademark Office. For example, in 2015, a hedge fund (acting with affiliated entities and individuals and proceeding under the name of the Coalition for Affordable Drugs) filed *inter partes* review (IPR) petitions with the U.S. Patent and Trademark Office, challenging some of our Ampyra Orange Book-listed patents. We successfully defended the patents in these proceedings, but this outcome did not affect the court decision invalidating Ampyra Orange Book-listed patents as described above. IPR petitions could be filed in the future challenging our other patents for any of our programs.

Nullity actions with respect to Fampyra have been filed in Germany against both of the German national patents derived from EP 1732548 (the ‘548 patent) and EP 2377536 (the ‘536 patent) by ratiopharm GmbH (“ratiopharm”), a generic manufacturer affiliated with Teva. In November 2021, the German Federal Patent Court issued preliminary opinions indicating that the claimed subject matter of the ‘548 patent lacked inventive step and the claimed subject matter of the ‘536 patent lacked novelty and inventive step. At oral hearings in February 2022 and April 2022, the German Federal Patent Court dismissed ratiopharm’s action against the ‘536 patent and the ‘548 patent, respectively, as inadmissible because of ongoing formality proceedings relating to these patents in the European Patent Office. Ratiopharm appealed the decision on the ‘536 patent but not the decision on the ‘548 patent. On December 6, 2022, the German Federal Court of Justice held that ratiopharm’s ‘536 nullity action was admissible and remanded the case back to the German Federal Patent Court. On January 11, 2022, Stada Arzneimittel (“Arzneimittel”) also filed a nullity action against the ‘536 patent. The ratiopharm and Arzneimittel ‘536 nullity actions have been consolidated. In November 2023, the German Federal Patent Court issued a preliminary opinion indicating that the claimed subject matter of the ‘536 patent lacked novelty and inventive step. At an oral hearing on March 4, 2024, the German Federal Patent Court held that the ‘536 patent was invalid. On July 27, 2022, Teva GmbH (“Teva”) also filed a nullity action against the ‘548 patent, in the same court as the ratiopharm nullity actions. On January 27, 2023, the German Federal Patent Court issued a preliminary opinion in the ‘548 Teva nullity action that the claimed subject matter of the ‘548 patent lacked inventive step. At an oral hearing on July 11, 2023, the German Federal Patent Court held that the ‘548 patent was invalid. The German Federal Patent Court issued its formal written decision on the ‘548 patent on November 10, 2023. We appealed the decision on December 11, 2023 and the appeal is now pending before the Federal Court of Justice. We are working with Biogen to vigorously defend these patents and enforce our patent rights. See *Legal Proceedings* in Part I, Item 3 of this Annual Report for more information. Loss of patent rights or generic entry into the German and other markets will have a material adverse effect on royalty revenue from Biogen in the future.

Patent litigation, IPR proceedings, and other legal proceedings usually involve complex legal and factual questions and require the devotion of significant financial resources and management time and attention. If we are not successful in protecting any of our intellectual property that is subject to such proceedings, we could lose Orange Book listed patents that protect our products and our business could be materially harmed. We can provide no assurance concerning the duration or the outcome of any such lawsuits and legal proceedings.

We may initiate actions to protect our intellectual property and in any litigation in which our intellectual property or our licensors' intellectual property is asserted, a court may determine that the intellectual property is invalid or unenforceable. Even if the validity or enforceability of that intellectual property is upheld by a court, a court may not prevent alleged infringement on the grounds that such activity is not covered by, for example, the patent claims. In addition, effective intellectual property enforcement may be unavailable or limited in some foreign countries for a variety of legal and public policy reasons. From time to time, we may receive notices from third parties alleging infringement of their intellectual property rights. Any litigation, whether to enforce our rights to use our or our licensors' patents or to defend against allegations that we infringe third-party rights, would be costly, time consuming, and may distract management from other important tasks.

As is commonplace in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. To the extent our employees are involved in areas that are similar to those areas in which they were involved at their former employers, we may be subject to claims that such employees and/or we have inadvertently or otherwise used or disclosed the alleged trade secrets or other proprietary information of the former employers. Litigation may be necessary to defend against such claims, which could result in substantial costs and be a distraction to management and which could have an adverse effect on us, even if we are successful in defending such claims.

We also rely in our business on trade secrets, know-how and other proprietary information. For example, the know-how that forms the basis of our proprietary manufacturing process for the ARCUS technology and Inbrija manufacturing is substantially dependent on trade secret protection. Establishing our global supply agreement with Catalent required that we share this type of information with Catalent, and we may need to share similar information with others in the future in connection with development of backup or additional manufacturing needed for Inbrija commercialization. We seek to protect trade secrets, know-how and other proprietary information, in part, through the use of confidentiality agreements with employees, consultants, collaborators, advisors and others, and in the case of Catalent by including various operational safeguards and confidentiality and other requirements in our global supply agreement with them. Nonetheless, those agreements may not provide adequate protection for our trade secrets, know-how or other proprietary information, including our proprietary ARCUS technology, and prevent their unauthorized use or disclosure. To the extent that consultants, collaborators, key employees or other third parties apply technological information independently developed by them or by others to our proposed products, joint ownership may result, which could undermine the value of the intellectual property to us or disputes may arise as to the proprietary rights to such information which may not be resolved in our favor. The risk that other parties may breach confidentiality agreements or that our trade secrets such as our ARCUS technology become known or independently discovered by competitors, could harm us by enabling our competitors, who may have greater experience and financial resources, to copy or use our trade secrets and other proprietary information in the advancement of their products, methods or technologies. Policing unauthorized use of our or our licensors' intellectual property is difficult, expensive and time-consuming, and we may be unable to determine the extent of any unauthorized use. Adequate remedies may not exist in the event of unauthorized use or disclosure.

Our business could be harmed by requirements to publicly disclose our clinical trial data.

There is an increasing trend across multiple jurisdictions, including the United States and the EU, towards requiring greater transparency, particularly in the area of clinical trial results. In many jurisdictions, including the U.S. and the EU, we are required to register most of our clinical trials as well as disclose summaries of the results of those clinical trials. Further requirements for transparency could result in the disclosure of data down to the individual patient level. In the EU, for example, the European Medicines Agency, or EMA, has since 2015 implemented a policy on transparency of clinical trial data submitted to the agency in applications for marketing authorization. These data traditionally were regarded as confidential commercial information not subject to disclosure. According to this policy, the EMA proactively publishes anonymized clinical data submitted by pharmaceutical companies to support their regulatory applications submitted after January 1, 2015 (subject to certain company redactions agreed with the EMA during the application review process). Possible redactions include commercially confidential information, identifiable information about study participants and study staff and patient level data (i.e., line listings including patient data against individual patient codes). The EMA plans to release patient level data in the future, but needs to address some data privacy concerns before doing so. The EMA may release clinical data submitted before this date on request, subject to us having the opportunity to make similar redactions. The precise implementation of the EMA's policy remains in flux and subject to legal challenge. This could harm our business in a variety of ways, including for example through disclosure of our trade secret methodologies for clinical development of our products, and/or by potentially enabling competitors to use our clinical data to gain approvals for their own products in the same or other jurisdictions. Regardless of the precise details of the EMA's policy, the trend across governments is for increased transparency, which could diminish our ability to protect our confidential commercial information.

If third parties successfully claim that we infringe their patents or proprietary rights, our ability to continue to develop and successfully commercialize our product candidates could be delayed or prevented.

Third parties may claim that we or our licensors or suppliers are infringing their patents or are misappropriating their proprietary information. In the event of a successful claim against us or our licensors or suppliers for infringement of the patents or proprietary rights of others relating to any of our marketed products or product candidates, we may be required to:

- pay substantial damages;
- stop using our technologies;
- withdraw a product from the market;
- stop certain research and development efforts;
- significantly delay product commercialization activities;
- develop non-infringing products or methods, which may not be feasible; and
- obtain one or more licenses from third parties.

In addition, from time to time, we may become aware of third parties who have, or claim to have, intellectual property rights covering matters such as methods for doing business, conducting research, diagnosing diseases or prescribing medications that are alleged to be broadly applicable across sectors of the industry, and we may receive assertions that these rights apply to us. The existence of such intellectual property rights could present a risk to our business.

A license required under any patents or proprietary rights held by a third party may not be available to us, or may not be available on acceptable terms. If we or our licensors or suppliers are sued for infringement, we could encounter substantial delays in, or be prohibited from developing, manufacturing and commercializing our product candidates and advancing our preclinical or clinical programs. In addition, any such litigation would be costly, time consuming, and might distract management from other important tasks.

We are dependent on our license agreements and if we fail to meet our obligations under these license agreements, or our agreements are terminated for any reason, we may lose our rights to our in-licensed patents and technologies.

We are dependent on licenses for intellectual property for products and research and development, including in particular Inbrija and potential ARCUS-based programs. Our failure to meet any of our obligations under these license agreements could result in the loss of our rights to this intellectual property. If we lose our rights under any of these license agreements, we may be unable to commercialize, or continue commercializing, a product that uses licensed intellectual property.

Risks Relating to our Common Stock

Our stock price may be volatile and you may lose all or a part of your investment.

Our stock price could fluctuate significantly due to a number of factors, including:

- the Intended Chapter 11 Proceedings;
- achievement or rejection of regulatory approvals by us or our collaborators or by our competitors;
- publicity regarding actual or potential clinical trial results or updates relating to products under development by us, our collaborators, or our competitors;
- developments concerning proprietary rights, including patents, litigation and other legal proceedings relating to such proprietary rights;
- dilution, or expected or potential dilution, relating to the issuance of additional shares of our common stock to satisfy conversion or make-whole payment obligations under, or interest on, our 2024 Notes;

- issuance of additional shares of our common stock, and the expected dilution to our stockholders resulting therefrom, which may occur upon the refinancing of our convertible senior notes;
- announcements of new acquisitions, collaborations, financings or other transactions, or of technological innovations or new commercial products by our competitors or by us;
- regulatory developments in the U.S. and foreign countries;
- changes in securities analysts' estimates of our performance or our failure to meet analysts' expectations;
- sales of substantial amounts of our stock or short selling activity by investors;
- variations in our anticipated or actual operating results;
- conditions or trends in the pharmaceutical or biotechnology industries generally;
- government regulation of drug pricing;
- changes in healthcare reimbursement policies; and
- events that affect, or have the potential to affect, general economic conditions, including but not limited to political unrest, global trade wars, natural disasters, acts of war, terrorism, or disease outbreaks (such as the COVID-19 global pandemic).

Many of these factors are beyond our control, and we believe that period-to-period comparisons of our financial results will not necessarily be indicative of our future performance. If our revenues in any particular period do not meet expectations, we may not be able to adjust our expenditures in that period, which could cause our operating results to suffer. If our operating results in any future period fall below the expectations of securities analysts or investors, our stock price may fall by a significant amount.

Additionally, the price of our common stock may be highly volatile following the commencement of the Intended Chapter 11 Proceedings and our common stock will likely decline significantly in value. Accordingly, any trading in our common stock during the pendency of the Intended Chapter 11 Proceedings will be highly speculative and pose substantial risks to purchasers of our common stock. Recoveries in the Intended Chapter 11 Proceedings for holders of common stock, if any, will depend upon several factors, including, but not limited to, our ability to negotiate and confirm a sale of substantially all of our assets under Section 363 or execute a plan of reorganization or liquidation as an alternative to the sale process, or a combination thereof. All of our indebtedness, including our 2024 Notes, is senior to the existing common stock in our capital structure, and therefore common stockholders would not receive any recovery unless the holders of more senior claims and interests, including our 2024 Notes, are paid in full. The amount of the 2024 Notes significantly exceeds the price the Purchaser has agreed to pay for the Purchased Assets and the noteholders' security interest in substantially all of our remaining assets (including any recovery we receive from our ongoing litigation with Alkermes as described in this Annual Report) will continue following the consummation of the Section 363 sale and Intended Chapter 11 Proceedings.

Moreover, shortly following the commencement of the Intended Chapter 11 Proceedings, we expect to receive written notice from the staff of the Nasdaq notifying us that, as a result of the Chapter 11 filing, and in accordance with Nasdaq Listing Rules 5101, 5110(b) and IM-5101-1, our common stock will be delisted from the Nasdaq. In such event, we expect that our common stock would commence trading on the Pink Open Market. We can provide no assurance that our common stock will commence trading or continue to trade on the Pink Open Market, whether broker-dealers will continue to provide public quotes of our common stock on this market, whether the trading volume of our common stock will be sufficient to provide for an efficient trading market or whether quotes for our common stock will continue on this market in the future, which could result in significantly lower trading volumes and reduced liquidity for investors seeking to buy or sell our common stock. A delisting of our common stock from the Nasdaq Global Select Market would materially and adversely affect a stockholder's ability to dispose of, or to obtain accurate quotations as to the market value of, our common stock. Furthermore, our common stock could become subject to the SEC's "penny stock" regulations. Under such regulations, broker-dealers are required to, among other things, comply with disclosure and special suitability determinations prior to the sale of shares of common stock. Furthermore, because of the limited market and generally low volume of trading in our common stock, the price of our common stock could be more likely to be affected by broad market fluctuations, general market conditions, changes in the markets' perception of our securities, and announcements made by us or third parties with interests in the Intended Chapter 11 Proceedings.

Trading on the Pink Open Market is volatile and sporadic, which could depress the market price of our common stock and make it difficult for our stockholders to resell their shares. The market for our common stock is limited and persons who purchase our common stock may not be able to resell their shares at or above the purchase price paid by them.

We expect that our common stock will commence trading on the Pink Open Market. Trading in stock quoted on the Pink Open Market is often extremely thin and characterized by wide fluctuations in trading prices, due to many factors, some of which may have little to do with our operations or business prospects. This volatility could further depress the market price of our common stock for reasons unrelated to operating performance. Moreover, the Pink Open Market is not a stock exchange, and trading of securities on the Pink Open Market is often more sporadic than the trading of securities listed on a stock exchange such as Nasdaq. The Pink Open Market is not a liquid market, and therefore there is likely to be only a limited public market for our common stock. We cannot assure you that an active public market for our common stock on the Pink Open Market will develop or be sustained in the future. If an active market for our common stock does not develop or is not sustained, the price may decline further. These factors may result in investors having difficulty reselling any shares of our common stock.

Future sales of our common stock could cause our stock price to decline, and future issuances of common stock could cause substantial dilution.

If our existing stockholders sell a large number of shares of our common stock, or the public market perceives that existing stockholders might sell shares of common stock, the market price of our common stock could decline significantly. Sales of substantial amounts of shares of our common stock in the public market by our executive officers, directors, 5% or greater stockholders or other stockholders, or the prospect of such sales, could adversely affect the market price of our common stock. As of March 27, 2024, 1,242,098 shares of our common stock were issued and outstanding; options to acquire 98,472 shares of our common stock were outstanding, exercisable at an average exercise price of $442.55 per share, issued under our 2006 Employee Incentive Plan, our 2015 Omnibus Incentive Compensation Plan, and our 2016 Inducement Plan. Additional shares of common stock are authorized for issuance pursuant to options and other stock-based awards under our 2015 Omnibus Incentive Compensation Plan and under our 2019 Employee Stock Purchase Plan, and additional stock-based awards could be issued under our 2016 Inducement Plan. To the extent that option holders exercise outstanding options, there may be further dilution and the sales of shares issued upon such exercises could cause our stock price to drop further. In addition, if we elect to settle all or a portion of our conversion or make-whole payment obligations under our 2024 Notes in shares of our common stock, our stockholders could experience significant dilution.

Certain provisions of Delaware law, our Certificate of Incorporation, and our Bylaws may delay or prevent an acquisition of us that stockholders may consider favorable or may prevent efforts by our stockholders to change our directors or our management, which could decrease the value of your shares.

Our Certificate of Incorporation and Bylaws contain provisions that could make it more difficult for a third party to acquire us, and may have the effect of preventing or hindering any attempt by our stockholders to replace our current directors or officers. These provisions include:

- Our board of directors has the right to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors.

- Our board of directors may issue, without stockholder approval, shares of preferred stock with rights, preferences and privileges determined by the board of directors. The ability to authorize and issue preferred stock with voting or other rights or preferences makes it possible for our board of directors to issue preferred stock with super voting, special approval, dividend or other rights or preferences on a discriminatory basis that could impede the success of any attempt to acquire us.

- Our board of directors is divided into three classes, each with staggered three-year terms. As a result, only one class of directors will be elected at each annual meeting of stockholders, and each of the two other classes of directors will continue to serve for the remainder of their respective three-year terms, limiting the ability of stockholders to reconstitute the board of directors.

- The vote of the holders of 75% of the outstanding shares of our common stock is required in order to take certain actions, including amendment of our bylaws, removal of directors for cause and certain amendments to our certificate of incorporation.

- Our Bylaws contain an exclusive forum clause providing that (i) the Court of Chancery of the State of Delaware will be the exclusive forum for actions or proceedings for (a) any derivative action or proceeding brought on our behalf; (b) any action asserting a breach of a fiduciary duty; (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of the State of Delaware or the our Certificate of Incorporation or Bylaws; (d) any action or proceeding to interpret, apply, enforce or determine the validity of our Certificate of Incorporation or Bylaws, including any right, obligation or remedy thereunder; or (e) any action asserting a claim governed by the internal affairs doctrine, and (ii) the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933.

As a Delaware corporation, we are also subject to certain anti-takeover provisions of Delaware law. Under Delaware law, a corporation may not engage in a business combination with any holder of 15% or more of its capital stock unless the holders have held the stock for three years or, among other things, the board of directors has approved the transaction. Our board of directors could rely on Delaware law to prevent or delay an acquisition of us, which could have the effect of reducing your ability to receive a premium on your common stock.

Because we do not intend to pay dividends in the foreseeable future, you will benefit from an investment in our common stock only if it appreciates in value.

We have not paid cash dividends on any of our classes of capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future. The success of your investment in our common stock will depend entirely upon any future appreciation. There is no guarantee that our common stock will appreciate in value or even maintain the price at which you purchased your shares.

General Risk Factors

Our ability to use net operating loss carry forwards to reduce future tax payments may be limited if taxable income does not reach sufficient levels or if there is a change in ownership of Acorda.

The Internal Revenue Code of 1986, as amended (the "IRC") contains certain provisions that can limit a taxpayer's ability to utilize net operating loss and tax credit carryforwards in any given year resulting from cumulative changes in ownership interests in excess of fifty percent over a three-year period ("ownership change"). In the event of such an ownership change, IRC Section 382 imposes an annual limitation on pre-ownership change tax attributes such as net operating loss and tax credit carryforwards. On June 1, 2022, the Company experienced an ownership change. The Company completed a Section 382 analysis which included consideration of net unrealized built in gains or losses and determined that its tax attributes would be limited and thus require a valuation allowance.

As of December 31, 2023, we had approximately $235.6 million of U.S. federal NOLs, of which $120.8 million on December 31, 2023 were incurred by our Biotie subsidiary. Our ability to use these NOL carryforwards will depend on the analysis of available positive and negative evidence, such as a history of earnings, reversing taxable temporary differences, tax planning strategies and future projections. Accordingly, a full valuation allowance continues to be recorded against the Biotie net operating losses of $120.8 million and a full valuation allowance of $114.7 million was recorded on Acorda's return filing group net operating losses.

We may have exposure to additional tax liabilities, which could have a material impact on our results of operations and financial position.

We are subject to income taxes, as well as non-income based taxes, in both the U.S. and Puerto Rico, as well as certain European countries where we have subsidiaries and/or subsidiary operations. Significant judgment is required in determining our tax liabilities. Although we believe our estimates are reasonable, the ultimate outcome with respect to the taxes we owe may differ from the amounts recorded in our financial statements. If the Internal Revenue Service, or other taxing authority, disagrees with the positions taken by us, we could have additional tax liability, and this could have a material impact on our results of operations and financial position. In addition, governments may adopt tax reform measures that significantly increase our worldwide tax liabilities, which could materially harm our business, financial condition and results of operations.

We may expand our business through the acquisition of companies or businesses or in-licensing product candidates that could disrupt our business and harm our financial condition.

We may in the future seek to expand our products and capabilities by acquiring one or more companies or businesses or in-licensing one or more product candidates. Our ability to enter into these types of transactions as part of our business strategy may be constrained based on our limited cash resources and/or limited access to other sources of capital needed to fund such transactions. Also, our ability to enter into such transactions is limited in part because of restrictive covenants contained in the indenture governing our 2024 Notes which constrain the type and terms of such agreements. Acquisitions and in-licenses involve numerous risks, including:

- substantial cash expenditures;
- potentially dilutive issuance of equity securities;
- incurrence or assumption of debt and contingent liabilities, some of which may not be disclosed to us and may be difficult or impossible for us to identify at the time of acquisition;
- exposure to business risks or issues, or legal or regulatory compliance issues, such as with the FDA, associated with the acquired or in-licensed company, business or product candidate, which may not be disclosed to us and may be difficult or impossible for us to identify at the time of acquisition or licensing;
- difficulties in assimilating the personnel and/or operations of acquired companies;
- diversion of our management's attention away from other business concerns;
- commencement of business in markets where we have limited or no direct experience; and
- potential loss of our key employees or key employees of acquired companies or businesses.

We cannot assure you that any acquisition or in-license will result in short-term or long-term benefits to us. We may incorrectly judge the value or worth of an acquired company or business or in-licensed products or product candidates, for example by underestimating the investment required to advance research and development programs, or overestimating likelihood of approval by the FDA or similar foreign regulators or the market potential of acquired or in-licensed products or product candidates. Acquired development programs are generally subject to all of the risks inherent in the drug development process, and our knowledge of the risks specifically relevant to acquired programs generally improves over time.

In addition, our future success would depend in part on our ability to manage the rapid growth associated with some of these acquisitions and in-licenses. Any acquisition might distract resources from and otherwise harm sales of Inbrija or other products we currently, or may in the future, market. We cannot assure you that we would be able to make the combination of our business with that of acquired businesses or companies or in-licensed products or product candidates work or be successful. Furthermore, the development or expansion of our business or any acquired business or company or in-licensed product or product candidate may require a substantial capital investment by us. We may not have these necessary funds or they might not be available to us on acceptable terms or at all. We may also seek to raise funds by selling shares of our stock, which could dilute our current stockholders' ownership interest, or securities convertible into our stock, which could dilute current stockholders' ownership interest upon conversion. Also, although we may from time to time announce that we have entered into agreements to acquire other companies or assets, we cannot assure you that these acquisitions will be completed in a timely manner or at all. These transactions are subject to an inherent risk that they may not be completed, for example because required closing conditions cannot be met at all or within specified time periods, termination rights may be exercised such as due to a breach by one of the parties, or other contingencies may arise that affect the transaction.

We face an inherent risk of liability in the event that the use or misuse of our products results in personal injury or death.

If the use or misuse of Inbrija, Ampyra or any other approved products we or our collaborator or distributor may sell in the future harms people, we may be subject to costly and damaging product liability claims brought against us by consumers, healthcare providers, pharmaceutical companies, third-party payers or others. The use of our product candidates in clinical trials could also expose us to product liability claims. We currently maintain a product liability insurance policy that includes coverage for our marketed products as well as for clinical trials. The total insurance limit is $25 million per claim, and the aggregate amount of claims under the policy is also capped at $25 million. We cannot predict all of the possible harms or side effects that may result from the use of our products or the testing of product candidates and, therefore, the amount of insurance coverage we currently have may not be adequate to cover all liabilities or defense costs we might incur. A product liability claim or series of claims brought against us could give rise to a substantial liability that could exceed our resources. Even if claims are not successful, the costs of defending such claims and potential adverse publicity could be harmful to our business.

Additionally, we have entered into various agreements where we indemnify third parties such as manufacturers and investigators for certain product liability claims related to our products. These indemnification obligations may require us to pay significant sums of money for claims that are covered by these indemnification obligations.

We may be the subject of litigation, which, if adversely determined, could harm our business and operating results.

From time to time, we may be subject to a variety of claims and lawsuits. The costs of defending any litigation, whether in cash expenses or in management time, could harm our business and materially and adversely affect our operating results and cash flows, even if we ultimately prevail in the litigation. An unfavorable outcome on any litigation matter could require that we pay substantial damages, or, in connection with any intellectual property infringement claims, could require that we pay ongoing royalty payments or prohibit us from selling certain of our products. In addition, we may decide to settle any litigation, which could cause us to incur significant settlement costs. A settlement or an unfavorable outcome on any litigation matter could have a material and adverse effect on our business, operating results, financial condition and cash flows. See *Legal Proceedings* contained in Part I, Item 3 of this Annual Report for more detailed information on existing or potential material legal proceedings.

We depend on sophisticated information technology systems to operate our business and a cyberattack or other breach of these systems, or a system error, could have a material adverse effect on our business and results of operations.

We are increasingly and substantially dependent upon information technology systems and infrastructure to operate our business. In the ordinary course of our business, we collect, store, process, and transmit sensitive data on our networks and systems, including our intellectual property and proprietary or confidential business information (such as research data) and confidential information (and personal information) with respect to our employees, customers, clinical trial patients and our business partners. In the ordinary course of our business, this type of data is also collected, stored, processed, and transmitted on the networks and systems of business partners and vendors from whom we purchase software and/or technology-based services.

The size and complexity of our and third-party information technology systems and infrastructure, and their connection to the Internet, make such systems potentially vulnerable to service interruptions, system errors leading to data loss, data theft, unauthorized disclosure, and/or cyberattacks. These incidents could result from inadvertent or intentional actions or omissions by our employees and consultants, or those of our business partners and vendors, or from the actions of third parties with criminal or other malicious intent. As with most other companies, our information technology systems have been, and will likely continue to be, subject from time to time to computer viruses, malicious codes, unauthorized access, and other forms or cyberattack, and we expect the sophistication and frequency of such efforts to continue to increase. To date, we are not aware of any significant impact to our business or operations resulting from these occurrences affecting our or third-party information technology systems that we utilize; however, there is a growing risk of harm from these types of incidents, which could disrupt our operations, result in a loss of assets, and otherwise have a material adverse effect on our business, financial condition, or results of operations.

We are increasingly relying on the networks and systems of third-party vendors as we seek to migrate the storage and processing of business and other information from our own computer servers and networks to "cloud"-based storage and software systems and services maintained by third-party vendors. While we believe there are potential cost savings and other benefits from this migration strategy, we do not control how third-party vendors maintain their networks and systems, what technology they implement to protect their systems from cyber-attack or other malicious behavior, or what corrective or remedial measures they would take in response to service issues or a criminal or other malicious attack. Also, many of these vendors are large, well-known technology companies that maintain substantial volumes of information for a large number of companies, and whose systems may therefore be larger targets for criminal or other malicious actors as compared to our own networks and systems. Accordingly, our migration to third-party networks and system could increase the risk that business and other information maintained by us could be subject to a breach, theft, unauthorized disclosure, or other forms of cyberattacks even if we are not specifically targeted.

Unauthorized access to, or disclosure or theft of, our business information and/or other information we maintain could compromise our intellectual property, expose sensitive business information, and expose personal information of our clinical trial patients, employees, and others. Any such event that leads to unauthorized access, use, or disclosure of personal information, including personal information regarding our patients or employees, could harm our reputation and business, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, require us to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information, which could disrupt our business, result in increased costs or loss of revenue, and/or result in significant legal and financial exposure. Also, unauthorized access to, or disclosure of theft of, our business information and/or other information we maintain could cause us to incur significant remediation costs, result in product development delays, disrupt or force suspension of key business operations and divert attention of management and key information technology resources. These events could also result in liability to others, if these incidents involve the data of others that we have agreed, or are otherwise legally responsible, to keep confidential and protect.

Breaches of information technology systems and technology can be difficult to detect, and any delay in identifying any such incidents may lead to increased harm of the type described above. While we have implemented security measures to protect our information technology systems and infrastructure, and monitor such systems and infrastructure on an ongoing basis for any current or potential threats, there can be no assurance that these measures will prevent the type of incidents that could have a material adverse effect on our business and results of operations. Also, we rely on the security measures and monitoring activities of our business partners and vendors who collect, store, process and transmit data on their networks and systems. In the event they experience a service issue or security incident: we may not receive timely notice from them of the issue or incident; they may not take adequate steps to remediate the issue or incident and protect against future occurrences; we may not have any remedy against them for losses and liabilities that we suffer, or if we have a remedy it may be inadequate, even though they are or may be at fault; and we may become subject to legal claims from others whose information has been compromised regardless of whether we are at fault.

Compliance with global privacy and data security requirements could result in additional costs and liabilities to us or inhibit our ability to collect and process data globally, and our failure to comply with data protection laws and regulations could lead to government actions, which could cause our business and reputation to suffer.

Evolving state, federal, and foreign laws, regulations and industry standards regarding privacy and security apply to our collection, use, retention, protection, disclosure, transfer and other processing of personal data. Privacy and data protection laws may be interpreted and applied differently from country to country and state to state in the U.S. and may create inconsistent or conflicting requirements, which can increase the costs incurred by us in complying with such laws, which may be substantial. For example, the European Data Protection Regulation ("GDPR") imposes a broad array of requirements for processing personal data, including elevated disclosure requirements regarding collection and use of such data, requirements that companies allow individuals to obtain copies or demand deletion of personal data held by those companies, limitations on retention of information, and public disclosure of significant data breaches, among other things. The GDPR provides for substantial penalties for non-compliance. Our efforts to comply with the GDPR and other privacy and data protection laws could impose significant costs and challenges that may increase over time, and we are exposed to substantial penalties or litigation related to violations of these or future data privacy laws and regulations.

Similarly, privacy laws and regulations are also expanding in the U.S. The California Consumer Privacy Act ("CCPA"), which became effective January 1, 2020, substantially expands privacy obligations of many businesses, including requiring new disclosures to California consumers, imposing new rules for collecting or using information about minors and affording consumers the right to know whether their data is sold or disclosed, the right to request that a company delete their personal information, the right to opt-out of the sale of personal information and the right to non-discrimination in terms of price or service when a consumer exercises a privacy right. Like the GDPR, the CCPA establishes potentially significant penalties for violation. The CCPA also provides a private right of action along with statutory damages for certain data breaches. The California Privacy Rights Act ("CPRA"), which became operational on July 1, 2023, expands on the CCPA, creating additional consumer rights and protections, including the right to correct personal information, the right to opt out of the use of personal information in automated decision making, the right to opt out of sharing consumer's personal information for cross-context behavioral advertising, and the right to restrict use of and disclosure of sensitive personal information. Similar restrictions are also included in the privacy laws of other states in the U.S.

We are evaluating our privacy program as a result of these privacy laws, and it is likely we will incur additional expense and investment of resources in our efforts to comply. If we are unable to implement a suitable compliance program relating to these or future privacy laws and regulations, we may face increased exposure to regulatory actions, including substantial fines and penalties.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 1C. Cybersecurity.

Risk Management and Strategy

We have developed a cybersecurity program intended to protect the confidentiality, integrity and availability of our systems, data, and products. Our cybersecurity program includes a variety of processes to assess, identify and manage risks from cybersecurity threats arising from our own and third-party provided systems, including customized annual training requirements, threat monitoring and detection tools, threat containment methods, risk assessments, and security requirements for our suppliers and other third parties. We assess third party cybersecurity controls through a cybersecurity questionnaire and include security and privacy addenda to our contracts where applicable. At least annually, we undertake several assessments to evaluate our cybersecurity controls.

Management has established an incident response plan designed to assess, identify and manage risks from cybersecurity threats and enable prompt response in the event that a cybersecurity incident is detected. We have a process in place for notification to our leadership response team in the event of a significant cyber incident, and for escalation of these events to our Audit Committee and Board, as appropriate. To date, we have not experienced a cybersecurity incident that has had a material impact on our business strategy, results of operations, or financial condition.

Governance

The Audit Committee of the Board of Directors oversees our cybersecurity program. It considers cybersecurity risk individually and within our overall risk management framework. We obtain periodic assessments of our information technology systems, including cybersecurity, the results of which assessments are reported to the Audit Committee. During meetings, our Vice President, Information Technology and executive leadership updates the committee on Acorda's cybersecurity posture, potential threats and risk mitigation strategies, and the progress of the Company's cybersecurity initiatives, as appropriate. The Chair of the Audit Committee and management provide regular briefings on such matters to the full Board of Directors, as appropriate.

Our Vice President, Information Technology is primarily responsible for leading our cybersecurity program through our information technology team. Our Vice President, Information Technology has over 20 years of experience in information technology, and regularly reports on cybersecurity matters to our Audit Committee. Our Vice President, Information Technology reports directly to our Chief Financial Officer, who is a member of our executive leadership team and reports directly to our Chief Executive Officer. As of December 31, 2023, our Information Technology team consisted of team members and contractors, many of whom have advanced degrees and cybersecurity-related industry certifications. Under the direction of our Vice President, Information Technology, we monitor developments that could affect our long-term organizational cybersecurity strategy based on threats globally and to continually enhance our cybersecurity program in response to such developments.

Item 2. Properties.

Pearl River, New York

In June 2022, we entered into a 6-year sublease for an aggregate of approximately 21,000 square feet of space in Pearl River, New York to serve as our new headquarters. We have no options to extend the term of the sublease. The sublease provides for monthly payments of rent during the lease term. The base rent is currently $0.3 million per year, subject to an annual 2.0% escalation factor in each subsequent year thereafter.

Waltham, Massachusetts

In October 2016, we entered into a 10-year lease agreement commencing in January 2017 for approximately 26,000 square feet of lab and office space in Waltham, Massachusetts. The base rent under the lease is currently $1.3 million per year.

In July 2023, we sublet to a third party approximately 13,000 square feet (approximately 49%) of our lab space. The sublease commenced on August 1, 2023, and will last for the reminder of our lease agreement through 2026. We recognized sublease rental income of $0.3 million in 2023 and will recognize $0.7 million in each subsequent year thereafter.

Item 3. Legal Proceedings.

We intend to commence voluntary proceedings under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York shortly after filing this Annual Report. We expect to continue to operate our business as a “debtor in possession” in accordance with the applicable provisions of the Code and orders of the Court. We expect to request approval from the Court for certain customary “first day” motions to continue our ordinary course operations after the filing date of the Intended Chapter 11 Proceedings.

In addition, from time to time, we may be involved in litigation or other legal proceedings relating to claims arising out of operations in the normal course of our business, including the matters described below. The outcome of litigation and other legal proceedings is unpredictable, and regardless of outcome, they can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors.

In July 2020, we filed an arbitration demand with the American Arbitration Association against Alkermes plc (“Alkermes”) after the parties were unable to resolve a dispute over license and supply royalties following the 2018 expiration of an Alkermes patent relating to Ampyra. In October 2022, an arbitration panel issued a final decision in this dispute and awarded us damages of $15 million plus prejudgment interest of $1.5 million and subsequently corrected the initial award to include an additional $1.6 million that was inadvertently omitted from the award calculation and pre-judgment interest of $0.2 million (the “Award”). In addition, as a result of the arbitration panel’s ruling, we no longer have to pay Alkermes any royalties on net sales for the license and supply of Ampyra, and we are free to use alternative sources for supply of Ampyra, which we have already secured.

In January 2023, we filed a petition in the District Court for the Southern District of New York ("District Court") to confirm the Award with modifications to the extent the arbitration panel disregarded federal law by declining to award us royalties we paid prior to July 2020 and after July 2018, the date on which the arbitration panel found that the parties' agreements were unenforceable as a matter of law. The petition sought restitution of the remaining illegal royalties that the arbitration panel found were demanded and collected by Alkermes in violation of the law in the amount of approximately $65 million together with pre- and post-award interest and costs. On February 8, 2023, Alkermes filed a brief opposing the relief requested in our petition and requested that the Award be confirmed without modification. We filed a brief in response on February 22, 2023. On August 4, 2023, the District Court confirmed the Award and denied our request to modify the Award. We filed a notice of appeal on September 1, 2023 at the United States Court of Appeals for the Federal Circuit appealing the District Court's denial of our request to modify the Award. On September 22, 2023, Alkermes filed a motion to transfer the appeal proceedings to the United States Court of Appeals for the Second Circuit. On October 10, 2023, we filed our response to Alkermes' motion to transfer and on October 24, 2023, Alkermes filed a reply to our response. On January 18, 2024, the Federal Circuit Court of Appeals denied Alkermes motion to transfer. We filed our opening brief on March 18, 2024.

On August 20, 2020, ratiopharm Gmbh ("ratiopharm") filed nullity actions against us in the German Federal Patent Court seeking to invalidate both of our German patents that derived from our European patents, EP 1732548 (the '548 patent) and EP 2377536 (the '536 patent), with claims directed to the use of a sustained dalfampridine composition to increase walking speed in a patient with multiple sclerosis. In November 2021, the German Federal Patent Court issued preliminary opinions indicating that the claimed subject matter of the '548 patent lacked inventive step and the claimed subject matter of the '536 patent lacked novelty and inventive step. At oral hearings in February 2022 and April 2022, the German Federal Patent Court dismissed ratiopharm's action against the '536 patent and the '548 patent, respectively, as inadmissible because of ongoing formality proceedings relating to these patents in the European Patent Office. Ratiopharm appealed the decision on the '536 patent but not the decision on the '548 patent. On December 6, 2022, the German Federal Court of Justice held that ratiopharm's '536 nullity action was admissible and remanded the case back to the German Federal Patent Court. On January 11, 2022, Stada Arzneimittel ("Arzneimittel") also filed a nullity action against the '536 patent. The ratiopharm and Arzneimittel '536 nullity actions have been consolidated. In November 2023, the German Federal Patent Court issued a preliminary opinion indicating that the claimed subject matter of the '536 patent lacked novelty and inventive step. At an oral hearing on March 4, 2024, the German Federal Patent Court held that the '536 patent was invalid. We are considering an appeal of this decision and will make a determination following receipt of the formal written decision. On July 27, 2022, Teva GmbH ("Teva") also filed a nullity action against the '548 patent, in the same court as the ratiopharm nullity actions. On January 27, 2023, the German Federal Patent Court issued a preliminary opinion in the '548 Teva nullity action that the claimed subject matter of the '548 patent lacked inventive step. At an oral hearing on July 11, 2023, the German Federal Patent Court held that the '548 patent was invalid. The German Federal Patent Court issued its formal written decision on the '548 patent on November 10, 2023. We appealed the decision on December 11, 2023 and the appeal is now pending before the Federal Court of Justice. We are working with Biogen to vigorously defend these patents and enforce our patent rights.

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 quoted on the Nasdaq Global Select Market under the symbol "ACOR." As a result of the Intended Chapter 11 Proceedings, we expect that our common stock will be delisted from the Nasdaq Global Select Market and begin trading on the Pink Open Market (commonly referred to as the "pink sheets").

On June 2, 2023, we filed an Amended and Restated Certificate of Incorporation with the Secretary of State of Delaware to effect a 1-for-20 reverse stock split and a proportionate reduction in the number of authorized shares from 61,666,666 to 3,083,333. Our common stock began trading on a split-adjusted basis on the Nasdaq Global Select Market on June 5, 2023. The reverse stock split applied equally to all outstanding shares of the common stock and did not modify the rights or preferences of the common stock. All figures in this report relating to shares of the Company's common stock (such as share amounts, per share amounts, and conversion rates and prices), including in the financial statements and accompanying notes to the financial statements, have been retroactively restated to reflect the reverse stock split.

Computershare, Inc. is the transfer agent and registrar for our common stock. As of March 27, 2024, we had 10 holders of record of our common stock, one of which is Cede & Co., a nominee for Depository Trust Company ("DTC"). All shares of common stock held by brokerage firms, banks, and other financial institutions as nominees for beneficial owners are deposited into participant accounts at DTC, and are therefore considered to be held of record by Cede & Co. as one stockholder.

Dividend Policy

We have never declared or paid cash dividends on our common stock. We do not anticipate paying any cash dividends on our capital stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business.

Unregistered Sales of Securities

None.

Issuer Purchases of Equity Securities

We did not repurchase any shares of our common stock during the fourth quarter of 2023. We have not announced any plans or programs for the repurchase of shares of our common stock.

Item 6. Selected Financial Data.

Not applicable.

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

The following discussion and analysis of our consolidated financial condition and results of operations should be read in conjunction with our audited consolidated financial statements and related notes included in this Annual Report on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report on Form 10-K, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. As a result of many factors, including those factors set forth in "Part I, Item 1A - Risk Factors" section of this Annual Report on Form 10-K, our actual results could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Background

We are a biopharmaceutical company focused on developing therapies that restore function and improve the lives of people with neurological disorders. We market Inbrija (levodopa inhalation powder), which is approved in the U.S. for intermittent treatment of OFF episodes, also known as OFF periods, in people with Parkinson's disease treated with carbidopa/levodopa. Inbrija is for as needed use and utilizes our ARCUS pulmonary delivery system, a technology platform designed to deliver medication through inhalation that we believe has potential to be used in the development of a variety of inhaled medicines. We also market branded Ampyra (dalfampridine) Extended Release Tablets, 10 mg to improve walking in adults with multiple sclerosis, or MS, and we will regain from Biogen the global commercialization rights to Fampyra (the brand name of Ampyra outside the U.S.).

Over the past several months, we, with the assistance of outside legal and financial advisors, have been engaged in a robust process to explore strategic alternatives and maximize value for our stakeholders in light of the upcoming maturity of our 6.00% convertible senior secured notes that mature on December 1, 2024 ("2024 Notes"). During this process, we were, and continue to be, in regular communication with the holders of the 2024 Notes and their advisors. We have evaluated every aspect of our business and have taken proactive steps to respond to the challenges we continue to face. Notwithstanding these measures, we engaged in an exhaustive process to find an appropriate strategic solution. Our Board of Directors, after reviewing a number of alternatives, has determined that it is in the best interests of the Company and its stakeholders to pursue a sale of assets under Chapter 11 of the United States Bankruptcy Code (the "Code") process, which we believe will ensure we obtain the maximum value for the Company and most importantly, that our products will be provided on an uninterrupted basis to patients who will continue to benefit from these much needed medications.

Shortly following the filing of this Annual Report, we expect to file for bankruptcy under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York ("Intended Chapter 11 Proceedings"). We expect to continue to operate our business as a "debtor in possession" in accordance with the applicable provisions of the Code and orders of the Court. We expect to request approval from the Court for certain customary "first day" motions to continue our ordinary course operations after the filing date of the Intended Chapter 11 Proceedings. For the duration of the Intended Chapter 11 Proceedings, our operations and our ability to develop and execute our business plan, our financial condition, our liquidity and our continuation as a going concern will be subject to a high degree of risk and uncertainty associated with the Intended Chapter 11 Proceedings.

The outcome of the Intended Chapter 11 Proceedings will be dependent upon factors that are outside of our control, including the actions of the Court. In conjunction with the Intended Chapter 11 Proceedings, we are continuing to explore strategic alternatives to maximize value for the benefit of our stakeholders, including a sale of substantially all of our assets under Section 363, a plan of reorganization or liquidation as an alternative to the sale process, or a combination thereof. The longer the proceedings related to the Intended Chapter 11 Proceedings continue, the less likely it may be that we can complete a sale of substantially all of our assets under Section 363 on terms that are favorable, or at all, or that we will be able to effect a plan of reorganization or liquidation as an alternative or in addition to a sale of substantially all of our assets. If we are unable to effect such a transaction or plan of reorganization or liquidation it will become increasingly likely that our clients, investors, strategic partners and service providers will lose confidence in our ability to seek to establish alternative advisory and/or other commercial relationships, which could further adversely affect our operations. Furthermore, so long as the Intended Chapter 11 Proceedings continue, we will be required to incur substantial costs for professional fees and other expenses associated with the administration of the Intended Chapter 11 Proceedings. We cannot predict the ultimate amount of all settlement terms for the liabilities that will be subject to the Intended Chapter 11 Proceedings.

Our Products

Inbrija/Parkinson's Disease

Inbrija is the first and only inhaled levodopa, or L-dopa, for intermittent treatment of OFF periods in people with Parkinson's disease treated with a carbidopa/levodopa regimen. Approximately one million people in the U.S. and 1.2 million people in Europe are diagnosed with Parkinson's; it is estimated that approximately 40% of people with Parkinson's in the U.S. experience OFF periods. U.S. Food and Drug Administration ("FDA") approval of Inbrija is for a single dose of 84 mg (administered as two capsules), which may be taken up to five times per day. Currently, Inbrija is available in the U.S. without the need for a medical exception for approximately 92% of commercially insured lives and approximately 68% of Medicare plan lives. U.S. net revenue for Inbrija was $33.6 million for the year ended December 31, 2023.

Inbrija is also approved for use in the European Union ("EU"). The European Commission ("EC") approved Inbrija dose is 66 mg (administered as two capsules) up to five times per day (per EU convention, this reflects emitted dose and is equivalent to the 84 mg labeled dose in the U.S.). Under the EU approval, Inbrija is indicated for the intermittent treatment of episodic motor fluctuations (OFF episodes) in adult patients with Parkinson's disease treated with a levodopa/dopa-decarboxylase inhibitor. We have entered into agreements to commercialize Inbrija in Spain, Germany, Latin America and China, and are in discussions with potential partners for commercialization of Inbrija in other jurisdictions outside of the U.S. Net revenues for ex-U.S. Inbrija sales were $4.8 million for the year ended December 31, 2023.

Inbrija utilizes our ARCUS platform for inhaled therapeutics. Because of our limited financial resources, we previously suspended work on ARCUS and other proprietary research and development programs. However, we will continue to discuss potential collaborations with companies that express interest in formulating their novel molecules for pulmonary delivery using ARCUS, and have performed feasibility studies for a number of these opportunities.

Ampyra/MS

Ampyra is an extended-release tablet formulation of dalfampridine approved by the FDA as a treatment to improve walking in patients with multiple sclerosis, or MS. Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse court ruling that invalidated certain Ampyra Orange Book-listed patents. We have experienced a significant decline in Ampyra sales due to competition from several generic versions of Ampyra. Additional manufacturers may market generic versions of Ampyra, and we expect our Ampyra sales will continue to decline over time. U.S. net revenue for Ampyra was $63.9 million for the year ended December 31, 2023.

Ampyra is marketed as Fampyra outside the U.S. by Biogen International GmbH ("Biogen"), under a License and Collaboration Agreement that we entered into in June 2009 ("Collaboration Agreement"). Under the Collaboration Agreement, we are entitled to receive double-digit tiered royalties on net sales of Fampyra, and we are also entitled to receive additional payments based on achievement of certain regulatory and sales milestones, although we do not anticipate achievement of any of those milestones in the foreseeable future. Fampyra has been approved in several countries across Europe, Asia, and the Americas. Our Fampyra patents have been challenged and invalidated in Germany and could be similarly challenged in other countries where Fampyra is marketed by Biogen, and these challenges could lead to generic competition for Fampyra. Generic drug manufacturers have launched competing products in Germany. See *Legal Proceedings* in Part I, Item 3 of this Annual Report for more information.

In January 2024, we received notice of termination from Biogen of the Collaboration Agreement. Accordingly, we will regain global commercialization rights to Fampyra. Biogen exercised its rights to terminate the Collaboration Agreement in order to shift resources towards upcoming business launches and programs that align with its priorities. The termination will be effective as of January 1, 2025. We plan to assume commercialization responsibilities during 2024 as marketing authorization transfers and distribution arrangements are finalized for each territory and we expect to enter into additional collaborations and distribution arrangements with third parties to transition commercialization of Fampyra.

Sale of Chelsea Manufacturing Operations and Catalent MSA

In February 2021, we sold our Chelsea manufacturing operations to Catalent Pharma Solutions ("Catalent"). In connection with the sale, we entered into a long-term, global manufacturing services (supply) agreement (the "2021 MSA") with Catalent for the manufacture of Inbrija. The 2021 MSA provided that we would purchase Inbrija exclusively from Catalent, and we were obligated to make minimum purchase commitments for Inbrija of $18 million annually through the expiration of the agreement on December 31, 2030.

In December 2021, we entered into an amendment of the 2021 MSA that adjusted the structure of the minimum payment terms for the period from July 1, 2021 through June 30, 2022 (the "Adjustment Period"). Under the amendment, the minimum payment obligation for the Adjustment Period was replaced with payments to Catalent for actual product delivered during the Adjustment Period subject to a cap for the Adjustment Period that corresponds to its original minimum purchase obligation for that period (i.e., $17 million), and with certain payments being made in the first half of 2022 instead of during the second half of 2021. As a result of the amendment, payments to Catalent for product delivered during the Adjustment Period were approximately $8.4 million less than the $17 million minimum inventory purchase obligation for that period.On December 31, 2022, we entered into a termination letter, which was subsequently amended and restated in March 2023, to terminate the 2021 MSA. In connection with the termination of the 2021 MSA, we are obligated to pay a $4 million termination fee to Catalent, payable in April 2024 and included in Accounts Payable as of September 30, 2023. The parties also entered into a Settlement and Release Agreement with respect to certain batches of Inbrija that were not delivered in 2022 as scheduled, and that were delivered in the first quarter of 2023.

Effective January 1, 2023, we entered into a new manufacturing services agreement with Catalent, which was subsequently amended in March 2023 (as amended in March 2023, the "New MSA"). Under the New MSA, Catalent will continue to manufacture Inbrija through 2030, with reduced minimum annual commitments through 2024 and significantly lower pricing thereafter. The New MSA provides for the scale-up of new spray drying equipment ("PSD-7"), which will provide expanded capacity for the long-term worldwide manufacturing requirements of Inbrija. In 2023, we satisfied our purchase commitment under the New MSA and purchased 15 batches of Inbrija at a total cost of $10.5 million. We are subject to a purchase commitment in 2024 of 24 batches of Inbrija at a total cost of $15.5 million. Thereafter, in 2025, we will pay Catalent a fixed per capsule fee based on the amount of Inbrija that is delivered for sale in the U.S. and other markets.

It is anticipated that by 2026, the PSD-7 equipment will be fully operational, which will significantly reduce the per capsule fees for all markets. We agreed to a minimum purchase requirement of at least three batches per year on the PSD-7 equipment, and will provide up to $1 million in each of 2023 and 2024 for capital expenditures to assist in the capacity expansion efforts. In addition, we paid Catalent $2 million in 2023 in connection with certain activities relating to the operational readiness of the PSD-7.

The New MSA, unless earlier terminated, will continue until December 31, 2030, and will be automatically extended for successive two-year periods unless either party provides the other with at least 18-months' prior written notice of non-renewal. Either party may terminate the New MSA by written notice under certain circumstances, including material breach (subject to specified cure periods) or insolvency. We may also terminate the New MSA upon certain specified regulatory events and for convenience upon 180 days' prior written notice.

During the year ended December 31, 2023, we incurred approximately $10.5 million of purchase commitments with Catalent, of which $10.5 million are recognized as inventory within our balance sheet for the period.

Convertible Senior Secured Notes Due 2024

In December 2019, we completed the private exchange of $276.0 million aggregate principal amount of our then outstanding 1.75% convertible senior notes due 2021 in exchange for a combination of approximately $207.0 million aggregate principal amount of newly-issued 6.00% convertible senior secured notes due 2024 ("2024 Notes") and paid approximately $55.2 million in cash to participating holders. As a result of the exchange, approximately $69.0 million of convertible senior notes due in 2021 remained outstanding, and was repaid at maturity on June 15, 2021 using cash on hand. The 2024 Notes are scheduled to mature on December 1, 2024 unless earlier converted in accordance with their terms. However, the commencement of the Intended Chapter 11 Proceedings will constitute an event of default under the Indenture governing the 2024 Notes, which will in turn result in the 2024 Notes becoming immediately due and payable, along with accrued and unpaid interest. The amount of the 2024 Notes significantly exceeds the price the Purchaser has agreed to pay for the Purchased Assets and the noteholders' security interest in substantially all of our remaining assets (including any recovery we receive from our ongoing litigation with Alkermes as described in this Annual Report) will continue following the consummation of the Section 363 sale and Intended Chapter 11 Proceedings. More information about the terms and conditions of the 2024 Notes is set forth in Note 7 to our Consolidated Financial Statements included in this report as well as in *Financing Arrangements* in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of this Annual Report.

Financial Management

As of December 31, 2023, we had cash, cash equivalents, and restricted cash of approximately $30.6 million. Restricted cash includes $0.7 million of which $0.4 million is related to self-funded employee health insurance, and $0.3 million is related to collateralized standby letters of credit. On June 1 and December 1, 2023, we made cash interest payments of approximately $6.2 million each in satisfaction of the interest payments due on June 1 and December 1, 2023, which was made out of restricted cash and operating cash respectively. Following the June 1, 2023 interest payment, we no longer have the option to pay interest on the 2024 Notes in our common stock and we have fully utilized the restricted cash that was set aside for the payment of interest on the 2024 Notes. More information about the terms and conditions of the 2024 Notes, including the event of default upon commencement of the Intended Chapter 11 Proceedings, is set forth in Note 7 to our Consolidated Financial Statements included in this Annual Report as well as in *Financing Arrangements* in the Management's Discussion and Analysis of Financial Condition and Results of Operations section of this Annual Report.

Reverse Stock Split

On June 2, 2023, we filed an Amended and Restated Certificate of Incorporation with the Secretary of State of Delaware to effect a 1-for-20 reverse stock split and a proportionate reduction in the number of authorized shares from 61,666,666 to 3,083,333. Our common stock began trading on a split-adjusted basis on the Nasdaq Global Select Market on June 5, 2023. The reverse stock split applied equally to all outstanding shares of the common stock and did not modify the rights or preferences of the common stock. All figures in this report relating to shares of our common stock (such as share amounts, per share amounts, and conversion rates and prices), including in the financial statements and accompanying notes to the financial statements, have been retroactively restated to reflect the reverse stock split.

Inbrija and ARCUS

Inbrija/Parkinson's Disease

Inbrija (levodopa inhalation powder) is the first and only inhaled levodopa, or L-dopa, for intermittent treatment of OFF episodes, also known as OFF periods, in people with Parkinson's disease treated with carbidopa/levodopa regimen. Our New Drug Application, or NDA, for Inbrija was approved by the FDA on December 21, 2018. The approval is for a single dose of 84 mg (administered as two capsules), which may be taken up to five times per day. Inbrija became commercially available in the U.S. in February 2019. Currently, Inbrija is available in the U.S. without the need for a medical exception for approximately 92% of commercially insured lives and approximately 68% of Medicare plan lives. U.S. net revenue for Inbrija was $33.6 million for the year ended December 31, 2023.

In September 2019, the European Commission ("EC") approved our Marketing Authorization Application ("MAA") for Inbrija. The approved dose is 66 mg (administered as two capsules) up to five times per day (per EU convention, this reflects emitted dose and is equivalent to the 84 mg labeled dose in the U.S.). Under the MAA, Inbrija is indicated in the EU for the intermittent treatment of episodic motor fluctuations (OFF episodes) in adult patients with Parkinson's disease treated with a levodopa/dopa-decarboxylase inhibitor. The MAA approved Inbrija for use in what were then the 27 countries of the EU, as well as Iceland, Norway, and Liechtenstein. Following the exit of the UK from the EU, we were granted a grandfathered Marketing Authorization (MA) by the Medicines and Healthcare Products Regulatory Agency (MHRA) in the UK that was approved in November 2021.

We have entered into agreements to commercialize Inbrija in Spain, Germany, Latin America, and China, and we are in discussions with potential partners for commercialization of Inbrija in other jurisdictions outside of the U.S. In 2021, we entered into exclusive distribution and supply agreements with Esteve Pharmaceuticals ("Esteve") to commercialize Inbrija in Spain and Germany. Under the terms of the Germany distribution agreement, in 2021 we received a €5 million (approximately $5.9) upfront payment, and we are entitled to receive additional sales-based milestones. Under the terms of both the Spain and Germany supply agreements, we are entitled to receive a significant double-digit percent of the Inbrija selling price in exchange for supply of the product. Esteve launched Inbrija in Germany in June 2022 and in Spain in February 2023. Net revenues for ex-U.S. Inbrija sales were $4.8 million for the year ended December 31, 2023.

In May 2022, we announced that we entered into exclusive distribution and supply agreements with Pharma Consulting Group, S.A., also known as Biopas Laboratories ("Biopas"), to commercialize Inbrija in nine countries within Latin America. Under the terms of the Biopas agreements, we are entitled to receive a significant double-digit, tiered percentage of the Inbrija selling price in exchange for supply of the product, and we are entitled to sales-based milestones. Biopas has submitted for marketing approval of Inbrija in Argentina, Chile, Colombia, Costa Rica, Ecuador, Panama and Peru, and expects to submit additional regulatory filings for approval in Mexico and Brazil in 2024. Biopas expects up to five regulatory approvals in 2024.

In May 2023, we entered into a distribution agreement and a commercial supply agreement with Hangzhou Chance Pharmaceuticals Co., Ltd ("Chance"), for the exclusive distribution of Inbrija in China. Chance is obligated to use commercially reasonable efforts to market Inbrija in China. The agreements remain in effect until the earlier of (a) the last commercial sale of Inbrija on a jurisdiction-by-jurisdiction basis, and (b) 12 years from the effective date of the agreements, subject to customary termination for insolvency and certain other termination rights. We received a non-refundable upfront payment of $2.5 million, and a near term milestone payment of up to $6 million, depending on the clinical study requirements to be determined by the Chinese National Medical Products Administration (NMPA). We will also receive $3 million upon regulatory approval of Inbrija in China, up to $132.5 million in sales milestones based on specified sales volumes, and a fixed fee for each carton of Inbrija supplied to Chance.

Parkinson's disease is a progressive neurodegenerative disorder resulting from the gradual loss of certain neurons in the brain. These neurons are responsible for producing dopamine and that loss causes a range of symptoms including impaired movement, muscle stiffness and tremors. The standard baseline treatment of Parkinson's disease is oral carbidopa/levodopa, but oral medication can be associated with wide variability in the timing and amount of absorption and there are significant challenges in creating a regimen that consistently maintains therapeutic effects. As Parkinson's progresses, people are likely to experience OFF periods, which are characterized by the return of Parkinson's symptoms that result from low levels of dopamine between doses of oral carbidopa/levodopa. OFF periods are often highly disruptive to people with Parkinson's. Approximately one million people in the U.S. and 1.2 million people in Europe are diagnosed with Parkinson's; it is estimated that approximately 40% of people with Parkinson's in the U.S. experience OFF periods.

Inbrija utilizes our ARCUS platform for inhaled therapeutics. ARCUS is a dry-powder pulmonary drug delivery technology that we believe has potential to be used in the development of a variety of inhaled medicines. The ARCUS platform allows systemic delivery of medication through inhalation, by transforming molecules into a light, porous dry powder. This allows delivery of substantially higher doses of medication than can be delivered via conventional dry powder technologies. We acquired the ARCUS technology platform as part of our 2014 acquisition of Civitas Therapeutics. We have worldwide rights to our ARCUS drug delivery technology, which is protected by extensive know-how and trade secrets and various U.S. and foreign patents, including patents that protect the Inbrija dry powder capsules beyond 2030. Inbrija also has ten years of market exclusivity in Europe that is set to expire in September 2029.

We believe there are potential opportunities for using ARCUS with central nervous system, or CNS, as well as non-CNS, disorders. Due to several corporate restructurings since 2017 and associated cost-cutting measures, we suspended work on ARCUS and other proprietary research and development programs. However, we will continue to discuss potential collaborations with companies that express interest in formulating their novel molecules for pulmonary delivery using ARCUS, and have performed feasibility studies for a number of these opportunities.

Also, due to the corporate restructurings, employee attrition and the 2021 sale of our Chelsea manufacturing operations, we may need to hire replacement personnel or engage consultants to continue with ARCUS research and development work beyond feasibility and similar early-stage studies.

Ampyra

Ampyra was approved by the FDA in January 2010 to improve walking in adults with multiple sclerosis. To our knowledge, Ampyra is the first drug approved for this indication. Efficacy was shown in people with all four major types of MS (relapsing remitting, secondary progressive, progressive relapsing and primary progressive). Ampyra became subject to competition from generic versions of Ampyra starting in late 2018 as a result of an adverse U.S. federal district court ruling that invalidated certain Ampyra Orange Book-listed patents. We have experienced a significant decline in Ampyra sales due to competition from several generic versions of Ampyra. Additional manufacturers may market generic versions of Ampyra, and we expect our Ampyra sales will continue to decline over time. U.S. net revenue for Ampyra was $63.9 million for the year ended December 31, 2023.

Prior to October 2022 our primary source of supply of Ampyra was provided through a manufacturing and license agreement with Alkermes Plc ("Alkermes"). In connection with a dispute over license and supply royalties, in the fourth quarter of 2022, an arbitration panel awarded to us an aggregate of $18.3 million including prejudgment interest. In addition, the arbitration panel ruled the agreements with Alkermes as unenforceable, and as a result we no longer have to pay Alkermes any royalties on net sales for license and supply of Ampyra, and we are using an alternative source for supply of Ampyra. The cost savings associated with this decision have greatly benefited Ampyra's value to us.

Ampyra is marketed as Fampyra outside the U.S. by Biogen under a Collaboration and License Agreement ("Collaboration Agreement"). Under the Collaboration Agreement, we are entitled to receive double-digit tiered royalties on net sales of Fampyra, and we are also entitled to receive additional payments based on achievement of certain regulatory and sales milestones, although we do not anticipate achievement of any of those milestones in the foreseeable future. Fampyra has been approved in several countries across Europe, Asia, and the Americas. Our Fampyra patents have been challenged and invalidated in Germany and could be similarly challenged in other countries where Fampyra is marketed by Biogen. The Germany nullity actions are further described in the *Legal Proceedings* section of this Annual Report. Fampyra currently faces generic competition in Germany. Continued challenges to the Fampyra patents could lead to generic competition with Fampyra in other countries, which could have a material adverse effect on our royalty revenue from Biogen and revenues following transition of our commercialization right from Biogen.

In January 2024, we received notice of termination from Biogen of the Collaboration Agreement. Accordingly, we will regain global commercialization rights to Fampyra. Biogen exercised its right to terminate the Collaboration Agreement in order to shift resources towards upcoming launches and programs that align with its priorities. The termination will be effective as of January 1, 2025. Effective as of the termination date the Collaboration Agreement will be terminated in its entirety and the license rights granted by the Company to Biogen will terminate. Following the termination date, the Company will not be entitled to receive any further royalty or milestone payments from Biogen. We are working with Biogen toward a transition for us to commercialize and supply Fampyra for the great majority of people with multiple sclerosis outside the U.S. currently being served. We plan to assume commercialization responsibilities as soon as possible during 2024 as marketing authorization transfers and distribution arrangements are finalized for each territory.

Results of Operations

Year Ended December 31, 2023 Compared to Year Ended December 31, 2022

Net Revenues

Net Product Revenues

Inbrija

We recognize product sales of Inbrija following receipt of product by companies in our distribution network, which for Inbrija primarily includes specialty pharmacies, and ASD Specialty Healthcare, Inc. (an Amerisource Bergen affiliate). We recognized net revenues from the U.S. sales of Inbrija of $33.6 million and $28.0 million for the years ended December 31, 2023 and 2022, respectively. The increase in Inbrija net revenues was composed of an increase in net volume of $4.0 million bolstered by price increases and discount and allowance adjustments of $1.6 million. Additionally, we recognized revenues from our supply agreement with Esteve of $4.8 million and $2.9 million for the years ended December 31, 2023 and 2022, respectively.

Ampyra

We recognize product sales of Ampyra following receipt of product by companies in our distribution network, which for Ampyra primarily includes specialty pharmacies, which deliver the medication to patients by mail. We recognized net revenues from the sale of Ampyra to these customers of $63.9 million and $72.9 million for the years ended December 31, 2023 and 2022, respectively. The decrease in Ampyra net revenues was composed of a decrease in net volume of $12.0 million, partially offset by price increase and discount and allowance adjustments of $3.0 million.

Discounts and Allowances on Sales

Discounts and allowances for both Ampyra and Inbrija are included as an offset in net revenues consist of allowances for customer credits, including estimated chargebacks, rebates, returns and discounts. Discounts and allowances are recorded following shipment of our products to our customers. Adjustments are recorded for estimated chargebacks, rebates, and discounts. Discounts and allowances also consist of discounts provided to Medicare beneficiaries whose prescription drug costs cause them to be subject to the Medicare Part D coverage gap (*i.e.*, the "donut hole"). Payment of coverage gap discounts is required under the Affordable Care Act. Discounts and allowances may increase as a percentage of sales as we enter into new managed care contracts in the future.

We believe that first and fourth quarter revenues for Ampyra and Inbrija are subject to certain recurring seasonal factors relating to the commencement of a new calendar year. For example, some patients refill their prescriptions earlier ahead of the new year, in the fourth quarter, in anticipation of the year-end reset of health plan deductibles and the Medicare donut hole, or a year-end switch of their insurance plans or pharmacy benefit providers. Also, we believe specialty pharmacies may increase their inventory in anticipation of the holidays and new year. These factors have had a positive impact on fourth quarter revenues and a negative impact on first quarter revenues.

Royalty Revenues

We recognized $15.1 million in royalty revenues for the year ended December 31, 2023 as compared to $14.2 million for the year ended December 31, 2022, related to ex-U.S. sales of Fampyra by Biogen and milestone revenues received based on sales of Qutenza. The increase was primarily due to the increase in milestone revenues received based on Qutenza sales of $2.5 million, partially offset by decrease of royalties recognized from Fampyra sales of $0.4 million and a decrease in royalties recognized from Neurelis sales of $1.2 million.

License Revenues

We recognized $0.1 million and $0.5 million in license revenues for the years ended December 31, 2023 and 2022 related to ex-U.S. sales of Inbrija and the license agreement with Asieris Pharmaceuticals for the preclinical asset Nepicastat, respectively.

Cost of Sales

We recorded cost of sales of $15.3 million for the year ended December 31, 2023 as compared to $30.3 million for the year ended December 31, 2022. This decrease of $15.0 million was primarily due to a reduction of $14.3 million in inventory costs related to recognized revenues, a reduction of $0.5 million related to royalty fees based on net product shipments, and a reduction of $1.2 million related to period costs related to expired inventory, freight, stability testing, packaging and other, partially offset by an increase of $1.0 million in idle capacity costs.

Cost of sales for the year ended December 31, 2023 consisted primarily of $11.3 million in inventory costs related to recognized revenues, $3.9 million in idle capacity and scrap inventory, and $0.1 million in other period costs.

Cost of sales for the year ended December 31, 2022 consisted primarily of $25.6 million in inventory costs related to recognized revenues, $2.8 million in idle capacity and scrap inventory, $1.4 million in other period costs, and $0.5 million in royalty fees based on net product shipments.

Amortization of Intangibles

We recorded amortization of intangible asset related to Inbrija of $30.8 million for the years ended December 31, 2023 and 2022.

Research and Development

Research and development expenses for the year ended December 31, 2023 were $5.2 million as compared to $5.8 million for the year ended December 31, 2022, a decrease of $0.6 million, or 10.3%. The decrease was primarily due to reductions in several research and development programs, and a change in classification of certain departmental costs from research and development to general and administrative expenses in 2022.

Selling, General and Administrative

Sales and marketing expenses for the year ended December 31, 2023 were $37.5 million compared to $40.9 million for the year ended December 31, 2022, a decrease of approximately $3.5 million, or 8.6%. The decrease was attributable primarily to a decrease in spending related to marketing for Inbrija of $3.1 million, and a decrease in salaries and benefits expenses of $0.4 million, partially offset by an increase in other selling related expenses of $0.1 million.

General and administrative expenses for the year ended December 31, 2023 were $52.3 million compared to $65.3 million for the year ended December 31, 2022, a decrease of approximately $13.0 million, or 19.9%. This decrease was primarily due to a decrease in salaries and benefit costs of $1.6 million, a decrease in Ardsley facilities' spending of $5.2 million, a decrease in professional and legal fees of $5.1 million, a decrease of $0.7 million in fees related to finance projects pertaining to debt restructuring, a decrease of $0.5 million related to costs for drug safety, and a decrease of $1.7 million due to IT functions, partially offset by an increase in digital media support spending of $1.8 million.

Change in Fair Value of Derivative Liability

A derivative liability was recorded in December 2019 as a result of the issuance of the 2024 Notes. The derivative liability is measured at fair value on a quarterly basis and changes in the fair value are recorded in the consolidated statement of operations. We recorded $0.0 and negligible income due to the change in the fair value of the derivative liability for the years ended December 31, 2023 and December 31, 2022, respectively.

Long-Lived Asset Impairment

We recognized a long-lived asset impairment charge of $251.3 million for the definite-lived Inbrija intangible asset for the year ended December 31, 2023. During the fourth quarter of 2023, the commencement of the Intended Chapter 11 Proceedings was determined to be a triggering event in connection with the our review of potential impairment on our long-lived assets. We performed a quantitative assessment and after completing the assessment during the fourth quarter of 2023, we concluded that the carrying value of the Inbrija intangible asset exceeded its estimated fair value and therefore, the Inbrija long-lived asset was partially impaired.

Changes in Fair Value of Acquired Contingent Consideration

As a result of the original spin out of Civitas from Alkermes, part of the consideration to Alkermes was a future royalty to be paid to Alkermes on Inbrija. We acquired this contingent consideration as part of the Civitas acquisition. The fair value of that future royalty is assessed quarterly. We recorded gain relating to changes in the fair value of our acquired contingent consideration of $9.6 million for the year ended December 31, 2023 compared to a gain of $6.7 million for the year ended December 31, 2022. The changes in the fair-value of the acquired contingent consideration were primarily due to the change in projected revenue, as well as a decrease in the discount rate.

Other Operating Income

Other operating income for the year ended December 31, 2023 was $0.0 million, compared to other operating income for the year ended December 31, 2022 of $12.6 million, primarily due to recognition of the principal-only portion of the Alkermes arbitration award of $16.6 million offset by the termination fee payable to Catalent of $4.0 million to establish our new manufacturing services agreement.

Interest and Amortization of Debt Discount Expense

Interest and amortization of debt discount expense for the year ended December 31, 2023 was $31.5 million as compared to $30.2 million for the year ended December 31, 2022.

Interest Income

Interest income as of December 31, 2023 was $0.5 million, compared to $1.9 million as of December 31, 2022, a decrease of $1.4 million. The decrease is primarily attributable to $1.7 million of prejudgment interest awarded to us through arbitration to resolve a dispute over license and supply royalties following the 2018 invalidation of an Alkermes patent relating to Ampyra in 2022, partially offset by a $0.3 million increase in interest income earned during the period.

Gain on Extinguishment of Debt

Gain on extinguishment of debt for the year ended December 31, 2023 was $0.0 million as compared to $27.1 million for the year ended December 31, 2022. This change was directly attributable to the waiver of our Non-Convertible Capital Loans related to our Biotie subsidiary, Biotie Therapies Ltd. in December 2022.

Other Income (Expense), Net

Other income, net was $0.1 million for the year ended December 31, 2023 compared to $1.3 million for the year ended December 31, 2022. The change is primarily attributable to the reduction in accrual and corresponding recognition of other income related to the settlement of an arbitration claim against Drug Royalty III, L.P., and LSRC III S.ar.l. (collectively, "DRI") in 2022.

Benefit from (Provision for) Income Taxes

We recorded a $43.2 million benefit from income taxes for the year ended December 31, 2023 as compared to a ($30.7) million provision for income taxes for the year ended December 31, 2022. The effective income tax rates for the year ended December 31, 2023 and 2022 were 14.6% and (87.0)%, respectively.

The variances in the effective tax rates for the year ended December 31, 2023 and 2022 was due primarily to an increase in the valuation allowance recorded on our deferred tax assets, equity forfeitures and permanent items related to the cancellation of debt income from the non-convertible capital loans granted by Business Finland (formerly Tekes).

We continue to evaluate the realizability of our deferred tax assets on a quarterly basis and will adjust such amounts in light of changing facts and circumstances including, but not limited to, future projections of taxable income, tax legislation, rulings by relevant tax authorities, the progress of ongoing tax audits and the regulatory approval of products currently under development. Any changes to the valuation allowance or deferred tax assets and liabilities in the future would impact our income taxes.

The Massachusetts income tax examination for the tax years 2018 and 2019 was finalized during the third quarter with no adjustment. The New Jersey income tax examination was finalized during the first quarter for tax years 2015 through 2018 with no adjustments.

Liquidity and Capital Resources

Voluntary Filing Under Chapter 11

Shortly following the filing of this Annual Report, we expect to file for bankruptcy under Chapter 11. We expect to continue to operate our business as a "debtor in possession" in accordance with the applicable provisions of the Code and orders of the Court. We expect to request approval from the Court for certain customary "first day" motions to continue our ordinary course operations after the filing date of the Intended Chapter 11 Proceedings. For the duration of the Intended Chapter 11 Proceedings, our operations and our ability to develop and execute our business plan, our financial condition, our liquidity and our continuation as a going concern will be subject to a high degree of risk and uncertainty associated with the Intended Chapter 11 Proceedings. The outcome of the Intended Chapter 11 Proceedings will be dependent upon factors that are outside of our control, including the actions of the Court.

Overview

Since our inception, we have financed our operations primarily from: private placements and public offerings of our capital stock; borrowing money through loans and the issuance of debt instruments; payments received under our collaboration and licensing agreements; revenue from sales of Ampyra, Fampyra, and Inbrija, as well as our former products, Zanaflex and Qutenza; royalty monetization and our revenue interest financing arrangement; and, to a lesser extent, funding from government grants.

The accompanying consolidated financial statements in Part II, Item 8, "Financial Statements and Supplementary Data," of this Annual Report on Form 10-K have been prepared assuming that we will continue as a going concern within one year after the date that the financial statements are issued. At December 31, 2023, we had $30.0 million of cash and cash equivalents, compared to $37.5 million at December 31, 2022. Our December 31, 2023 cash and cash equivalents balance does not include $0.7 million of restricted cash of which $0.4 million is related to self-funded employee health insurance, and $0.3 million is related to collateralized standby letters of credit. We incurred net losses of $252.9 million and $65.9 million for the years ended December 31, 2023 and 2022, respectively.

Our future capital requirements will depend on a number of factors, including:

- the progress and outcome of the Intended Chapter 11 Proceedings;
- the amount of revenue generated from sales of Inbrija and Ampyra;
- our ability to manage operating expenses;
- the amount and timing of purchase price, milestone or other payments that we may owe or have a right to receive under collaboration, license, asset sale, acquisition, or other agreements or transactions; and the extent to which the terms and conditions of our convertible senior secured notes due 2024 (the "2024 Notes") restrict or direct our use of proceeds from such transactions;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims and other intellectual property rights; and
- capital required or used for future acquisitions, to in-license new products, programs or compounds, or for research and development relating to existing or future acquired or in-licensed programs or compounds.

Our ability to meet our future operating requirements, repay our liabilities, and meet our other obligations, and continue as a going concern are dependent upon a number of factors, including our ability to generate cash from product sales, reduce planned expenditures, and obtain additional financing.

The Company believes that its existing cash and cash equivalents will not be sufficient to cover its cash flow requirements. The 2024 Notes are scheduled to mature on December 1, 2024, unless earlier converted in accordance with their terms. However, the commencement of the Intended Chapter 11 Proceedings will constitute an event of default under the Indenture governing the 2024 Notes, which will in turn result in the 2024 Notes becoming immediately due and payable, along with accrued and unpaid interest. At December 31, 2023, the principal balance outstanding under the 2024 Notes was $207.0 million. The amount of the 2024 Notes significantly exceeds the price the Purchaser has agreed to pay for the Purchased Assets and the noteholders' security interest in substantially all of our remaining assets (including any recovery we receive from our ongoing litigation with Alkermes as described in this Annual Report) will continue following the consummation of the Section 363 sale and Intended Chapter 11 Proceedings. Additionally, for the duration of the Intended Chapter 11 Proceedings, our operations and our ability to develop and execute our business plan, our financial condition, our liquidity and our continuation as a going concern will be subject to a high degree of risk and uncertainty associated with the Intended Chapter 11 Proceedings. Management believes that, due to these circumstances and events, substantial doubt exists regarding our ability to continue as a going concern through one year from the date that these financial statements are issued.

Financing Arrangements

DIP Credit Agreement

In order to fund the continued operations of the Company during the pendency of the Intended Chapter 11 Proceedings, we and certain of the RSA Noteholders agreed to the terms of a form of Debtor-in-Possession Credit Agreement (the "DIP Credit Agreement") to be entered into by and among the Company, as borrower, and the lenders from time to time party thereto (collectively, the "DIP Lenders", GLAS USA LLC, as administrative agent (the "DIP Administrative Agent"), and GLAS Americas, LLC, collateral agent (collectively, with the DIP Administrative Agent, the "DIP Agent"), pursuant to which the DIP Lenders would provide the Company with a senior secured, superpriority debtor-in-possession term loan facility in the maximum aggregate amount of $60.0 million (the "DIP Credit Facility," and the commitments of the DIP Lenders thereunder, the "DIP Commitments" and, the loans thereunder, the "DIP Loans"), which, subject to the satisfaction of certain conditions precedent to drawing as set forth in the DIP Credit Agreement, including the approval of the Court, will be made available to the Company in multiple drawings as follows: (i) up to $10.0 million ("Interim DIP Loan Commitment") will be made available for drawing upon entry by the Court of an interim order authorizing and approving the DIP Credit Facility on an interim basis (the "Interim DIP Order"),00 (ii) up to $10.0 million ("Final DIP Loan Commitments") will be made available for drawing upon entry of the Court of a final order authorizing and approving the DIP Credit Facility on a final basis (the "Final DIP Order" and together with the Interim DIP Order, the "DIP Orders"), and (iii) upon subject to entry of the Final Order, a roll-up facility in the aggregate maximum principal amount of $40.0 million, representing a roll-up of obligations under the 2024 Notes on a two dollars to one dollar basis of the DIP Commitments under the DIP Facility made by the RSA Noteholders.

The DIP Credit Facility will mature (the "Maturity Date") on the earlier of 180 days from the petition date of the Intended Chapter 11 Proceedings and entry by the Court of the final sale order in connection with a Section 363 sale transaction. The interest rate applicable to DIP Loans is 10.5% per annum. Accrued interest will be due and payable in kind on the last business day of each calendar month, commencing April 30, 2024.

The Company must also pay (i) a commitment fee of 2.0% per annum of the sum of the (x) Interim DIP Loan Commitments and (y) Final DIP Loan Commitments, which is fully earned and due on the closing date of the DIP Credit Facility and, is paid in kind and capitalized to the balance sheet of the Company upon the entry of the Final Order, (ii) an exit fee of 2.0% of the aggregate DIP Loans actually advanced under the DIP Credit Facility, which fee is payable in cash on the earlier of the date of repayment of all or a portion of any DIP Loans and the Maturity Date, and (iii) a ticking fee equal to a DIP Lender's pro rata share of the product of (i) 2.0% per annum multiplied by (ii) for each monthly period (or partial period if applicable), the actual daily amount by which the DIP Commitment exceeds the aggregate amount of DIP Loans advanced, which ticking fee shall be payable monthly in arrears on the last business day of each calendar month, commencing April 30, 2024.

The DIP Credit Agreement includes certain customary representations and warranties, covenants applicable to the Company and its subsidiaries, and events of default. If an event of default under the DIP Credit Agreement occurs and is continuing, then the DIP Agent may declare any outstanding obligations under the DIP Credit Agreement to be immediately due and payable.

The obligations under the DIP Credit Agreement are guaranteed by Civitas Therapeutics, Inc., Biotie Therapies, LLC, Biotie Therapies AG, Neuronex, Inc. and Acorda Therapeutics Limited (the "Guarantors"). Subject to customary exceptions and limitations, all of the borrowings under the DIP Credit Agreement are secured by a lien on substantially all of the assets of the Company and each Guarantor.

The description of the DIP Credit Agreement set forth above is qualified in its entirety by reference to the final, executed DIP Credit Agreement, as approved by the Court.

Convertible Senior Secured Notes Due 2024

On December 24, 2019, we completed the private exchange of $276.0 million aggregate principal amount of our outstanding 1.75% Convertible Senior Notes due 2021 (the "2021 Notes") for a combination of the 2024 Notes and cash. For each $1,000 principal amount of exchanged 2021 Notes, we issued $750 principal amount of the 2024 Notes and made a cash payment of $200 (the "Exchange"). In the aggregate, we issued approximately $207.0 million aggregate principal amount of the 2024 Notes and paid approximate $55.2 million in cash to participating holders. The Exchange was conducted with a limited number of institutional holders of the 2021 Notes pursuant to Exchange Agreements dated as of December 20, 2019. The 2021 Notes received by us in the Exchange were canceled in accordance with their terms. Accordingly, upon completion of the Exchange, $69.0 million of the 2021 Notes remained outstanding. On June 15, 2021, we repaid the outstanding balance of the 2021 Notes at their maturity date using cash on hand.

The 2024 Notes were issued pursuant to an Indenture, dated as of December 23, 2019, among us, our wholly owned subsidiary, Civitas Therapeutics, Inc. (along with any domestic subsidiaries acquired or formed after the date of issuance, the "Guarantors"), and Wilmington Trust, National Association, as trustee and collateral agent (the "2024 Indenture"). The 2024 Notes are senior obligations of us and the Guarantors, secured by a first priority security interest in substantially all of the assets of us and the Guarantors, subject to certain exceptions described in the Security Agreement, dated as of December 23, 2019, between the grantors party thereto and Wilmington Trust, National Association, as collateral agent.

The 2024 Notes are scheduled to mature on December 1, 2024 unless earlier converted in accordance with their terms prior to such date. However, the commencement of the Intended Chapter 11 Proceedings will constitute an event of default under the Indenture governing the 2024 Notes, which will in turn result in the 2024 Notes becoming immediately due and payable, along with accrued and unpaid interest. In addition, our common stock is likely to be delisted from Nasdaq following the consummation of the Intended Chapter 11 Proceedings, which would constitute a make-whole fundamental change that would provide holders of our 2024 Notes with the right to require us to repurchase their notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, if any. We do not have the cash to make such a payment, which may complicate our ability to effectively complete the Intended Chapter 11 Proceedings and may result in our liquidation under Chapter 7. Under the 2024 Indenture, we no longer have the option to pay interest on the 2024 Notes in common stock and we have fully utilized the restricted cash that was set aside for the payment of interest on the 2024 Notes.

The 2024 Notes are convertible at the option of the holder into shares of our common stock at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date. The adjusted conversion rate for the 2024 Notes is 2.3810 shares of our common stock per $1,000 principal amount of 2024 Notes, representing an adjusted conversion price of approximately $420.00 per share of common stock. The conversion rate was adjusted to reflect the 1-for-6 reverse stock split effected on December 31, 2020, and adjusted again to reflect the 1-for-20 reverse split effected on June 2, 2023. As of December 31, 2023 the maximum number of shares that could be required to be issued would be 969,102 shares.

We may elect to settle conversions of the 2024 Notes in cash, shares of our common stock or a combination of cash and shares of our common stock. In addition, we will have the right to cause all 2024 Notes then outstanding to be converted automatically if the volume-weighted average price per share of our common stock equals or exceeds 130% of the adjusted conversion price for a specified period of time and certain other conditions are satisfied.

Subject to a number of exceptions and qualifications, the 2024 Indenture restricts our ability and the ability of certain of our subsidiaries to, among other things, (i) pay dividends or make other payments or distributions on their capital stock, or purchase, redeem, defease or otherwise acquire or retire for value any capital stock, (ii) make certain investments, (iii) incur indebtedness or issue preferred stock, other than certain forms of permitted debt, which includes, among other items, indebtedness incurred to refinance the 2021 Notes, (iv) create liens on their assets, (v) sell their assets, (vi) enter into certain transactions with affiliates or (vii) merge, consolidate or sell of all or substantially all of their assets. The 2024 Indenture also requires us to make an offer to repurchase the 2024 Notes upon the occurrence of certain asset sales.

The 2024 Indenture provides that a number of events will constitute an event of default, including, among other things, (i) a failure to pay interest for 30 days, (ii) failure to pay the 2024 Notes when due at maturity, upon any required repurchase, upon declaration of acceleration or otherwise, (iii) failure to convert the 2024 Notes in accordance with the 2024 Indenture and the failure continues for five business days, (iv) not issuing certain notices required by the 2024 Indenture within a timely manner, (v) failure to comply with the other covenants or agreements in the 2024 Indenture for 60 days following the receipt of a notice of non-compliance, (vi) a default or other failure by us to make required payments under our or certain of our subsidiaries; other indebtedness having an outstanding principal amount of $30.0 million or more, (vii) failure by us or certain subsidiaries to pay final judgments aggregating in excess of $30.0 million, (viii) certain events of bankruptcy or insolvency and (ix) the commercial launch in the United States of a product determined by the U.S. FDA to be bioequivalent to Inbrija. In the case of an event of default arising from certain events of bankruptcy or insolvency with respect to us, all outstanding 2024 Notes will become due and payable immediately without further action or notice. If any other event of default occurs and is continuing, the trustee or the holders of at least 25% in aggregate principal amount of the then outstanding 2024 Notes may declare all the notes to be due and payable immediately.

We assessed all terms and features of the 2024 Notes in order to identify any potential embedded features that would require bifurcation. As part of this analysis, we assessed the economic characteristics and risks of the 2024 Notes, including the conversion, put and call features. We concluded the conversion features required bifurcation as a derivative. The fair value of the conversion features derivative was determined based on the difference between the fair value of the 2024 Notes with the conversion options and the fair value of the 2024 Notes without the conversion options using a binomial model. We determined that the fair value of the derivative upon issuance of the 2024 Notes was $59.4 million and recorded this amount as a derivative liability with an offsetting amount as a debt discount as a reduction to the carrying value of the 2024 Notes on the closing date, or December 24, 2019. There are several embedded features within the 2024 Notes which, upon issuance, did not meet the conditions for equity classification. As a result, these features were aggregated together and recorded as the derivative liability conversion option. The conversion feature is measured at fair value on a quarterly basis and the changes in the fair value of the conversion feature for the period will be recognized in the consolidated statements of operations.

We received stockholder approval on August 28, 2020 to increase the number of authorized shares of our common stock from 13,333,333 shares to 61,666,666 shares. As a result of the share approval, we determined that multiple embedded conversion options met the conditions for equity classification. We performed a valuation of these conversion options as of September 17, 2020, which was the date we completed certain securities registration obligations for the shares underlying the 2024 Notes. The resulting fair value of these conversion options was $18.3 million, which was reclassified to equity and presented in the statement of stockholder's equity as of September 30, 2020, net of the $4.4 million tax impact. The equity component is not re-measured as long as it continues to meet the conditions for equity classification. We performed a valuation of the derivative liability related to certain embedded conversion features that are precluded from equity classification. The fair value of these conversion features was calculated to be negligible as of December 31, 2023.

The outstanding 2024 Note balances as of December 31, 2023 and December 31, 2022 consisted of the following:

(In thousands)	December 31, 2023	December 31, 2022
Liability component:		
Principal	$ 207,000	$ 207,000
Less: debt discount and debt issuance costs, net	(20,857)	(39,969)
Net carrying amount	186,143	167,031
Equity component	18,257	$ 18,257
Derivative liability-conversion Option	$ —	$ —

Non-Convertible Capital Loans

Our Biotie Therapies Ltd. subsidiary received fourteen non-convertible capital loans granted by Business Finland (formerly Tekes) for research and development of specific drug candidates, with an aggregate adjusted acquisition-date fair value of $20.5 million (€18.2 million). The loans were to be repaid only when the consolidated retained earnings of Biotie Therapies Ltd. from the development of specific loan-funded product candidates is sufficient to fully repay the loans. In light of the decision to let lapse all patents having resulted from the funded projects, we filed an application with Business Finland for waiver of the loans and accrued interest. In July 2022, Business Finland granted these waivers, which will become effective upon Biotie Therapies Ltd.'s compliance with specified conditions to be completed, including a residual payment of approximately $0.1 million for certain of these loans. In December 2022, we met all conditions of Business Finland and these loans were formerly waived. We recorded a gain on extinguishment of debt of $27.1 million for the carrying amount of the loans including accrued interest.

Fampyra Royalty Monetization

On October 1, 2017, we completed a royalty purchase agreement with HealthCare Royalty Partners, or HCRP ("Royalty Agreement"). In exchange for the payment of $40 million to us, HCRP obtained the right to receive Fampyra royalties payable by Biogen under the Biogen Collaboration Agreement up to an agreed upon threshold of royalties. This threshold was met during the second quarter of 2022 and our obligations to HCRP expired upon Biogen's payment of royalties for that quarter.

Since we have maintained rights under the Biogen Collaboration Agreement, therefore, the Royalty Agreement has been accounted for as a liability that will be amortized using the effective interest method over the life of the arrangement, in accordance with the relevant accounting guidance. We recorded the receipt of the $40 million payment from HCRP and established a corresponding liability in the amount of $40 million, net of transaction costs of approximately $2.2 million. The net liability is classified between the current and non-current portion of liability related to the sale of future royalties in the consolidated balance sheets based on the recognition of the interest and principal payments to be received by HCRP in the 12 months following the financial statement reporting date. The total net royalties to be paid, less the net proceeds received, is recorded to interest expense using the effective interest method over the life of the Royalty Agreement. We estimate the payments to be made to HCRP over the term of the Royalty Agreement based on forecasted royalties and calculates the interest rate required to discount such payments back to the liability balance. Over the course of the Royalty Agreement, the actual interest rate will be affected by the amount and timing of net royalty revenue recognized and changes in forecasted revenue. On a quarterly basis, we reassess the effective interest rate and adjust the rate prospectively as necessary.

The following table shows the activity within the liability account for the years ended December 31, 2023 and 2022:

(In thousands)	December 31, 2023	December 31, 2022
Liability related to sale of future royalties - beginning balance	$ —	$ 4,460
Deferred transaction costs amortized	—	33
Non-cash royalty revenue payable to HCRP	—	(4,739)
Non-cash interest expense recognized	—	246
Liability related to sale of future royalties - ending balance	$ —	$ —

Cash, Cash Equivalents and Investment Activities

At December 31, 2023, cash and cash equivalents were approximately $30.0 million, as compared to $37.5 million at December 31, 2022. Our cash and cash equivalents consist of highly liquid investments with original maturities of three months or less at date of purchase and consist of investments in a Treasury money market fund. Also, we maintain cash balances with financial institutions in excess of insured limits.

Associated with the Intended Chapter 11 Proceedings, we plan to lower our operating budget and further reduce the scale of our operations, in addition to funding ongoing operations, we have incurred and expect to incur significant professional fees and other costs in connection with and throughout the Intended Chapter 11 Proceedings.

Net Cash Used in Operations

Net cash used in operations was $14.0 million compared to $20.9 million for the years ended December 31, 2023 and 2022, respectively. Cash used in operations for the year ended December 31, 2023 was primarily due to:

- a net loss of $252.9 million, a deferred tax benefit of $43.2 million, a change in acquired contingent consideration obligation of $9.6 million, an increase in other assets of $4.0 million, an increase in accounts receivable of $3.4 million, an increase in inventory of $3.4 million, a decrease other current liabilities of $0.9 million, and non-cash lease expense of $0.1 million; partially offset by

- intangible asset impairment of $251.3 million, depreciation and amortization expense of $31.7 million, amortization of debt discount and debt issuance costs of $19.1 million, an increase in accounts payable accrued expenses and other current liabilities of $0.9 million, and share-based compensation expense of $0.5 million.

Net Cash Provided by Investing

Net cash used in investing activities for the year ended December 31, 2023 was $0.3 million, which was due primarily to purchases of property and equipment and intangible assets.

Net Cash Used in Financing

Net cash used in financing activities for the year ended December 31, 2023 was $0.0.

Contractual Obligations and Commitments

Our long-term contractual obligations include commitments and estimated purchase obligations entered into in the normal course of business. Refer to Note 11 to our Consolidated Financial Statements included in this report for a description of our long-term contractual obligations.

Under certain agreements, we are required to pay royalties or license fees and milestones for the use of technologies and products in our research and development activities and in the commercialization of products. The amount and timing of any of the foregoing payments are not known due to the uncertainty surrounding the successful research, development and commercialization of the products.

Effects of Inflation

Our most liquid assets are cash and cash equivalents. Because of their liquidity, these assets are not directly affected by inflation. Because we intend to retain and continue to use our equipment, furniture and fixtures and leasehold improvements, we believe that the incremental inflation related to replacement costs of such items will not materially affect our operations. However, the rate of inflation affects our expenses, primarily employee compensation and contract services, which could increase our level of expenses.

Critical Accounting Policies and Estimates

The following discussion of critical accounting policies identifies the accounting policies that require application of management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain and may change in subsequent periods. It is not intended to be a comprehensive list of all of our significant accounting policies, which are more fully described in Note 2 to our Consolidated Financial Statements. In many cases, the accounting treatment of a particular transaction is specifically dictated by generally accepted accounting principles, with no need for management's judgment in their application. There are also areas in which the selection of an available alternative policy would not produce a materially different result.

Revenue Recognition

ASC 606 outlines a five-step process for recognizing revenue from contracts with customers: (i) identify the contract with the customer, (ii) identify the performance obligations in the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the separate performance obligations in the contract, and (v) recognize revenue associated with the performance obligations as they are satisfied.

We only apply the five-step model to contracts when it is probable that we will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. Once a contract is determined to be within the scope of ASC 606, we determine the performance obligations that are distinct. We recognize as revenues the amount of the transaction price that is allocated to each respective performance obligation when the performance obligation is satisfied or as it is satisfied. Generally, our performance obligations are transferred to customers at a point in time, typically upon receipt of the product by the customer.

ASC 606 requires entities to record a contract asset when a performance obligation has been satisfied or partially satisfied, but the amount of consideration has not yet been received because the receipt of the consideration is conditioned on something other than the passage of time. ASC 606 also requires an entity to present a revenue contract as a contract liability in instances when a customer pays consideration, or an entity has a right to an amount of consideration that is unconditional (e.g., receivables), before the entity transfers a good or service to the customer. As of December 31, 2023, we had contract liabilities of $8.1 million, as compared to $6.1 million as of December 31, 2022. Contract liabilities of $8.1 million consists of upfront payment received as part of the Chance China distribution agreement entered into in May 2023, as well as the upfront payment received as part of the Esteve distribution agreement entered into in 2021. Contract liabilities of $6.1 million consist of the Esteve Germany distribution agreement and pre-payment of product ordered as part of the Esteve Spain supply agreement entered into in 2021. We did not have any contract assets as of December 31, 2023 or 2022. As of December 31, 2023, approximately $0.2 million of revenue is expected to be recognized from remaining performance obligations for the Esteve and Chance agreement over the next 12 months. The Company expects to recognize revenue of these remaining performance obligations over the next 8 years in Germany and 11 years in China with the balance recognized thereafter. The Company will re-evaluate the transaction price in each reporting period and as certain events are resolved or other changes in circumstances occur.

Product Revenues, Net

Net revenues from product sales are recognized at the transaction price when the customer obtains control of our products, which occurs at a point in time, upon receipt of the product by the customer. Our payment terms are between 30 to 60 days.

Our net revenues represent total revenues adjusted for discounts and allowances, including estimated cash discounts, chargebacks, rebates, returns, copay assistance, data fees and wholesaler fees for services. These adjustments represent variable consideration under ASC 606 and are recorded for our estimate of cash consideration expected to be given by us to a customer that is presumed to be a reduction of the transaction price of our products and, therefore, are characterized as a reduction of revenues. These adjustments are established by management as its best estimate based on available information and will be adjusted to reflect known changes in the factors that impact such allowances. Adjustments for variable consideration are determined based on the contractual terms with customers, historical trends, communications with customers and the levels of inventory remaining in the distribution channel, as well as expectations about the market for the product and anticipated introduction of competitive products.

Discounts and Allowances

Revenues from product sales are recorded at the transaction price, which includes estimates for discounts and allowances for which reserves are established and includes cash discounts, chargebacks, rebates, returns, copay assistance, data fees and wholesaler fees for services. Actual discounts and allowances are recorded following shipment of product and the appropriate reserves are credited. These reserves are classified as reductions of accounts receivable (if the amount is payable to the customer and right of offset exists) or a current liability (if the amount is payable to a party other than a customer). These allowances are established by management as our best estimate based on historical experience and data points available and are adjusted to reflect known changes in the factors that impact such reserves. Allowances for customer credits, chargebacks, rebates, data fees and wholesaler fees for services, returns, and discounts are established based on contractual terms with customers and analyses of historical usage of these items. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from our estimates, we will adjust these estimates, which would affect net product revenues and earnings in the period such variances become known. The nature of our allowances and accruals requiring critical estimates, and the specific considerations it uses in estimating their amounts are as follows:

Government Chargebacks and Rebates: We contract for Medicaid and other U.S. federal government programs to allow for our products to remain eligible for reimbursement under these programs. For Medicare, we also estimate the number of patients in the prescription drug coverage gap for whom we will owe an additional liability under the Medicare Part D program. Based upon our contracts and the most recent experience with respect to sales through each of these channels, we provide an allowance for chargebacks and rebates. We monitor the sales trends and adjust the chargeback and rebate percentages on a regular basis to reflect the most recent chargebacks and rebate experience. Our liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period. Our government chargeback and rebate accruals were $4.6 million and $4.0 million at December 31, 2023 and December 31, 2022, respectively. A 10% change in our government chargebacks and rebate allowances would have had an approximate $1.4 million and $1.3 million effect on our net revenue for the years ended December 31, 2023 and December 31, 2022, respectively.

Managed Care Contract Rebates: We contract with various managed care organizations including health insurance companies and pharmacy benefit managers. These contracts stipulate that rebates and, in some cases, administrative fees, are paid to these organizations provided our product is placed on a specific tier on the organization's drug formulary. Based upon our contracts and the most recent experience with respect to sales through managed care channels, we provide an allowance for managed care contract rebates. We monitor the sales trends and adjust the allowance on a regular basis to reflect the most recent rebate experience. Our liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period. Our managed care contract rebate accruals were $5.0 million and $4.0 million at December 31, 2023 and December 31, 2022, respectively. A 10% change in our managed care contract rebate allowances would have had an approximate $2.2 million and $2.0 million effect on our net revenue for the years ended December 31, 2023 and December 31, 2022, respectively.

Copay Mitigation Rebates: We offer copay mitigation to commercially insured patients who have coverage for our products (in accordance with applicable law) and are responsible for a cost share. Based upon our contracts and the most recent experience with respect to actual copay assistance provided, we provide an allowance for copay mitigation rebates. We monitor the sales trends and adjust the rebate percentages on a regular basis to reflect the most recent rebate experience. Our copay mitigation rebate accruals were $0.1 million and $0.5 million at December 31, 2023 and December 31, 2023, respectively. A 10% change in our copay mitigation rebate allowances would have had an approximate $0.5 million effect on our net revenue for the years ended December 31, 2023 and December 31, 2023.

Cash Discounts: We sell directly to companies in our distribution network, which primarily includes specialty pharmacies and ASD Specialty Healthcare, Inc. (an Amerisource Bergen affiliate). We generally provide invoice discounts for prompt payment for our products. We estimate our cash discounts based on the terms offered to our customers. Discounts are estimated based on rates that are explicitly stated in our contracts as it is expected they will take the discount and are recorded as a reduction of revenue at the time of product shipment when product revenue is recognized. We adjust estimates based on actual activity as necessary. Our cash discount allowances were $0.3 million and $0.4 million at December 31, 2023 and December 31, 2022, respectively. A 10% change in our cash discount allowances would have had an approximate $0.2 million effect on our net revenues for the years ended December 31, 2023 and December 31, 2022.

Product Returns: We either offer customers no return except for products damaged in shipping or consistent with industry practice, a limited right of return based on the product's expiration date. Our estimates the amount of our product sales that may be returned by our customers and records this estimate as a reduction of revenue in the period the related product revenue is recognized. We currently estimate product return liabilities using historical sales information and inventory remaining in the distribution channel.

Based on the data that we receive from our customers, we have been able to make a reasonable estimate for product returns. We do not accept returns of Ampyra except for product damaged in shipping. Historically, it has been rare for us to have product damaged in shipping. We will exchange product from inventory for product damaged in shipping.

Data Fees and Fees for Services Payable to Specialty Pharmacies: We have contracted with certain specialty pharmacies to obtain transactional data related to our products in order to develop a better understanding of our selling channel as well as patient activity and utilization by the Medicaid program and other government agencies and managed care organizations. We pay a variable fee to the specialty pharmacies to provide us the data. We also pay the specialty pharmacies a fee in exchange for providing distribution and inventory management services, including the provision of inventory management data to us. We estimate our fee for service accruals and allowances based on sales to each specialty pharmacy and the applicable contracted rate. Our fee for service expenses are accrued at the time of product shipment and are typically settled with the specialty pharmacies within 60 days after the end of each respective quarter. Our data fee and fee for service accruals were $0.5 million and $0.3 million at December 31, 2023 and December 31, 2022, respectively. A 10% change in our data fee and fee for service allowances would have had an approximate $0.2 million effect on our net revenue for the years ended December 31, 2023 and 2022.

We have adjusted our allowances in the past based on actual experience, and we will likely be required to make adjustments to these allowances and accruals in the future. The historical adjustments have not been significant to operations. We continually monitor our allowances and accruals and make adjustments when we believe actual experience may differ from our estimates. The allowances included in the table below reflect these adjustments.

The following table provides a summary of activity with respect to our sales discounts and allowances during 2023 and 2022:

(in thousands)	Government chargebacks and rebates	Managed care contract rebates	Copay mitigation rebates	Cash discounts	Product returns	Data fees and fees for services payable to wholesalers	Other vendor allowances	Total
Balance at December 31, 2021	$ 4,509	$ 4,633	$ 524	$ 780	$ 78	$ 563	$ —	$ 11,087
Allowances for sales	12,951	19,954	4,987	1,830	—	2,177	—	41,899
Actual credits for sales during 2022	(13,498)	(20,565)	(5,024)	(2,203)	—	(2,401)	—	(43,692)
Actual credits for prior year sales	2	—	—	—	—	—	—	2
Balance at December 31, 2022	$ 3,964	$ 4,022	$ 487	$ 407	$ 78	$ 339	$ —	$ 9,296
Allowances for sales	14,412	22,394	4,981	1,978	—	2,039	—	45,805
Actual credits for sales during 2023	(13,775)	(21,435)	(5,383)	(2,058)	(2)	(1,847)	—	(44,501)
Actual credits for prior year sales	—	—	—	—	—	—	—	—
Balance at December 31, 2023	4,601	4,981	85	327	76	531	—	10,601

Royalty Revenues

Royalty revenues recorded by the Company relate to the Company's License and Collaboration agreement with Biogen for sales of Fampyra, milestone payments received in connection to the Company's Asset Purchase Agreement with Grunenthal GmbH for sales of Qutenza, and an agreement with Neurelis Inc. for sales of Valtoco. Royalty revenues from Neurelis was capped at $5.1 million. No further royalties from sales of Valtoco are expected. We recognized revenues for royalties under ASC 606, which provides revenue recognition constraints by requiring the recognition of revenue at the later of the following: 1) sale or usage of the products or 2) satisfaction of the performance obligations. We satisfied our performance obligations and therefore recognizes royalty revenue when the sales to which the royalties relate are completed.

License Revenues

License revenues relates to the License and Collaboration agreement with Biogen which provides for milestone payments for the achievement of certain regulatory and sales milestones during the term of the agreement. Regulatory milestones are contingent upon the approval of Fampyra for new indications outside of the U.S. Sales milestones are contingent upon the achievement of certain net sales targets for Fampyra sales outside of the U.S. We recognize license revenues under ASC 606, which provides constraints for entities to recognize license revenues which is deemed to be variable by requiring us to estimate the amount of consideration to which it is entitled in exchange for transferring the promised goods or services to a customer. We recognize an estimate of revenues to the extent that it is probable that a significant reversal in the amount of cumulative revenues recognized will not occur when the milestone is achieved. For regulatory milestones, we evaluate whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. Milestone payments that are not within our control or the licensee's control, such as regulatory approvals, are generally not considered probable of being achieved until those approvals are received. For sales-based milestones, we recognize revenues upon the achievement of the specific sale milestones.

If the license to our intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, we will recognize revenues from upfront license fees allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other rights and obligations, we determine whether the combined performance obligation is satisfied over time or at a point in time. If the combined performance obligation is satisfied over time, we use our judgment in determining the appropriate method of measuring progress for purposes of recognizing revenue from the up-front license fees. We evaluate the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

Inventory

We capitalize inventory costs associated with our products prior to regulatory approval when, based on management's judgment, future commercialization is considered probable and the future economic benefit is expected to be realized; otherwise, such costs are expensed as research and development.

Through October 2022, the cost of Ampyra inventory is based on specified prices calculated as a percentage of net product sales of the product shipped by Alkermes to us. In the event Alkermes does not manufacture the products, Alkermes is entitled to a compensating payment for the quantities of product provided by the alternative manufacturer. This compensating payment is included in our inventory balances. We record a reserve for excess and obsolete inventory based on the historic and forecasted sales pattern and specifically identified obsolete inventory based on the expiration dates of our products. We periodically review inventory for slow moving or obsolete amounts based on expected sales. We review projected market share as well as current buying patterns from our customers. We analyze our ability to sell the inventory on hand and committed to customers prior to the expiration period of the respective inventory. As a result, significant judgment is employed in determining the appropriateness of our ability to sell inventory on hand and commitments based on the sales projections. If annual and expected volumes are less than expected, we may be required to make additional allowances for excess or obsolete inventory in the future.

After October 2022, the cost of Ampyra inventory is based on our manufacturing and packaging agreement with Patheon. We rely on a single third-party manufacturer to supply dalfampridine, the active pharmaceutical ingredient, or API, in Ampyra, and also on a single supplier for a critical excipient used in the manufacture of Ampyra. Additionally, we pay Patheon a fixed per bottle fee (60 tablets per bottle) based on the annual quantity of Ampyra bottles that are delivered for sale.

Cost of Sales

Inbrija

Cost of sales includes the cost of inventory, expense due to inventory reserves when necessary, royalty expense, packaging costs, freight and required inventory stability testing costs. Cost of sales include those costs directly associated with the production of revenues, such as raw material consumed, factory overhead and other direct production costs.

Ampyra

Cost of sales includes the cost of inventory, expense due to inventory reserves when necessary, royalty expense, milestone amortization of intangible assets associated with our agreement with Alkermes, packaging costs, freight and required inventory stability testing costs. Our inventory costs, royalty obligations and milestone obligations were set forth in the agreements entered into with Alkermes. These agreements required us to pay Alkermes a percentage of our net selling price for each inventory lot purchased from Alkermes. The cost for each lot was calculated based on an agreed upon estimated net selling price which was based on an actual historical net selling price. At the end of each quarter, we performed a calculation to adjust the inventory value for any lots received in the current quarter to that quarter's actual net selling price. This payment was recorded as an adjustment to inventory as well as an accrual on our balance sheet and is required to be paid within 45 days of the quarter end. In the event we sold any inventory purchased from Alkermes during that respective quarter, we would also record an adjustment to the cost of goods sold and an additional accrual on the balance sheet to be paid to Alkermes. The agreement with Alkermes allowed us to purchase up to 25% of our annual inventory requirements from an alternative manufacturer but stipulated a compensating payment to be made to Alkermes for any inventory purchased from this alternative manufacturer. This payment was determined at the end of the quarter in which any new lots have been purchased exclusive from Alkermes using the actual net selling price for the respective quarter net of an agreed upon amount as stipulated by the Alkermes agreement. This payment was recorded as an adjustment to inventory as well as an accrual on our balance sheet. In October 2022, an arbitration panel issued a decision in our dispute with Alkermes and awarded to us approximately $18.3 million, including prejudgment interest and declared our agreements with Alkermes unenforceable. As a result of the panel's ruling, we no longer have to pay Alkermes any royalties on net sales for license and supply of Ampyra, and we are free to use alternative sources for supply of Ampyra, which we have already secured for U.S. supply. We had previously designated Patheon as a second manufacturing source of Ampyra. We pay Patheon a fixed per bottle fee (60 tablets per bottle) based on the annual quantity of Ampyra bottles that are delivered for sale.

Research and Development

Research and development expense consists primarily of:

- salaries and related benefits and share-based compensation for research and development personnel;
- costs of facilities and equipment that have no alternative future use;
- fees paid to professional service providers in conjunction with independently monitoring our clinical trials and acquiring and evaluating data in conjunction with our clinical trials;
- fees paid to contract research organizations ("CROs") in conjunction with preclinical studies;
- fees paid to organizations in conjunction with contract manufacturing;
- costs of materials used in research and development;
- upfront and milestone payments under contractual agreements;
- consulting, license and sponsored research fees paid to third parties; and
- depreciation of capital resources used to develop our products.

For those studies that we have administered ourselves, we account for our clinical study costs by estimating the patient cost per visit in each clinical trial and recognizing this cost as visits occur, beginning when the patient enrolls in the trial. This estimated cost includes payments to the trial site and patient-related costs, including laboratory costs related to the conduct of the trial. Cost per patient varies based on the type of clinical trial, the site of the clinical trial, and the length of the treatment period for each patient. For those studies for which we have used a CRO, we account for our clinical study costs according to the terms of the CRO contract. These costs include upfront, milestone and monthly expenses as well as reimbursement for pass through costs. All research and development costs are expensed as incurred except when we are accounting for nonrefundable advance payments for goods or services to be used in future research and development activities. In these cases, these payments are capitalized at the time of payment and expensed ratable over the period the research and development activity is performed. As actual costs become known to us, we adjust our accrual; such changes in estimate may be a material change in our clinical study accrual, which could also materially affect our results of operations.

We have used our employee and infrastructure resources across several projects, and many of our costs are not attributable to an individually named project, but are broadly applicable research projects. Accordingly, we do not account for internal research and development costs on a project-by-project basis. Unallocated costs are represented as operating expenses in the table below.

The following table shows, for each of the years ended, (i) the total third-party expenses for preclinical and clinical development, on a project-by-project basis, (ii) our unallocated research and development operating expenses, and (iii) acquisitions, licenses and milestone payments, on a project-by-project basis:

(in thousands)	Year Ended December 31,	
	2023	2022
Preclinical and clinical development:		
Contract expenses—Ampyra LCM	$ —	$ 80
Research and development operating expenses:	5,152	5,687
Acquisitions, licenses and milestones:		
Cimaglermin alfa (previously GGF2)	—	37
Total research and development	$ 5,152	$ 5,805

With respect to previously established clinical study accruals for the years ended December 31, 2023 and December 31, 2022, we did not make any significant adjustments to our clinical study costs.

Sales and Marketing Expenses

Sales and marketing expenses include personnel costs, related benefits and share-based compensation for our sales, managed markets and marketing personnel, the cost of Ampyra sales and marketing initiatives as well as the pre-market marketing costs for future products.

General and Administrative Expenses

General and administrative expenses consist primarily of personnel costs, related benefits and share-based compensation for personnel serving executive, finance, medical affairs, safety, business development, legal, quality assurance, information technology and human resource functions. Other costs include facility costs not otherwise included in research and development or sales and marketing expense and professional fees for legal and accounting services.

Finite-Lived Intangible Assets

Intangible assets with finite lives are amortized on a straight-line basis over the period in which we expect to receive economic benefit and are reviewed for impairment when facts and circumstances indicate that the carrying value of the asset may not be recoverable. The determination of the expected life will be dependent upon the use and underlying characteristics of the intangible asset. In our evaluation of the intangible assets, we consider the term of the underlying asset life and the expected life of the related product line. If impairment indicators are present or changes in circumstance suggest that impairment may exist, we perform a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, we would determine the fair value of the intangible asset and recognize an impairment loss in the statement of operations if the carrying value of the intangible asset exceeds its fair value. Fair value is generally estimated based on either appraised value or other valuation techniques. Events that could result in an impairment, or trigger an interim impairment assessment, may include actions by regulatory authorities with respect to us or our competitors, new or better products entering the market, changes in market share or market pricing, changes in the economic lives of the assets, changes in the legal framework covering patents, rights or licenses, and other market changes which could have a negative effect on cash flows and which could result in an impairment.

Derivative Liability

During 2019, a derivative liability was initially recorded as a result of the issuance of the 2024 Notes (see Note 8 to our Consolidated Financial Statements included in this report for more information on the 2024 Notes). We initially determined the fair value of the liability upon issuance. The fair value measurement of the derivative liability is classified as Level 3 under the fair value hierarchy as it has been valued using certain unobservable inputs. These inputs include: (1) share price as of the valuation date, (2) assumed timing of conversion of the Notes, (3) historical volatility of share price and (4) the risk-adjusted discount rate used to present value the probability-weighted cash flows. Significant increases or decreases in any of those inputs in isolation could result in a significantly lower or higher fair value measurement. The fair value of the derivative liability was determined using a binomial model that calculates the fair value of the Notes with the conversion feature as compared to the fair value of the Notes without the conversion feature, with the difference representing the value of the conversion feature, or the derivative liability. The conversion feature will be measured at fair value on a quarterly basis and the change in the fair value of the conversion feature for the period will be recorded in the consolidated statements of operations.

Changes in Fair Value of Acquired Contingent Consideration

Changes in the fair value of acquired contingent consideration represents changes in the estimated fair value of our acquired contingent liability. Contingent consideration is recognized at fair value as of the date of acquisition and recorded as a liability on the consolidated balance sheet. The contingent consideration is re-valued on a quarterly basis using a probability weighted discounted cash-flow approach until fulfillment or expiration of the contingency. Changes in the fair value of the contingent consideration are recognized in the statement of operations.

To the extent that the discount rates were to increase or decrease by one percentage point, we estimate that our acquired contingent consideration liability would decrease or increase by approximately $1.3 million or $1.5 million, respectively. If the estimated net sales were to increase or decrease by one percentage point, we estimate that our acquired contingent consideration liability would change by approximately $0.3 million.

Other Income (Expense)

Interest income consists of income earned on our cash and cash equivalents. Interest expense consists of cash and non-cash interest expense for the convertible senior secured notes due 2024 issued in December 2019 and non-cash interest expense pertaining to the Fampyra royalty monetization. Gain on extinguishment of debt is the net carrying amount of the extinguished debt recognized on the income statement.

Income Taxes

As part of the process of preparing our financial statements we are required to estimate our income taxes in each of the jurisdictions in which we operate. In accordance with ASC 740, we account for income taxes by the asset and liability method. Under this method, deferred income taxes are recognized for tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each year-end, based on enacted laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are provided if, based upon the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

We will continue to evaluate the realizability of our deferred tax assets and liabilities on a quarterly basis, and will adjust such amounts in light of changing facts and circumstances, including but not limited to future projections of taxable income, tax legislation, rulings by relevant tax authorities and the progress of ongoing tax audits, if any. We consider all available evidence, both positive and negative, to determine whether, based on the weight of that evidence, a valuation allowance is required to reduce the deferred tax assets to the amount that is more likely than not to be realized in future periods.

Share-Based Compensation

We account for stock options, restricted stock and restricted stock units granted to employees and non-employees by recognizing the costs resulting from all share-based payment transactions in the financial statements at their fair values. We estimate the fair value of each option on the date of grant using the Black-Scholes closed-form option-pricing model based on assumptions for the expected term of the stock options, expected volatility of our common stock, prevailing interest rates, and an estimated forfeiture rate.

We have based our current assumptions on the following:

Assumption	Method of estimating
● Estimated expected term of options	● Historical term of our options based on exercise data
● Expected volatility	● Historic volatility of our common stock
● Risk-free interest rate	● Yields of U.S. Treasury securities corresponding with the expected life of option grants
● Forfeiture rates	● Historical forfeiture data

Of these assumptions, the expected term of the option and expected volatility of our common stock are the most difficult to estimate since they are based on the exercise behavior of the employees and expected performance of our common stock. Increases in the term and the volatility of our common stock will generally cause an increase in compensation expense.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information otherwise required under this item.

Item 8. Financial Statements and Supplementary Data.

The consolidated financial statements required pursuant to this item are included in Item 15 of this report and the related report of our independent auditor are presented beginning on page F-1. Our independent auditor is Ernst & Young LLP (PCAOB ID: 42), located in Stamford, Connecticut, USA.

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

As required by Rule 13a-15 under the Securities Exchange Act of 1934 (the "Exchange Act"), we carried out an evaluation of the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of our 2022 fiscal year (the period covered by this report). This evaluation was carried out under the supervision and with the participation of our management, including our President and Chief Executive Officer and our Chief Financial Officer and Treasurer. Based on that evaluation, these officers have concluded that, as of December 31, 2023, our disclosure controls and procedures were effective to achieve their stated purpose.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules, regulations, and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our principal executive and principal financial officers, as appropriate, to allow timely decisions regarding disclosure.

Change in internal control over financial reporting

In connection with the evaluation required by Exchange Act Rule 13a-15(d), our management, including our President and Chief Executive Officer and our Chief Financial Officer and Treasurer, concluded that there were no changes in our internal control over financial reporting during the quarter ended December 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the effectiveness of controls

Our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within a company have been detected.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act).

Under the supervision of and with the participation of our Chief Executive Officer and our Chief Financial Officer, our management conducted an assessment of the effectiveness of our internal control over financial reporting as of the end of 2022 (the period covered by this report) based on the framework and criteria established in Internal Control – Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Based on this assessment, our management has concluded that, as of December 31, 2023, our internal control over financial reporting was effective. 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.

Attestation Report of the Registered Public Accounting Firm

This Annual Report on Form 10-K does not include an attestation report of our independent registered public accounting firm on internal control over financial reporting as we are a "non-accelerated filer" as defined under SEC rules.

Item 9B. Other Information.

Securities Trading Plans of Directors and Executive Officers

During the three months ended December 31, 2023, none of our directors or Section 16 reporting officers adopted, modified, or terminated any contract, instruction or written plan for the purchase or sale of our securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any "non-Rule 10b5-1 trading arrangement" (as defined in Item 408(c) of Regulation S-K.

Incentive and Retention Agreements

On March 27, 2024, we entered into amendments to the employment agreements (the "Retention Agreements") with each of our named executive officers (the "Participants"). We entered into the Retention Agreements in order to incentivize the Participants to continue to lead the Company throughout the pendency of the Intended Chapter 11 Proceedings. The Retention Agreements provide for the prepayment of 2024 non-equity incentive compensation (the "2024 Awards"), subject to a potential clawback as further described below.

The amounts paid pursuant to Retention Agreements must generally be repaid by a Participant if the Participant voluntarily resigns employment without good reason or is terminated for cause prior to the earlier of December 31, 2024 or the effective date of the Chapter 11 plan in connection with our Intended Chapter 11 Proceedings with respect to 100% of the after-tax amount of the 2024 Awards for each Participant. The amounts paid pursuant to this program include the following payments to the following named executive officers, in respect of the 2024 Awards: (i) $775,000 for Ron Cohen, M.D., President and Chief Executive Officer, (ii) $450,000 for Michael Gesser, Chief Financial Officer, (iii) $473,000 for Kerry Clem, Chief Commercial Officer, and (iv) $450,000 for Neil Belloff, General Counsel and Secretary. The 2024 Awards also included unused time off accrued through March 31, 2024.

The foregoing description is not complete and is qualified in its entirety by reference to the full text of the form of amendment to employment offer letter which is filed herewith as Exhibit 10.21 and is incorporated herein by reference.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by this item will be contained in our 2024 Proxy Statement, or alternatively included in an amendment to this Form 10-K, under the caption for the proposal relating to the "Election of Directors," as well as the captions "Information Concerning Executive Officers," "Executive Compensation," and "Additional Information," and such information is incorporated herein by this reference.

We have adopted a code of business conduct and ethics applicable to all of our directors and employees, including our principal executive officer and principal financial and accounting officer. The code of business conduct and ethics is available in the corporate governance section of "Investors" of our website, *www.acorda.com*.

Any waiver of the code of business conduct and ethics for directors or executive officers, or any amendment to the code that applies to directors or executive officers, may only be made by the board of directors. We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of this code of ethics by posting such information on its website, at the address and location specified above. To date, no such waivers have been requested or granted.

Item 11. Executive Compensation.

The information required by this item will be contained in our 2024 Proxy Statement, or alternatively included in an amendment to this Form 10-K, under the caption for the proposal relating to the "Election of Directors," as well as the captions "Information Concerning Executive Officers," "Compensation Committee Report," "Compensation Discussion and Analysis," "Executive Compensation," and "Additional Information," and such information is incorporated herein by this reference.

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

The information required by this item will be contained in our 2024 Proxy Statement, or alternatively included in an amendment to this Form 10-K, under the captions "Security Ownership of Certain Beneficial Owners and Management," "Information Concerning Executive Officers" and "Additional Information" and is incorporated herein by this reference.

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

The information required by this item will be contained in our 2024 Proxy Statement, or alternatively included in an amendment to this Form 10-K, under the caption for the proposal relating to the "Election of Directors," as well as the caption "Certain Relationships and Related Transactions," and such information is incorporated herein by this reference.

Item 14. Principal Accounting Fees and Services.

The information required by this item will be contained in our 2024 Proxy Statement, or alternatively included in an amendment to this Form 10-K, under the caption for the proposal relating to the "Ratification of Independent Auditors" and is incorporated herein by this reference.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) The following documents are being filed as part of this report:

(1) The following financial statements of the Company and the Report of Independent Registered Public Accounting Firm are included in this Annual Report on Form 10-K:

Financial Statements of Acorda Therapeutics, Inc. and Subsidiaries:

(2) Financial Statement Schedules have been omitted because they are either not applicable or the required information is included in the consolidated financial statements or notes thereto listed in (a)(1) above.

(3) Exhibits

Exhibits required to be filed by Item 601 of Regulation S-K are listed in the Exhibit Index immediately following the signature page of this Report and incorporated herein by reference.

INDEX TO FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Acorda Therapeutics, Inc

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Acorda Therapeutics, Inc, and subsidiaries (the Company) as of December 31, 2023, and 2022, the related consolidated statements of operations, comprehensive loss, stockholders' equity and cash flows for each of the two years in the period ended December 31, 2023, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2023, and 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2023, in conformity with U.S. generally accepted accounting principles.

The Company’s Ability to Continue as a Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company has a significant debt payment due in December 2024 for which significant uncertainties exist as it relates to the Company’s ability to repay the debt principle as it currently is structured. The Company has stated that filing for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York is imminent and has stated that substantial doubt exists about the Company’s ability to continue as a going concern. Management's evaluation of the events and conditions and management’s plans regarding these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (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 financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the 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 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 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 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 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.

Estimate of variable consideration in contracts with customers

Description of the Matter	As described in Note 2 to the consolidated financial statements, the Company has net product revenues of $102.4 million for the year ended December 31, 2023, which includes estimates of variable consideration for government rebates. The estimates of variable consideration are based on the amounts earned or to be claimed on the related sales and are classified as reductions of accounts receivable (if the amount is payable to the customer and right of offset exists) or a current liability (if the amount is payable to a party other than a customer). As described in Note 2, these estimates are established by management based on available information and will be adjusted to reflect known changes in the factors that impact such amounts. The measurement and valuation of management's estimate of variable consideration related to government rebates is a critical audit matter because the calculation includes subjective assumptions regarding the levels of expected future claims, forecasted shipments from specialty pharmacies to eligible patients and governmental pricing calculations.
How We Addressed the Matter in Our Audit	To test the estimate of variable consideration related to government rebates, we performed audit procedures that included testing the operating effectiveness of internal controls over the measurement and valuation of the estimate including controls over management's review of the government pricing calculations, the significant assumptions and the data inputs used to estimate government rebates. Our procedures also included, among others, evaluating the methodology used, testing the accuracy and completeness of the underlying data used in the calculations and evaluating the significant assumptions that are used by management to estimate its variable consideration. We also compared the assumptions used by management to historical trends, evaluated the change in the estimates from prior periods and assessed the historical accuracy of management's estimates against actual results. In addition, we involved a subject matter specialist to assist with our procedures in evaluating management's methodology and calculations used to measure the estimate of government rebates.

	Fair Value Measurement of the Contingent Consideration
Description of the Matter	As described in Note 12 to the consolidated financial statements, the Company has a $29.5 million contingent consideration liability recorded as of December 31, 2023, representing the fair value of future royalties management believes are likely to be paid to the counterparty. The determination of the recorded amount of the contingent consideration liability requires the Company to make significant estimates and assumptions. We identified the measurement of the contingent consideration liability as a critical audit matter because auditing the Company's estimate involved complex and challenging auditor judgment about the inputs to the valuation, such as the estimated revenue forecast for future sales of Inbrija and the discount rate, which are largely unobservable.
How We Addressed the Matter in Our Audit	To test the estimated fair value of the contingent consideration liability, we performed audit procedures that included assessing the terms of the arrangement, evaluating the methodology used, testing the significant assumptions discussed above and the completeness, accuracy and relevance of the underlying data used by management in its analysis. We performed analyses of certain assumptions to assess the impact of changes in those assumptions on the Company's determination of the fair value of the contingent consideration liability. We also evaluated whether the assumptions used by management were consistent with external market data and evidence obtained in other areas of the audit.
	Long-Lived Intangible Assets – Quantitative Impairment Assessment
Description of the Matter	At December 31, 2023, the Company recorded an impairment charge of $251.3 million related to its definite-lived Inbrija intangible asset group. As described in Note 2 to the consolidated financial statements, long-lived assets are reviewed at least annually to determine if events or changes in circumstances indicate that an asset group's carrying amount may not be recoverable. If the asset group is determined to not be recoverable and impaired, the carrying amount of the asset group is reduced to fair value as estimated by a discounted cash flow model, with the difference recorded as an impairment charge. Auditing management's quantitative impairment assessment was highly judgmental due to estimation required in determining the discounted cash flows and related fair values of the impaired asset group. In particular, the cash flows were sensitive to significant assumptions such as revenue growth rates, EBITDA margins, and the discount rate.
How We Addressed the Matter in Our Audit	To test the estimated fair value of the definite-lived Inbrija intangible asset group, our audit procedures included, among others, evaluating the Company's use of the income approach as a valuation methodology, involving our valuation specialists to assist in testing the discount rate and testing the completeness and accuracy of the underlying data supporting the significant assumptions. We evaluated management's ability to accurately forecast by comparing actual results to historical forecasts. We compared the significant assumptions to current industry, market and economic trends, historical results, other guideline companies within the same industry and to other relevant factors. We also performed a sensitivity analysis of the significant assumptions to evaluate the change in fair value resulting from changes in the assumptions. Lastly, we evaluated the Company's assumptions in light of any contrary evidence.

We have served as the Company's auditor since 2010.

/s/ Ernst & Young, LLP

Stamford, Connecticut

April 1, 2024

ACORDA THERAPEUTICS, INC. AND SUBSIDIARIES

Consolidated Balance Sheets

(In thousands, except share amounts)

	December 31,	
	2023	**2022**
Assets		
Current assets:		
Cash and cash equivalents	$ 29,979	$ 37,536
Restricted cash	381	6,884
Trade accounts receivable, net of allowances of $962 and $842, as of December 31, 2023 and 2022, respectively	17,298	13,866
Prepaid expenses	5,211	4,312
Inventory, net	16,155	12,752
Other current assets	5,770	6,765
Total current assets	74,794	82,115
Property and equipment, net of accumulated depreciation	2,079	2,603
Intangible assets, net of accumulated amortization and impairment	22,987	305,087
Right of use asset, net of accumulated amortization	4,221	5,287
Restricted cash	255	255
Other assets	4,189	248
Total assets	$ 108,525	$ 395,595
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 13,373	$ 9,809
Accrued expenses and other current liabilities	24,310	23,680
Convertible senior notes	186,143	—
Current portion of lease liability	1,588	1,545
Current portion of acquired contingent consideration	2,132	2,532
Deferred Revenue	227	384
Total current liabilities	227,773	37,950
Convertible senior notes	—	167,031
Non-current portion of acquired contingent consideration	27,368	38,668
Deferred tax liability	—	44,202
Non-current portion of lease liability	3,166	4,341
Other non-current liabilities	8,174	9,781
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $0.001 par value per share. Authorized 1,000,000 shares at December 31, 2023 and 2022; no shares issued as of December 31, 2023 and 2022	—	—
Common stock, $0.001 par value per share. Authorized 3,083,333 shares at December 31, 2023 and 2022; issued 1,242,376 and 1,242,376 shares, including those held in treasury, as of December 31, 2023 and 2022, respectively	1	24
Treasury stock at cost (278 shares at December 31, 2023 and December 31, 2022)	(638)	(638)
Additional paid-in capital	1,030,383	1,029,881
Accumulated deficit	(1,189,127)	(936,273)
Accumulated other comprehensive loss	1,425	628
Total stockholders' equity (deficit)	(157,956)	93,622
Total liabilities and stockholders' equity	$ 108,525	$ 395,595

See accompanying Notes to Consolidated Financial Statements

ACORDA THERAPEUTICS, INC. AND SUBSIDIARIES

Consolidated Statements of Operations

(In thousands, except per share data)

	Year ended December 31, 2023	Year ended December 31, 2022
Revenues:		
Net product revenues	$ 102,421	$ 103,845
Royalty Revenues	15,113	14,221
License Revenue	99	500
Total net revenues	117,633	118,566
Costs and expenses:		
Cost of sales	15,283	30,332
Research and development	5,152	5,804
Selling, general and administrative	89,698	106,256
Impairment of intangible asset	251,322	—
Amortization of intangible assets	30,764	30,764
Changes in fair value of derivative liability	—	(37)
Changes in fair value of acquired contingent consideration	(9,634)	(6,659)
Other operating income	—	(12,554)
Total operating expenses	382,585	153,906
Operating loss	(264,952)	(35,340)
Other income (expense), net:		
Interest and amortization of debt discount expense	(31,533)	(30,200)
Interest income	530	1,909
Realized Gain (Loss) on FX Currency	(288)	(8)
Gain on extinguishment of debt	—	27,142
Gain on disposal of property and equipment	171	—
Other income (expense)	51	1,250
Total other income (expense), net	(31,069)	93
Loss before taxes	(296,021)	(35,247)
Benefit from (Provision for) income taxes	43,167	(30,669)
Net loss	$ (252,854)	$ (65,916)
Net loss per share—basic	$ (203.57)	$ (65.23)
Net loss per share—diluted	$ (203.57)	$ (65.23)
Weighted average common shares outstanding used in computing net loss per share—basic	1,242	1,011
Weighted average common shares outstanding used in computing net loss per share—diluted	1,242	1,011

See accompanying Notes to Consolidated Financial Statements

ACORDA THERAPEUTICS, INC. AND SUBSIDIARIES

Consolidated Statements of Comprehensive Loss

(In thousands)

	Year ended December 31, 2023	Year ended December 31, 2022
Net loss	$ (252,854)	$ (65,916)
Other comprehensive income:		
Foreign currency translation adjustment	797	1,645
Other comprehensive income, net of tax	$ 797	$ 1,645
Comprehensive loss	$ (252,057)	$ (64,271)

See accompanying Notes to Consolidated Financial Statements

ACORDA THERAPEUTICS, INC. AND SUBSIDIARIES

Consolidated Statements of Changes in Stockholders' Equity

(In thousands)

	Common stock						
	Number of shares	Par value	Treasury stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive income (loss)	Total stockholders equity
Balance at December 31, 2021	687	13	(638)	1,023,136	(870,357)	(1,017)	151,137
Compensation expense for issuance of stock options to employees	—	—	—	1,496	—	—	1,496
Compensation expense for issuance of restricted stock to employees	5	—	—	(3)	—	—	(3)
Interest payment for convertible notes	550	11	—	5,252	—	—	5,263
Other comprehensive income, net of tax	—	—	—	—	—	1,645	1,645
Net loss	—	—	—	—	(65,916)	—	(65,916)
Balance at December 31, 2022	1,242	24	(638)	1,029,881	(936,273)	628	93,622
Compensation expense for issuance of stock options to employees	—	—	—	479	—	—	479
Compensation expense for issuance of restricted stock to employees	—	—	—	—	—	—	—
Reverse stock split adjustment	—	(23)	—	23	—	—	—
Interest payment for convertible notes	—	—	—	—	—	—	—
Other comprehensive income, net of tax	—	—	—	—	—	797	797
Net loss	—	—	—	—	(252,854)	—	(252,854)
Balance at December 31, 2023	1,242	1	(638)	1,030,383	(1,189,127)	1,425	(157,956)

See accompanying Notes to Consolidated Financial Statements

ACORDA THERAPEUTICS, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows

(In thousands)

	Year ended December 31, 2023	Year ended December 31, 2022
Cash flows from operating activities:		
Net loss	(252,854)	$ (65,916)
Adjustments to reconcile net loss to net cash used in operating activities:		
Share-based compensation expense	478	1,493
Amortization of debt discount and debt issuance costs	19,112	16,923
Depreciation and amortization expense	31,666	32,809
Intangible asset impairment	251,322	—
Change in contingent consideration obligation	(9,634)	(6,659)
Change in derivative liability	—	(37)
Non-cash lease expense	(66)	—
Gain on debt extinguishment	—	(27,142)
Non-cash royalty revenue	—	(4,762)
Deferred tax provision (benefit)	(43,177)	30,669
Changes in assets and liabilities:		
Decrease (increase) in accounts receivable	(3,432)	2,585
Increase in prepaid expenses and other current assets	(4)	(2,959)
Decrease (increase) in inventory	(3,403)	5,796
Increase in other assets	(3,965)	(237)
Increase (decrease) in accounts payable, accrued expenses and other current liabilities	884	(7,359)
Increase (decrease) in other non-current liabilities	(911)	3,872
Net cash (used) in operating activities	(13,984)	(20,924)
Cash flows from investing activities:		
Purchases of property and equipment	(264)	(136)
Net cash provided by investing activities	(264)	(136)
Cash flows from financing activities:		
Net cash (used) in financing activities	—	—
Effect of exchange rate changes on cash and cash equivalents and restricted cash	188	512
Net (decrease) in cash and cash equivalents and restricted cash	(14,060)	(20,548)
Cash, cash equivalents and restricted cash at beginning of period	44,675	65,223
Cash, cash equivalents and restricted cash at end of period	$ 30,615	$ 44,675
Supplemental disclosure:		
Cash paid for interest	12,420	7,157
Cash paid for taxes	804	199

See accompanying Notes to Consolidated Financial Statements.

(1) Organization and Business Activities

Acorda Therapeutics, Inc. ("Acorda" or the "Company") is a biopharmaceutical company focused on developing therapies that restore function and improve the lives of people with neurological disorders.

Voluntary Filing Under Chapter 11

Over the past several months, the Company, with the assistance of outside legal and financial advisors, have been engaged in a robust process to explore strategic alternatives and maximize value for the Company's stakeholders in light of the upcoming maturity of its 6.00% convertible senior secured notes that mature on December 1, 2024 ("2024 Notes"). During this process, the Company was, and continues to be, in regular communication with the holders of its 2024 Notes and their advisors. The Company evaluated every aspect of its business and has taken proactive steps to respond to the challenges the Company continues to face. Notwithstanding these measures, the Company engaged in an exhaustive process to find an appropriate strategic solution. The Company's Board of Directors, after reviewing a number of alternatives, has determined that it is in the best interests of the Company and its stakeholders to pursue a sale of assets under Chapter 11 of the United States Bankruptcy Code (the "Code"), which the Company believes will ensure the Company obtains the maximum value for the Company and most importantly, that the Company's products will be provided on an uninterrupted basis to patients who will continue to benefit from these much needed medications.

The Company intends to commence voluntary proceedings under Chapter 11 in the United States Bankruptcy Court for the Southern District of New York (the "Court") shortly after filing this Annual Report (the "Intended Chapter 11 Proceedings"). The Company expects to continue to operate its business as a "debtor in possession" in accordance with the applicable provisions of the Code and orders of the Court. The Company expects to request approval from the Court for certain customary "first day" motions to continue its ordinary course operations after the filing date of the Intended Chapter 11 Proceedings. Shortly following the commencement of the Intended Chapter 11 Proceedings, the Company expects to receive written notice from the staff of the Nasdaq Global Select Market ("Nasdaq") notifying it that, as a result of the Chapter 11 filing, and in accordance with Nasdaq Listing Rules, the Company's common stock will be delisted from the Nasdaq. In such event, the Company expects that its common stock would commence trading on the Pink Open Market (commonly referred to as the "pink sheets").

Asset Purchase Agreement

Prior to the commencement of the Intended Chapter 11 Proceedings, on March 31, 2024 the Company entered into a "stalking horse" Asset Purchase Agreement (the "Asset Purchase Agreement") with Merz Pharmaceuticals, LLC, a North Carolina limited liability company (the "Purchaser"), and, solely with respect to the guarantee of purchaser's obligations thereunder, Merz Pharma GmbH & Co. KGaA, a German partnership (the "Purchaser Parent"). The Asset Purchase Agreement provides for the sale of substantially all of the Company's assets (the "Purchased Assets") to the Purchaser for $185.0 million, subject to certain adjustments as specified in the Asset Purchase Agreement. The Asset Purchase Agreement is subject to Court approval and compliance with agreed-upon bidding procedures under Section 363 of the Code ("Section 363") allowing for the submission of higher or otherwise better offers and satisfaction of other agreed-upon conditions. In accordance with the sale process under Section 363, notice of the proposed sale to the Purchaser will be given to third parties and competing bids will be solicited over a specified period of time. The Company will manage the bidding process and evaluate the bids, in consultation with the Company's advisors and as overseen by the Court. The Company cannot provide any assurance that the Company will be able to successfully complete a sale of the Purchased Assets or that it will be able to continue to fund the Company's operations throughout the Intended Chapter 11 Proceedings.

Restructuring Support Agreement

Prior to the commencement of the Intended Chapter 11 Proceedings, on April 1, 2024 the Company entered into a Restructuring Support Agreement with the holders of a majority of its 2024 Notes (the "RSA Noteholders" and such agreement, the "Restructuring Support Agreement"). As contemplated in the Restructuring Support Agreement, the Company will seek to sell substantially all of its assets in a sale pursuant to Section 363. The Restructuring Support Agreement sets out certain milestones and conditions relating to the Section 363 sale process, subject to the terms and conditions contained therein.

DIP Credit Agreement

In order to fund the continued operations of the Company during the pendency of the Intended Chapter 11 Proceedings, the Company and certain of the RSA Noteholders agreed to the terms of a form of Debtor-in-Possession Credit Agreement (the "DIP Credit Agreement") to be entered into by and among the Company, as borrower, and the lenders from time to time party thereto (collectively, the "DIP Lenders", GLAS USA LLC, as administrative agent (the "DIP Administrative Agent"), and GLAS Americas, LLC, collateral agent (collectively, with the DIP Administrative Agent, the "DIP Agent"), pursuant to which the DIP Lenders would provide the Company with a senior secured, superpriority debtor-in-possession term loan facility in the maximum aggregate amount of $60.0 million (the "DIP Credit Facility," and the commitments of the DIP Lenders thereunder, the "DIP Commitments" and, the loans thereunder, the "DIP Loans"), which, subject to the satisfaction of certain conditions precedent to drawing as set forth in the DIP Credit Agreement, including the approval of the Court, will be made available to the Company in multiple drawings as follows: (i) up to $10.0 million ("Interim DIP Loan Commitment") will be made available for drawing upon entry by the Court of an interim order authorizing and approving the DIP Credit Facility on an interim basis (the "Interim DIP Order"),00 (ii) up to $10.0 million ("Final DIP Loan Commitments") will be made available for drawing upon entry of the Court of a final order authorizing and approving the DIP Credit Facility on a final basis (the "Final DIP Order" and together with the Interim DIP Order, the "DIP Orders"), and (iii) upon subject to entry of the Final Order, a roll-up facility in the aggregate maximum principal amount of $40.0 million, representing a roll-up of obligations under the 2024 Notes on a two dollars to one dollar basis of the DIP Commitments under the DIP Facility made by the RSA Noteholders. See *Financing Arrangements* in Part II, Item 7 of this Annual Report for more information.

The management of the Company is responsible for the accompanying audited consolidated financial statements and the related information included in the notes to the consolidated financial statements.

(2) Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (U.S.) and include the results of operations of the Company and its majority owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

Basis of Presentation

On June 2, 2023, the Company filed an Amended and Restated Certificate of Incorporation with the Secretary of State of Delaware to effect a 1-for-20 reverse stock split and a proportionate reduction in the number of authorized shares from 61,666,666 to 3,083,333. The Company's common stock began trading on a split-adjusted basis on the Nasdaq Global Select Market on June 5, 2023. The reverse stock split applied equally to all outstanding shares of the common stock and did not modify the rights or preferences of the common stock. All figures in this report relating to shares of the Company's common stock (such as share amounts, per share amounts, and conversion rates and prices), including in the financial statements and accompanying notes to the financial statements, have been retroactively restated to reflect the reverse stock split.

Use of Estimates

The preparation of the consolidated financial statements requires management to make a number of estimates and assumptions relating to the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include share-based compensation accounting, which are largely dependent on the fair value of the Company's equity securities, measurement of changes in the fair value of acquired contingent consideration which is based on a probability weighted discounted cash flow valuation methodology, estimated deductions to determine net revenue such as allowances for customer credits, including estimated discounts, rebates, and chargebacks, which are estimated based on available information that will be adjusted to reflect known changes in the factors that impact such allowances, estimates of derivative liability associated with the exchange of the convertible senior secured notes due 2024, which is marked to market each quarter based on a binomial model, estimates of reserves for obsolete and excess inventory, and estimates of unrecognized tax benefits and valuation allowances on deferred tax assets which are based on an assessment of recoverability of the deferred tax assets against future taxable income. Actual results could differ from those estimates.

Risks and Uncertainties

The Company is subject to risks common to companies in the pharmaceutical industry including, but not limited to, uncertainties related to commercialization of products, regulatory approvals, dependence on key products, dependence on key customers and suppliers, and protection of intellectual property rights.

Cash and Cash Equivalents

The Company considers all highly liquid debt instruments with original maturities of three months or less from date of purchase to be cash equivalents. All cash and cash equivalents are held in highly rated securities including a Treasury money market fund which is unrestricted as to withdrawal or use. To date, the Company has not experienced any losses on its cash and cash equivalents. The carrying amount of cash and cash equivalents approximates its fair value due to its short-term and liquid nature. The Company maintains cash balances in excess of insured limits.

Restricted Cash

At December 31, 2023, the Company had $0.7 million of restricted cash, of which $0.3 consisted of collateralized standby letters of credit in connection with obligations under facility leases and $0.4 million held in a bank account with funds to cover the Company's self-funded employee health insurance.l See Note 7 to the Company's Consolidated Financial Statements included in this report for a discussion of interest payments on the outstanding convertible senior secured notes due 2024.

The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported within the statement of financial position that sum to the total of the same amounts shown in the statement of cash flows:

	December 31, 2023		December 31, 2022	
(In thousands)	**Beginning of period**	**End of period**	**Beginning of period**	**End of period**
Cash and cash equivalents	$ 37,536	$ 29,979	$ 45,634	$ 37,536
Restricted cash	6,884	381	13,400	6,884
Restricted cash-non current	255	255	6,189	255
Total Cash, cash equivalents and restricted cash per statement of cash flows	$ 44,675	$ 30,615	$ 65,223	$ 44,675

Other Comprehensive Income (Loss)

The Company's other comprehensive income (loss) consisted of adjustments for foreign currency translation and is recorded and presented net of income tax. There was no income tax allocated to the foreign currency translation adjustment in Other Comprehensive Income (Loss) for the period ended December 31, 2023 and 2022. The cumulative foreign currency translation adjustment reported in Other Comprehensive Income (Loss) was $0.8 million and $1.6 million for the period ended December 31, 2023 and 2022, respectively.

Inventory

Inventory is stated at the lower of cost or net realizable value. The Company capitalizes inventory costs associated with the Company's products prior to regulatory approval when, based on management's judgment, future commercialization is considered probable and the future economic benefit is expected to be realized; otherwise, such costs are expensed as research and development. Cost is determined using the first-in, first-out method (FIFO) for all inventories. The Company establishes reserves as necessary for obsolescence and excess inventory. The Company records a reserve for excess and obsolete inventory based on the expected future product sales volumes and the projected expiration of inventory and specifically identified obsolete inventory. Production costs related to idle capacity are not included in the cost of inventory but are charged directly to cost of sales in the period incurred.

The following table provides the major classes of inventory:

(In thousands)	December 31, 2023	December 31, 2022
Raw materials	$ 4,178	$ 6,212
Work-in-progress	$ 2,491	$ —
Finished goods	9,486	6,540
Total	$ 16,155	$ 12,752

Ampyra

Prior to October 2022, the cost of Ampyra inventory manufactured by Alkermes plc (Alkermes) was based on agreed upon pricing with Alkermes. In the event Alkermes did not manufacture the products, Alkermes was entitled to a compensating payment for the quantities of product provided by Patheon, the Company's alternative manufacturer. This compensating payment is included in the Company's inventory balances. No payments were made for the years ended December 31, 2023 and 2022.

In October 2022, an arbitration panel issued a decision in our dispute with Alkermes and ruled that the existing license and supply agreements with Alkermes are unenforceable. As a result of the panel's ruling, the Company no longer pays Alkermes any royalties on net sales for license and supply of Ampyra, and the Company is using an alternative source for supply of Ampyra.

On September 30, 2010, the Company entered into a world-wide manufacturing services agreement with Patheon, Inc. as a second manufacturer for Ampyra (Dalfampridine-ER tablets, 10mg). Under the manufacturing services agreement, the Company agreed to purchase from Patheon, on a non-exclusive basis, a portion of our requirements for Ampyra in the United States. The Company pays Patheon a fixed per bottle fee (60 tablets per bottle) based on the annual quantity of Ampyra bottles that are delivered for sale. Patheon is currently the Company's sole manufacturer and packager of Ampyra for sales in the United States.

The manufacturing services agreement is automatically renewed for successive one-year periods on December 31 of each year, unless either the Company or Patheon provide the other party with at least 12-months' prior written notice of non-renewal. Either party may terminate manufacturing services agreement by written notice under certain circumstances, including material breach (subject to specified cure periods) or insolvency. The Company may also terminate the manufacturing services agreement upon certain regulatory actions or objections. Patheon may terminate the manufacturing services agreement if the Company assigns the agreement to a third party under certain circumstances.

The manufacturing services agreement contains customary representations, warranties and covenants, including with respect to the ownership of any intellectual property created pursuant to the manufacturing services agreement, as well as provisions relating to ordering, payment and shipping terms, regulatory matters, reporting obligations, indemnity, confidentiality and other matters.

The Company relies on a single third-party manufacturer to supply dalfampridine, the active pharmaceutical ingredient, or API, in Ampyra, and also on a single supplier for a critical excipient used in the manufacture of Ampyra. If these companies experience any disruption in their operations, the Company's supply of Ampyra could be delayed or interrupted until the problem is solved or the Company locates another source of supply or another packager, which may not be available. The Company may not be able to enter into alternative supply or packaging arrangements on terms that are commercially reasonable, if at all. Any new supplier or packager would also be required to qualify under applicable regulatory requirements. Because of these and other factors, the Company could experience substantial delays before they are able to obtain qualified replacement products or services from any new supplier or packager.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation, except for assets acquired in a business combination, which are recorded at fair value as of the acquisition date. Depreciation is computed on a straight-line basis over the estimated useful lives of the assets, which ranges from one to seven years. Leasehold improvements are recorded at cost, less accumulated amortization, which is computed on a straight-line basis over the shorter of the useful lives of the assets or the remaining lease term. Expenditures for maintenance and repairs are charged to expense as incurred.

Finite-Lived Intangible Assets

The Company has finite lived intangible assets that are amortized on a straight-line basis over the period in which the Company expects to receive economic benefit and are reviewed for impairment when facts and circumstances indicate that the carrying value of the asset may not be recoverable. The determination of the expected life will be dependent upon the use and underlying characteristics of the intangible asset. In the Company’s evaluation of the intangible assets, it considers the term of the underlying asset life and the expected life of the related product line. If impairment indicators are present or changes in circumstance suggest that impairment may exist, the Company performs a recoverability test by comparing the sum of the estimated undiscounted cash flows of each intangible asset to its carrying value on the consolidated balance sheet. If the undiscounted cash flows used in the recoverability test are less than the carrying value, the Company would determine the fair value of the intangible asset and recognize an impairment loss in the statement of operations if the carrying value of the intangible asset exceeds its fair value. Fair value is generally estimated based on either appraised value or other valuation techniques. Events that could result in an impairment, or trigger an interim impairment assessment, may include actions by regulatory authorities with respect to the Company or its competitors, new or better products entering the market, changes in market share or market pricing, changes in the economic lives of the assets, changes in the legal framework covering patents, rights or licenses, and other market changes which could have a negative effect on cash flows and which could result in an impairment.

Contingent Consideration

The Company may record contingent consideration as part of the cost of business acquisitions. Contingent consideration is recognized at fair value as of the date of acquisition and recorded as a liability on the consolidated balance sheet. The contingent consideration is re-valued on a quarterly basis using a probability weighted discounted cash-flow approach until fulfillment or expiration of the contingency. Changes in the fair value of the contingent consideration are recognized in the statement of operations.

Due to the Company's Asset Purchase and License agreement between Civitas, the Company's wholly owned subsidiary, and Alkermes in December 2010, the Company has recognized contingent consideration. See Note 13 to the Company’s Consolidated Financial Statements included in this report for a discussion on the Alkermes ARCUS agreement. Refer to Note 12 – *Fair Value Measurements* for more information about the contingent consideration liability.

Impairment of Long-Lived Assets

The Company continually evaluates whether events or circumstances have occurred that indicate that the estimated remaining useful lives of its long-lived assets, including identifiable intangible assets subject to amortization and property plant and equipment, may warrant revision or that the carrying value of the assets may be impaired. The Company evaluates the realizability of its long-lived assets based on profitability and cash flow expectations for the related assets. Factors the Company considers important that could trigger an impairment review include significant changes in the use of any assets, changes in historical trends in operating performance, changes in projected operating performance, stock price, loss of a major customer and significant negative economic trends. The commencement of the Intended Chapter 11 Proceedings was determined to be a triggering event in connection with the Company's review of the recoverability of its long-lived assets for the year ended December 31, 2023. The Company performed a recoverability test as of December 31, 2023 using the undiscounted cash flows, which are the sum of the future undiscounted cash flows expected to be derived from the direct use of the long-lived assets to the carrying value of the long-lived assets. Estimates of future cash flows were based on the Company's own assumptions about its own use of the long-lived assets. The cash flow estimation period was based on the long-lived assets' estimated remaining useful life to the Company. After performing the recoverability test, the Company determined that the undiscounted cash flows were less than the carrying value and the long-lived assets were impaired. The Company recognized an impairment charge of $251.3 million for the year ended December 31, 2023 in the Statement of Operations. Changes in these assumptions and resulting valuations could result in future long-lived asset impairment charges. Management will continue to monitor any changes in circumstances for indicators of impairment. Any write-downs are treated as permanent reductions in the carrying amount of the assets.

Non-Cash Interest Expense on Liability Related to Sale of Future Royalties

As of October 1, 2017, the Company completed a royalty purchase agreement with HealthCare Royalty Partners, or HCRP ("Royalty Agreement"). In exchange for the payment of $40 million to the Company, HCRP obtained the right to receive Fampyra royalties payable by Biogen under the Collaboration and Licensing Agreement between the Company and Biogen (the "Biogen Collaboration Agreement"), up to an agreed upon threshold of royalties. This threshold was met during the second quarter of 2022 and its obligations to HCRP expired upon Biogen's payment of royalties for that quarter. As a result, the full benefit of the Fampyra royalty revenue reverted back to the Company and the Company will continue to receive the Fampyra royalty revenue from Biogen until the revenue stream ends. As of December 31, 2023 the liability related to the sale of future royalties is zero.

Prior to satisfying its obligation to HCRP, since the Company maintained rights under the Biogen Collaboration Agreement, the Royalty Agreement has been accounted for as a liability that was amortized using the effective interest method over the life of the arrangement, in accordance with the relevant accounting guidance. In order to determine the amortization of the liability, the Company estimated the total amount of future net royalty payments made to HCRP over the term of the agreement up to the agreed upon threshold of royalties. The total threshold of net royalties to be paid, less the net proceeds received was recorded as interest expense over the life of the liability. The Company imputes interest on the unamortized portion of the liability using the effective interest method and records interest expense based on the timing of the payments received over the term of the Royalty Agreement. The Company's estimate of the interest rate under the arrangement is based on forecasted net royalty payments expected to be made to HCRP over the life of the Royalty Agreement. The Company estimated an effective annual interest rate of approximately 15%. Over the course of the Royalty Agreement, the actual interest rate was affected by the amount and timing of net royalty revenue recognized and changes in forecasted revenue. On a quarterly basis, the Company reassessed the effective interest rate and adjusted the rate prospectively as required. Non-cash royalty revenue is reflected as royalty revenue and non-cash interest expense is reflected as interest and amortization of debt discount expense in the Statement of Operations.

Patent Costs

Patent application and maintenance costs are expensed as incurred.

Research and Development

Research and development expenses include the costs associated with the Company's internal research and development activities, including salaries and benefits, occupancy costs, and research and development conducted for it by third parties, such as contract research organizations (CROs), sponsored university-based research, clinical trials, contract manufacturing for its research and development programs, and regulatory expenses. In addition, research and development expenses include the cost of clinical trial drug supply shipped to the Company's clinical study vendors. For those studies that the Company administers itself, the Company accounts for its clinical study costs by estimating the patient cost per visit in each clinical trial and recognizes this cost as visits occur, beginning when the patient enrolls in the trial. This estimated cost includes payments to the trial site and patient-related costs, including laboratory costs related to the conduct of the trial. Cost per patient varies based on the type of clinical trial, the site of the clinical trial, and the length of the treatment period for each patient. For those studies for which the Company uses a CRO, the Company accounts for its clinical study costs according to the terms of the CRO contract. These costs include upfront, milestone and monthly expenses as well as reimbursement for pass through costs. As actual costs become known to the Company, it adjusts the accrual; such changes in estimate may be a material change in its clinical study accrual, which could also materially affect its results of operations. Because of its limited financial resources, the Company previously suspended work on proprietary research and development programs, and has performed feasibility studies for potential collaborations with other companies that express interest in formulating their novel molecules for pulmonary delivery using the Company's proprietary ARCUS technology.

Accounting for Income Taxes

The Company provides for income taxes in accordance with ASC Topic 740 (ASC 740). Income taxes are accounted for under the asset and liability method with deferred tax assets and liabilities recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. 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 reversed or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date. Deferred tax assets are reduced by a valuation allowance for the amounts of any tax benefits which, more likely than not, will not be realized.

In determining whether a tax position is recognized for financial statement purposes, a two-step process is utilized whereby the threshold for recognition is a more likely-than-not test that the tax position will be sustained upon examination and the tax position is measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement.

Revenue Recognition

ASC 606 outlines a five-step process for recognizing revenue from contracts with customers: i) identify the contract with the customer, ii) identify the performance obligations in the contract, (iii) determine the transaction price, iv) allocate the transaction price to the separate performance obligations in the contract, and (v) recognize revenue associated with the performance obligations as they are satisfied.

The Company only applies the five-step model to contracts when it is probable that the Company will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. Once a contract is determined to be within the scope of ASC 606, the Company determines the performance obligations that are distinct. The Company recognizes as revenues the amount of the transaction price that is allocated to each respective performance obligation when the performance obligation is satisfied or as it is satisfied. Generally, the Company's performance obligations are transferred to customers at a point in time, typically upon receipt of the product by the customer.

ASC 606 requires entities to record a contract asset when a performance obligation has been satisfied or partially satisfied, but the amount of consideration has not yet been received because the receipt of the consideration is conditioned on something other than the passage of time. ASC 606 also requires an entity to present a revenue contract as a contract liability in instances when a customer pays consideration, or an entity has a right to an amount of consideration that is unconditional (e.g., receivable), before the entity transfers a good or service to the customer. As of December 31, 2023, the Company had contract liabilities of $8.1 million, which are the upfront payments received as part of the Esteve Germany distribution agreement entered into in 2021 and the Chance China distribution agreement entered into in May 2023. The Company did not have any contract assets as of December 31, 2023 or 2022.

Product Revenues, Net

Inbrija is distributed in the U.S. primarily through: a specialty pharmacy associated with the Company's e-prescribing program, described below; AllianceRx Walgreens Prime, or Walgreens, a specialty pharmacy that delivers the medication to patients by mail; the cash pay program through Sterling and ASD Specialty Healthcare, Inc. (an Amerisource Bergen affiliate). Walgreens is the sole specialty pharmacy for U.S. sales of Inbrija. In 2022, the Company implemented an e-prescribing program for the distribution of Inbrija in the U.S. through a specialty pharmacy that supports electronic prescriptions. The Company believes the convenience of electronic prescribing may be preferred by some physicians and patients.

Ampyra is distributed primarily through a network of specialty pharmacies, which deliver the medication to patients by mail.

Net revenues from product sales is recognized at the transaction price when the customer obtains control of the Company's products, which occurs at a point in time, typically upon receipt of the product by the customer, such as specialty pharmacy companies and distributors. The Company's payment terms are between 30 to 60 days.

The Company's net revenues represent total revenues adjusted for discounts and allowances, including estimated cash discounts, chargebacks, rebates, returns, copay assistance, data fees and wholesaler fees for services. These adjustments represent variable consideration under ASC 606 and are recorded for the Company's estimate of cash consideration expected to be given by the Company to a customer that is presumed to be a reduction of the transaction price of the Company's products and, therefore, are characterized as a reduction of revenue. These adjustments are established by management as its best estimate based on available information and will be adjusted to reflect known changes in the factors that impact such allowances. Adjustments for variable consideration are determined based on the contractual terms with customers, historical trends, communications with customers and the levels of inventory remaining in the distribution channel, as well as expectations about the market for the product and anticipated introduction of competitive products.

Discounts and Allowances

Revenues from product sales are recorded at the transaction price, which includes estimates for discounts and allowances for which reserves are established and includes cash discounts, chargebacks, rebates, returns, copay assistance, data fees and wholesaler fees for services. Actual discounts and allowances are recorded following shipment of product and the appropriate reserves are credited. These reserves are classified as reductions of accounts receivable (if the amount is payable to the customer and right of offset exists) or a current liability (if the amount is payable to a party other than a customer). These allowances are established by management as its best estimate based on historical experience and data points available and are adjusted to reflect known changes in the factors that impact such reserves. Allowances for customer credits, chargebacks, rebates, data fees and wholesaler fees for services, returns, and discounts are established based on contractual terms with customers and analyses of historical usage of these items. Actual amounts of consideration ultimately received may differ from the Company's estimates. If actual results in the future vary from the Company's estimates, the Company will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known. The nature of the Company's allowances and accruals requiring critical estimates, and the specific considerations it uses in estimating their amounts are as follows:

Government Chargebacks and Rebates: The Company contracts for Medicaid and other U.S. federal government programs to allow for its products to remain eligible for reimbursement under these programs. For Medicare, the Company also estimates the number of patients in the prescription drug coverage gap for whom the Company will owe an additional liability under the Medicare Part D program. Based on the Company's contracts and the most recent experience with respect to sales through each of these channels, the Company provides an allowance for chargebacks and rebates. The Company monitors the sales trends and adjust the chargeback and rebate percentages on a regular basis to reflect the most recent chargebacks and rebate experience. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period.

Managed Care Contract Rebates: The Company contracts with various managed care organizations including health insurance companies and pharmacy benefit managers. These contracts stipulate that rebates and, in some cases, administrative fees, are paid to these organizations provided the Company's product is placed on a specific tier on the organization's drug formulary. Based on the Company's contracts and the most recent experience with respect to sales through managed care channels, the Company provides an allowance for managed care contract rebates. The Company monitors the sales trends and adjust the allowance on a regular basis to reflect the most recent rebate experience. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period.

Copay Mitigation Rebates: The Company offers copay mitigation to commercially insured patients who have coverage for their products (in accordance with applicable law) and are responsible for a cost share. Based on the Company's contracts and the most recent experience with respect to actual copay assistance provided, the Company's provides an allowance for copay mitigation rebates. The Company monitors the sales trends and adjust the rebate percentages on a regular basis to reflect the most recent rebate experience.

Cash Discounts: The Company sells directly to companies in their distribution network, which primarily includes specialty pharmacies, which deliver the medication to patients by mail, and ASD Specialty Healthcare, Inc. (an AmerisourceBergen affiliate). The Company generally provides invoice discounts for prompt payment for its products. The Company estimates its cash discounts based on the terms offered to its customers. Discounts are estimated based on rates that are explicitly stated in the Company's contracts as it is expected they will take the discount and are recorded as a reduction of revenue at the time of product shipment when product revenue is recognized. The Company adjusts estimates based on actual activity as necessary.

Product Returns: The Company offers no right of return except for products damaged upon receipt to Ampyra and Inbrija customers or a limited right of return based on the product's expiration date to previous Zanaflex and Qutenza customers. The Company estimates the amount of its product sales that may be returned by its customers and records this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company currently estimates product return liabilities using historical sales information and inventory remaining in the distribution channel.

Data Fees and Fees for Services Payable to Specialty Pharmacies: The Company has contracted with certain specialty pharmacies to obtain transactional data related to its products in order to develop a better understanding of its selling channel as well as patient activity and utilization by the Medicaid program and other government agencies and managed care organizations. The Company pays a variable fee to the specialty pharmacies to provide the Company the data. The Company also pays the specialty pharmacies a fee in exchange for providing distribution and inventory management services, including the provision of inventory management data to the Company. The Company estimates its fee for service accruals and allowances based on sales to each specialty pharmacy and the applicable contracted rate.

Royalty Revenues

The Company recognizes revenue for royalties under ASC 606, which provides revenue recognition constraints by requiring the recognition of revenue at the later of the following: 1) sale or usage of the products or 2) satisfaction of the performance obligations. The Company has satisfied its performance obligations and therefore recognizes royalty revenue when the sales to which the royalties relate are completed.

Royalty revenues recorded by the Company relate to the Company's License and Collaboration agreement with Biogen for sales of Fampyra, and an agreement with Neurelis Inc. for sales of Valtoco. Royalty revenues from Neurelis was capped at $5.1 million. No further royalties from sales of Valtoco are expected.

License Revenues

License revenues relates to the Collaboration Agreement with Biogen which provides for milestone payments for the achievement of certain regulatory and sales milestones during the term of the agreement. Regulatory milestones are contingent upon the approval of Fampyra for new indications outside of the U.S. Sales milestones are contingent upon the achievement of certain net sales targets for Fampyra sales outside of the U.S. The Company recognizes license revenues under ASC 606, which provides constraints for entities to recognize license revenues which is deemed to be variable by requiring the Company to estimate the amount of consideration to which it is entitled in exchange for transferring the promised goods or services to a customer. The Company recognizes an estimate of revenues to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the milestone is achieved. For regulatory milestones, the Company evaluates whether the milestones are considered probable of being reached and estimates the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. Milestone payments that are not within the Company's control or the licensee's control, such as regulatory approvals, are generally not considered probable of being achieved until those approvals are received. For sales-based milestones, the Company recognizes revenues upon the achievement of the specific sale milestones.

If the license to the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenues from upfront license fees allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other rights and obligations, the Company determines whether the combined performance obligation is satisfied over time or at a point in time. If the combined performance obligation is satisfied over time, the Company uses its judgment in determining the appropriate method of measuring progress for purposes of recognizing revenue from the up-front license fees. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

Esteve and Chance Distribution and Supply Agreements

In November 2021, the Company entered into distribution and supply agreements with Esteve Pharmaceuticals to commercialize Inbrija in Germany. Under the terms of the distribution agreement, the Company received a $5.9 million upfront payment, and is entitled to receive additional sales-based milestones. Similarly, in July 2021, the Company entered into a distribution and supply agreement with Esteve to commercialize Inbrija in Spain. Under the terms of the supply agreements, the Company is entitled to receive a significant double-digit percent of the selling price of Inbrija in exchange for supply of the product. Esteve launched in Germany in June 2022, and Spain in February 2023.

In May 2023, the Company entered into a distribution agreement and a commercial supply agreement with Hangzhou Chance Pharmaceuticals Co., Ltd ("Chance"), for the exclusive distribution of Inbrija in China. Chance is obligated to use commercially reasonable efforts to market Inbrija in China. The agreements remain in effect until the earlier of (a) the last commercial sale of Inbrija on a jurisdiction- by- jurisdiction basis, and (b) 12 years from the effective date of the agreements, subject to customary termination for insolvency and certain other termination rights. The Company received a non-refundable upfront payment of $2.5 million, and a near term milestone payment of up to $6 million, depending on the clinical study requirements to be determined by the Chinese National Medical Products Administration (NMPA). The Company will also receive $3 million upon regulatory approval of Inbrija in China, up to $132.5 million in sales milestones based on specified sales volumes, and a fixed fee for each carton of Inbrija supplied to Chance.

The Company assessed this arrangement in accordance with ASC 606 and concluded that the contract counterparty, Esteve, is a customer. The Company identified the following promises in the arrangement: the trademark license and marketing and distribution rights and the supply of minimum purchase commitments. The Company further determined that the promise for additional supply exceeding minimum purchase commitments represented a customer option, which would create an obligation for the Company if exercised by Esteve. No additional or material upfront consideration is owed to the Company by Esteve upon exercise of the customer option for the right to additional supply and it is offered at the same percent of selling price as the supply of minimum purchase commitments. Accordingly, it was assessed as a material right and, therefore, a separate performance obligation in the arrangement. The Company then determined that the trademark license and marketing and distribution rights and the supply of minimum purchase commitments were not distinct from one another and must be combined as a performance obligation. Based on this determination, as well as the considerations noted above with respect to the material right for additional supply, the Company identified two distinct performance obligations at the inception of the contract: (i) the combined performance obligation, (ii) the material right for additional supply.

As of December 31, 2023, the Company had contract liabilities of $8.1 million, as compared to $6.1 million as of December 31, 2022, which are the upfront payments received under the terms of the Company's supply and distribution agreements with Hangzhou Chance Pharmaceuticals Co., Ltd. ("Chance") and Esteve Pharmaceuticals GmbH ("Esteve Germany") related to the commercialization of Inbrija in China and Germany, respectively. The Company did not have any contract assets as of December 31, 2023 or 2022. The Company launched Inbrija in Germany in June 2022 and Spain in February 2023, and expects to launch in China in 2025. The Company recognized $4.8 million of revenues during the period ended December 31, 2023 from the supply agreement with Esteve Pharmaceuticals. As of December 31, 2023, approximately $0.2 million of revenue is expected to be recognized from remaining performance obligations for the Esteve agreement over the next 12 months as goods are shipped. The Company expects to recognize revenue of these remaining performance obligations over the next 8 years in Germany and 11 years in China, with the balance recognized thereafter. The Company will re-evaluate the transaction price in each reporting period and as certain events are resolved or other changes in circumstances occur.

Additionally, the Company is eligible to receive additional payments based on the achievements by Esteve and Chance of sales-based milestones. Variable consideration related these sales-based milestones was fully constrained due to the fact that it was probable that a significant reversal of cumulative revenue would occur, given the inherent uncertainty of success with these future milestones.

The following table disaggregates the Company's revenues by major source (in thousands):

(In thousands)	Fiscal Year Ended December 31, 2023	Fiscal Year Ended December 31, 2022
Revenues:		
Net product revenues:		
Ampyra	$ 63,940	$ 72,945
Inbrija U.S.	33,644	27,989
Inbrija ex-U.S.	4,837	2,911
Total net product revenues	102,421	103,845
Royalty Revenues	15,113	14,221
License Revenue	99	500
Total net revenues	$ 117,633	$ 118,566

Concentration of Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of investments in cash, cash equivalents, restricted cash, short-term investments and accounts receivable. The Company does not require any collateral for its accounts receivable. The Company maintains cash, cash equivalents and restricted cash with approved financial institutions. The Company is exposed to credit risks and liquidity in the event of default by the financial institutions or issuers of investments in excess of FDIC insured limits. The Company performs periodic evaluations of the relative credit standing of these financial institutions and limits the amount of credit exposure with any institution.

The Company does not own or operate, and currently does not plan to own or operate, facilities for production and packaging of its product Ampyra and Inbrija. It relies and expects to continue to rely on third parties for the production and packaging of its commercial products and clinical trial materials for all of its products except Inbrija. Prior to the sale of the facility in February 2021, the Company leased a manufacturing facility in Chelsea, Massachusetts which produced Inbrija for clinical trials and commercial supply.

Prior to October 2022, the Company relied primarily on Alkermes for its supply of Ampyra. Under its supply agreement with Alkermes, the Company was obligated to purchase at least 75% of its yearly supply of Ampyra from Alkermes, and was also required to make compensatory payments if it did not purchase 100% of its requirements from Alkermes, subject to certain specified exceptions. The Company and Alkermes agreed that the Company may purchase up to 25% of its annual requirements from Patheon, a mutually agreed-upon second manufacturing source, with compensatory payments. The Company and Alkermes also relied on a single third-party manufacturer, Regis, to supply dalfampridine, the active pharmaceutical ingredient, or API, in Ampyra.

In October 2022, an arbitration panel issued a decision in the Company's dispute with Alkermes and awarded to the Company approximately $18.3 million including prejudgment interest and declared the Company's agreements with Alkermes unenforceable. Of the total award amount of $18.3 million, the Company recorded $16.6 million as a reduction to operating expenses and $1.7 million as interest income. As a result of the panel's ruling, the Company no longer pays Alkermes any royalties on net sales for license and supply of Ampyra. The Company had previously designated Patheon, Inc. as a second manufacturing source of Ampyra. In connection with that designation, the Company entered into a manufacturing agreement with Patheon, and Alkermes assisted the Company in transferring manufacturing technology to Patheon. Patheon now supplies the Company with its Ampyra needs.

The Company relies on a single third-party manufacturer to supply dalfampridine, the active pharmaceutical ingredient, or API, in Ampyra, and also on a single supplier for a critical excipient used in the manufacture of Ampyra. If these companies experience any disruption in their operations, the Company's supply of Ampyra could be delayed or interrupted until the problem is solved or the Company locates another source of supply or another packager, which may not be available. The Company may not be able to enter into alternative supply or packaging arrangements on terms that are commercially reasonable, if at all. Any new supplier or packager would also be required to qualify under applicable regulatory requirements. Because of these and other factors, the Company could experience substantial delays before they are able to obtain qualified replacement products or services from any new supplier or packager.

The Company's principal direct customers for the year ended December 31, 2023 were a network of specialty pharmacies and ASD Specialty Healthcare, Inc. (an Amerisource Bergen affiliate) for Inbrija and a network of specialty pharmacies for Ampyra. The Company periodically assesses the financial strength of these customers and establishes allowances for anticipated losses, if necessary. Five customers individually accounted for more than 10% of the Company's revenues related to specialty pharmacies and approximately 90% of total revenues in 2023, and approximately 91% of total revenues in 2022. Four customers individually accounted for more than 10% of the Company's accounts receivable related to specialty pharmacies and approximately 87% of total accounts receivable as of December 31, 2023, and approximately 85% of total accounts receivable as of December 31, 2022.

Allowance for Cash Discounts

An allowance for cash discounts is accrued based on historical usage rates at the time of product shipment. The Company adjusts accruals based on actual activity as necessary. Cash discounts are typically settled with customers within 34 days after the end of each calendar month. The Company provided cash discount allowances of $2.0 million and $1.8 million for the years ended December 31, 2023 and 2022, respectively. The Company's reserve for cash discount allowances was $0.3 million and $0.4 million as of December 31, 2023 and 2022, respectively.

(in thousands)	Cash Discounts
Balance at December 31, 2021	$ 780
Allowances for sales	1,830
Actual credits	(2,203)
Balance at December 31, 2022	$ 407
Allowances for sales	1,978
Actual credits	(2,058)
Balance at December 31, 2023	$ 327

Allowance for Doubtful Accounts

A portion of the Company's accounts receivable may not be collected. The Company provides reserves based on an evaluation of the aging of its trade receivable portfolio and an analysis of high-risk customers. The Company has not historically experienced material losses related to credit risk. The allowance for doubtful accounts is $0.2 million and $0.1 million as of December 31, 2023 and December 31, 2022, respectively. The Company recorded write-offs of $0.1 million and $0.2 million for the years ended December 31, 2023 and December 31, 2022, respectively.

Allowance for Chargebacks

Based upon the Company's contracts and the most recent experience with respect to sales with the U.S. government, the Company provides an allowance for chargebacks. The Company monitors the sales trends and adjusts the chargebacks on a regular basis to reflect the most recent chargebacks experience. The Company recorded a charge of $3.0 million and $3.4 million for the years ended December 31, 2023 and December 31, 2022, respectively. The Company made a payment of $2.9 million and $3.2 million related to the chargebacks allowances for the years ended December 31, 2023 and December 31, 2022, respectively. The Company's reserve for chargebacks allowance were $0.4 million as of December 31, 2023 and $0.3 million as of December 31, 2022.

Contingencies

The Company accrues for amounts related to legal matters if it is probable that a liability has been incurred and the amount is reasonably estimable. Litigation expenses are expensed as incurred.

Fair Value of Financial Instruments

The fair value of a financial instrument represents the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced sale or liquidation. Significant differences can arise between the fair value and carrying amounts of financial instruments that are recognized at historical cost amounts. The Company considers that fair value should be based on the assumptions market participants would use when pricing the asset or liability.

The following methods are used to estimate the fair value of the Company's financial instruments:

(a) Cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate their fair values due to the short-term nature of these instruments;

(b) Short-term investments are recorded based primarily on quoted market prices;

(c) Finite-lived Inbrija intangible asset is measured at fair value using a discounted cash flow approach;

(d) Acquired contingent consideration related to the Civitas acquisition is measured at fair value using a probability weighted, discounted cash flow approach;

(e) Convertible senior secured notes due 2024 were measured at fair value based on market quoted prices of the debt securities; and

(f) Derivative liability related to conversion options of the convertible senior secured notes due 2024 is measured at fair value using a binomial model.

Earnings per Share

Basic net income (loss) per share and diluted net income per share is based upon the weighted average number of common shares outstanding during the period. Diluted net income per share is based upon the weighted average number of common shares outstanding during the period plus the effect of additional weighted average common equivalent shares outstanding during the period when the effect of adding such shares is dilutive. Common equivalent shares result from the assumed exercise of outstanding stock options (the proceeds of which are then assumed to have been used to repurchase outstanding stock using the treasury stock method), the vesting of restricted stock and the potential dilutive effects of the conversion options on the Company's convertible debt. In addition, the assumed proceeds under the treasury stock method include the average unrecognized compensation expense of stock options that are in-the-money. This results in the "assumed" buyback of additional shares, thereby reducing the dilutive impact of stock options. The dilutive effect of outstanding shares is reflected in diluted earnings per share by application of the treasury stock method or if-converted method, as applicable, at each reporting period. See Note 15 to the Company's Consolidated Financial Statements included in this report for a discussion on earnings (loss) per share.

Share-based Compensation

The Company has various share-based employee and non-employee compensation plans. See Note 6 to the Company's Consolidated Financial Statements included in this report for a discussion of share-based compensation.

The Company accounts for stock options and restricted stock granted to employees and non-employees by recognizing the costs resulting from all share-based payment transactions in the consolidated financial statements at their fair values. The Company estimates the fair value of each option on the date of grant using the Black-Scholes closed-form option-pricing model based on assumptions of expected volatility of its common stock, prevailing interest rates, an estimated forfeiture rate, and the expected term of the stock options, and the Company recognizes that cost as an expense ratably over the associated service period.

Foreign Currency Translation

The functional currency of operations outside the United States of America is deemed to be the currency of the local country, unless otherwise determined that the United States dollar would serve as a more appropriate functional currency given the economic operations of the entity. Accordingly, the assets and liabilities of the Company's foreign subsidiary, Biotie, are translated into United States dollars using the period-end exchange rate; and income and expense items are translated using the average exchange rate during the period; and equity transactions are translated at historical rates. Cumulative translation adjustments are reflected as a separate component of equity. Foreign currency transaction gains and losses are charged to operations and reported in other income (expense) in consolidated statements of operations.

Segment and Geographic Information

The Company is managed and operated as one business which is focused on developing therapies that restore function and improve the lives of people with neurological disorders. The entire business is managed by a single management team that reports to the Chief Executive Officer. The Company does not operate separate lines of business with respect to any of its products or product candidates and the Company does not prepare discrete financial information to allocate resources to separate products or product candidates or by location. Accordingly, the Company views its business as one reportable operating segment. Net product revenues reported to date are derived from the sales of Ampyra and Inbrija for the years ended December 31, 2023 and December 31, 2022, respectively.

Accumulated Other Comprehensive Income

Unrealized gains (losses) from the Company's investment securities and adjustments for foreign currency translation are included in accumulated other comprehensive income within the consolidated balance sheet.

Liquidity

The Company's ability to meet its future operating requirements, repay its liabilities, meet its other obligations, and continue as a going concern are dependent upon a number of factors, including its ability to generate cash from product sales, reduce expenditures, and obtain additional financing.

As of December 31, 2023, the Company had cash, cash equivalents, and restricted cash of approximately $30.6 million. Restricted cash includes $0.4 million related to self-funded employee health insurance and $0.3 million is related to collateralized standby letters of credit. The Company incurred net losses of $252.9 million and $65.9 million for the years ended December 31, 2023 and 2022, respectively.

The Company assesses and determines its ability to continue as a going concern in accordance with the provisions of ASC Topic 205-40, "Presentation of Financial Statements—Going Concern" ("ASC Topic 205-40"), which requires the Company to evaluate whether there are conditions or events that raise substantial doubt about its ability to continue as a going concern within one year after the date that its annual and interim consolidated financial statements are issued. Certain additional financial statement disclosures are required if such conditions or events are identified. If and when an entity's liquidation becomes imminent, financial statements should be prepared under the liquidation basis of accounting. Determining the extent, if any, to which conditions or events raise substantial doubt about the Company's ability to continue as a going concern, or the extent to which mitigating plans sufficiently alleviate any such substantial doubt, as well as whether or not liquidation is imminent, requires significant judgment by management. The Company has evaluated whether there are conditions and events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date the consolidated financial statements contained in this report are issued.

The Company believes that its existing cash and cash equivalents will not be sufficient to cover its cash flow requirements. The 2024 Notes mature on December 1, 2024, unless earlier converted in accordance with their terms. However, the commencement of the Intended Chapter 11 Proceedings will constitute an event of default under the Indenture governing the 2024 Notes, which will in turn result in the 2024 Notes becoming immediately due and payable, along with accrued and unpaid interest. At December 31, 2023, the principal balance outstanding under the 2024 Notes was $207.0 million. Additionally, for the duration of the Intended Chapter 11 Proceedings, the Company's operations and its ability to develop and execute its business plan, its financial condition, its liquidity and its continuation as a going concern will be subject to a high degree of risk and uncertainty associated with the Intended Chapter 11 Proceedings. The amount of the 2024 Notes significantly exceeds the price the Purchaser has agreed to pay for the Purchased Assets and the noteholders' security interest in substantially all of the Company's remaining assets (including any recovery the Company receives from its ongoing litigation with Alkermes as described in this Annual Report) will continue following the consummation of the Section 363 sale and Intended Chapter 11 Proceedings.

Recent Accounting Pronouncements - Adopted

In December 2019, the FASB issued ASU 2019-12, Simplifying the Accounting for Income Taxes. The ASU enhances and simplifies various aspects of the income tax accounting guidance in ASC 740 and removes certain exceptions for recognizing deferred taxes for investments, performing intra-period allocation and calculating income taxes in interim periods. The ASU also adds guidance to reduce complexity in certain areas, including recognizing deferred taxes for tax goodwill and allocating taxes to members of a consolidated group. This ASU is effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years with early adoption permitted. The Company adopted this guidance effective January 1, 2021. The adoption of this guidance did not have a significant impact on the consolidated financial statements.

In March 2020, the FASB issued ASU 2020-03, "Codification Improvements to Financial Instruments": The amendments in this update are to clarify, correct errors in, or make minor improvements to a variety of ASC topics. The changes in ASU 2020-03 are not expected to have a significant effect on current accounting practices. The ASU improves various financial instrument topics in the Codification to increase stakeholder awareness of the amendments and to expedite the improvement process by making the Codification easier to understand and easier to apply by eliminating inconsistencies and providing clarifications. The ASU is effective for smaller reporting companies for fiscal years beginning after December 15, 2022 with early application permitted. The adoption of this guidance did not have a significant impact on the consolidated financial statements.

In May 2021, the FASB issued ASU 2021-04, Earnings Per Share (Topic 260), Debt – Modifications and Extinguishments (Subtopic 470-50), Compensation – Stock Compensation (Topic 718), and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options. The FASB is issuing this update to clarify and reduce diversity in an issuer's accounting for modifications or exchanges of freestanding equity-classified written call options (for example, warrants) that remain equity classified after modification or exchange. The amendments in this update are effective for all entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. The Company adopted this guidance effective January 1, 2022. The adoption of this guidance did not have a significant impact on the consolidated financial statements.

Recent Accounting Pronouncements - Not Yet Adopted

In August 2020, the FASB issued ASU 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity. This update simplifies the accounting for convertible instruments by eliminating the cash conversion and beneficial conversion feature models which require separate accounting for embedded conversion features. This update also amends the guidance for the derivatives scope exception for contracts in an entity's own equity to reduce form-over-substance-based accounting conclusions and requires the application of the if-converted method for calculating diluted earnings per share. ASU 2020-06 is effective for smaller reporting companies for fiscal periods beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact the adoption of this guidance may have on its consolidated financial statements.

In November 2023, the FASB issued ASU 2023-07, Improvements to Reportable Segment Disclosures. This update requires a public entity to disclose significant segment expenses and other segment items on an annual and interim basis and provide in interim periods all disclosures about a reportable segment's profit or loss and assets that are currently required annually. Additionally, it requires a public entity to disclose the title and position of the Chief Operating Decision Maker (CODM). The ASU does not change how a public entity identifies its operating segments, aggregates them, or applies the quantitative thresholds to determine its reportable segments. The new standard is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted. The Company is currently evaluating the impact the adoption of this guidance may have on its consolidated financial statements.

In December 2023, the FASB issued ASU 2023-09, Improvements to Income Tax Disclosures. This update enhances the transparency and decision usefulness of income tax disclosures. ASU 2023-09 is effective for annual periods beginning after December 15, 2024. For entities other than public business entities, the amendments are effective for annual periods beginning after December 15, 2025. The Company is currently assessing the impact that this guidance may have on its consolidated financial statements.

Subsequent Events

Subsequent events are defined as those events or transactions that occur after the balance sheet date, but before the financial statements are filed with the Securities and Exchange Commission. The Company completed an evaluation of the impact of any subsequent events through the date these financial statements were issued, and determined there were subsequent events that required disclosure or adjustment in these financial statements. See Note 17 to the Company's Consolidated Financial Statements included in this report for a discussion of subsequent events.

(3) Leases

The Company adopted the lease guidance under ASU 2016-02, "Leases" Topic 842 effective January 1, 2019. Under the guidance for lessees, leases will be classified as finance or operating, with classification affecting the pattern and classification of expense recognition in the income statement. Operating lease ROU assets and operating lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at the commencement date. The operating lease ROU asset also includes any lease payments made and excludes lease incentives and initial direct costs incurred, if any.

The interest rate implicit in lease contracts is typically not readily determinable. As such, the Company utilizes its incremental borrowing rate, which is the rate incurred to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. In calculating the present value of the lease payments, the Company elected to utilize its incremental borrowing rate based on the remaining lease terms as of the January 1, 2019 adoption date.

The Company has elected the practical expedient to combine lease and non-lease components as a single component. The lease expense is recognized over the expected term on a straight-line basis. Operating leases are recognized on the balance sheet as right-of-use assets, current operating lease liabilities and non-current operating lease liabilities.

Additionally, the Company has elected the short-term lease recognition exemption for all leases that qualify. This means, for those leases where the initial lease term is one year or less or for which the ROU asset at inception is deemed immaterial, the Company will not recognize ROU assets or lease liabilities. Those leases are expensed on a straight-line basis over the term of the lease.

As of December 31, 2023, the Company serves as the lessee for two operating leases. The Company's leases have remaining lease terms of 3 years to 4.5 years.

Operating Leases

The Company leases certain office space, manufacturing and warehouse space under arrangements classified as leases under ASC 842. Leases with an initial term of 12 months or less are not recorded on the balance sheet; the Company recognizes lease expense for these leases on a straight-line basis over the lease term.

Ardsley, New York

The Company was previously headquartered at a leased facility in Ardsley, New York with approximately 160,000 square feet of space. In September 2021, the Company sent the landlord notice of exercise of its early termination option under the lease, which was effective on June 22, 2022. In connection with the lease termination, the Company paid an early termination fee of approximately $4.7 million. Concurrent with the Ardsley lease termination, in June 2022, the Company relocated its corporate headquarters to a substantially smaller subleased office in Pearl River, New York, described below.

Pearl River, New York

In June 2022, the Company entered into a 6-year sublease for an aggregate of approximately 21,000 square feet of space in Pearl River, New York. The Company has no options to extend the term of the sublease. The Pearl River sublease provides for monthly payments of rent during the lease term. Payments commenced on January 1, 2023 with a base rent of $0.3 million per year, subject to an annual 2.0% escalation factor in each subsequent year thereafter.

Waltham, Massachusetts

In October 2016, the Company entered into a 10-year lease agreement with a term commencing January 1, 2017, for approximately 26,000 square feet of lab and office space in Waltham, MA. The lease provides for monthly rental payments over the lease term. The base rent under the lease is currently $1.3 million per year.

In July 2023, the Company sublet to a third party approximately 13,000 square feet (approximately 49%) of its lab space at the Waltham, Massachusetts location. The sublease commenced on August 1, 2023, and will last for the reminder of the Company’s lease agreement through 2026. Under the terms of the head lease the Company is not relieved of its obligation as lessee and will continue to make monthly rent payments. The Company performed a recoverability test of the sublease agreement upon inception by comparing the rental income under the sublease to the Company’s obligations under the head lease and noted no impairment existed on the head lease. The Company recognized sublease rental income of $0.3 million in 2023 and $0.7 million per year beginning in 2024 until lease expiration in December 2026.

The Company’s existing leases have remaining lease terms of 3 years to 4.5 years. The weighted-average remaining lease term for its operating leases was 3.4 years at December 31, 2023. The weighted-average discount rate was 7.97% at December 31, 2023.

ROU assets and lease liabilities related to the Company’s operating leases are as follows:

(In thousands)	Balance Sheet Classification	December 31, 2023	December 31, 2022
Right-of-use assets	Right of use assets	$ 4,221	$ 5,287
Current lease liabilities	Current portion of lease liabilities	1,588	1,545
Non-current lease liabilities	Non-current portion of lease liabilities	3,166	4,341

The Company has lease agreements that contain both lease and non-lease components. The Company accounts for lease components together with non-lease components (e.g., common-area maintenance). The components of lease costs were as follows:

(In thousands)	Year ended December 31, 2023	Year ended December 31, 2022
Operating lease cost	$ 1,546	$ 3,843
Variable lease cost	426	2,005
Short-term lease cost	1	8
Total lease cost	$ 1,973	$ 5,855

Future minimum commitments under all non-cancelable operating leases are as follows:

(In thousands)	
2024	1,588
2025	1,633
2026	1,678
2027	357
2028	182
Later years	—
Total lease payments	5,438
Less: Imputed interest	(684)
Present value of lease liabilities	4,754

Supplemental cash flow information activity related to the Company's operating leases are as follows:

(In thousands)	December 31, 2023	December 31, 2022
Operating cash flow information:		
Cash paid for amounts included in the measurement of lease liabilities	$ 1,545	$ 8,191

(4) Intangible Assets

Intangible Assets

Inbrija and ARCUS Technology

In connection with the acquisition of Civitas in October 2014, the Company acquired global rights to Inbrija, a Phase 3 treatment candidate for Parkinson's disease OFF periods, also known as OFF episodes. The acquisition of Civitas also included rights to Civitas' proprietary ARCUS drug delivery technology, which the Company believes has potential to be used in the development of a variety of inhaled medicines. In December 2018, the FDA approved Inbrija for intermittent treatment of OFF episodes in people with Parkinson's disease treated with carbidopa/levodopa.

In accordance with the acquisition method of accounting, the Company allocated the acquisition cost for the transaction to the underlying assets acquired and liabilities assumed by the Company, based upon the estimated fair values of those assets and liabilities at the date of acquisition and classified the fair value of the acquired IPR&D as an indefinite-lived intangible asset until the successful completion of the associated research and development efforts. The value allocated to the indefinite lived intangible asset was $423 million. In December 2018, the Company received FDA approval for Inbrija and accordingly reclassified the indefinite lived intangible asset to a definite lived intangible asset with amortization commencing upon launch in February 2019.

The commencement of the Intended Chapter 11 Proceedings was determined to be a triggering event in connection with the Company's review of the recoverability of its long-lived assets for the year ended December 31, 2023. The Company performed a recoverability test as of December 31, 2023 using the undiscounted cash flows, which are the sum of the future undiscounted cash flows expected to be derived from the direct use of the long-lived assets to the carrying value of the long-lived assets. Estimates of future cash flows were based on the Company's own assumptions about its own use of the long-lived assets. The cash flow estimation period was based on the long-lived assets' estimated remaining useful life to the Company. After performing the recoverability test, the Company determined that the undiscounted cash flows were less than the carrying value and the long-lived assets were impaired. The Company recognized an impairment charge of $251.3 million for the year ended December 31, 2023 in the Statement of Operations. The Company concluded there are no facts or circumstances that would indicate a need for changing the estimated remaining useful life of this asset.

Websites

Intangible assets also include certain website development costs which have been capitalized. The Company has developed several websites, each with its own purpose, including the general corporate website, product information websites and various other websites. The Company fully amortized website development costs as of December 31, 2023.

The Company continually evaluates whether events or circumstances have occurred that indicate that the carrying value of the intangible assets may be impaired or that the estimated remaining useful lives of these assets may warrant revision. Other than the impairment identified above, as of December 31, 2023, the Company determined the remaining intangible assets were not impaired and that there are no facts or circumstances that would indicate a need for changing the estimated remaining useful lives of these assets.

Intangible assets consisted of the following:

		December 31, 2023						December 31, 2022			
(Dollars In thousands)	Estimated Remaining Useful Lives (Years)	Cost	Additions	Disposals	Accumulated Amortization	Impairment	Net Carrying Amount	Cost	Disposals	Accumulated Amortization	Net Carrying Amount
Inbrija [(1)]	11	423,000	—	—	(148,691)	(251,322)	22,987	423,000	—	(117,927)	305,073
Website development costs	1-3	10,902	—	(281)	(10,621)	—	—	14,585	(3,683)	(10,888)	14
		$ 433,902	$ —	$ (281)	$ (159,312)	$ (251,322)	$ 22,987	$ 437,585	$ (3,683)	$ (128,815)	$ 305,087

(1) In December 2018, the Company received FDA approval for Inbrija and accordingly reclassified the indefinite lived intangible assets to definite lived intangible assets and began amortizing the assets upon launch in February 2019.

The Company recorded amortization expenses of $30.8 million pertaining to the intangible asset related to Inbrija for the year ended December 31, 2023. The Company recorded amortization expense of $30.8 million pertaining to the intangible asset related to Inbrija for the year ended December 31, 2022.

Estimated future amortization expense for intangible assets subsequent to December 31, 2023 is as follows:

(In thousands)	
2024	$ 2,578
2025	$ 2,578
2026	$ 2,578
2027	$ 2,578
2028	$ 2,578
Thereafter	$ 10,097
	$ 22,987

The weighted-average remaining useful lives of all amortizable assets is approximately 11.0 years.

(5) Property and Equipment

Property and equipment consisted of the following:

(In thousands)	December 31, 2023	December 31, 2022	Estimated useful lives used
Machinery and equipment	$ 2,316	$ 2,315	2-7 years
Leasehold improvements	2,024	1,761	Lesser of useful life or remaining lease term
Computer equipment	2,620	4,467	1-3 years
Laboratory equipment	468	582	2-5 years
Furniture and fixtures	233	233	4-7 years
	7,661	9,358	
Less accumulated depreciation	(5,582)	(6,755)	
	$ 2,079	$ 2,603	

Depreciation and amortization expense on property and equipment was $0.9 million and $1.9 million for the years ended December 31, 2023 and 2022, respectively.

(6) Common Stock Options and Restricted Stock

On June 2, 2023, the Company filed an Amended and Restated Certificate of Incorporation with the Secretary of State of Delaware to effect a 1-for-20 reverse stock split and a proportionate reduction in the number of authorized shares from 61,666,666 to 3,083,333. The Company's common stock began trading on a split-adjusted basis on the Nasdaq Global Select Market on June 5, 2023. The reverse stock split applied equally to all outstanding shares of the common stock and did not modify the rights or preferences of the common stock. All figures in this report relating to shares of the Company's common stock (such as share amounts, per share amounts, and conversion rates and prices), including in the financial statements and accompanying notes to the financial statements, have been retroactively restated to reflect the reverse stock split.

On January 12, 2006, the Company's board of directors approved the adoption of the Acorda Therapeutics, Inc. 2006 Employee Incentive Plan (the 2006 Plan). The 2006 Plan served as the successor to the Company's 1999 Plan, as amended, and no further option grants or stock issuances were to be made under the 1999 Plan after the effective date, as determined under Section 14 of the 2006 Plan. All employees of the Company were eligible to participate in the 2006 Plan, including executive officers, as well as directors, independent contractors, and agents of the Company. The 2006 Plan also covered the issuance of restricted stock.

The 2006 Plan was administered by the Compensation Committee of the Board of Directors, which selected the individuals to be granted options and restricted stock, determined the time or times at which options and restricted stock were to be granted, determined the number of shares to be granted subject to any option or restricted stock and the duration of each option and restricted stock, and made any other determinations necessary, advisable, and/or appropriate to administer the 2006 Plan. Under the 2006 Plan, each option granted expires no later than the tenth anniversary of the date of its grant. The number of shares of common stock authorized for issuance under the 2006 Plan as of December 31, 2023 was 124,267 shares. As of December 31, 2023, the Company had granted an aggregate of 100,154 shares as restricted stock or subject to issuance upon exercise of stock options under the 2006 Plan, of which 5,945 shares remained subject to outstanding options.

On June 9, 2015, the Company's stockholders approved the adoption of the Acorda Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan (the 2015 Plan). The 2015 Plan serves as the successor to the Company's 2006 Plan, as amended, and no further option or stock grants were made under the 2006 Plan after the effective date of the 2015 Plan. All employees of the Company are eligible to participate in the 2015 Plan, including executive officers, as well as directors, consultants, advisors and other service providers of the Company or any of its subsidiaries. The 2015 Plan also covers the issuance of restricted stock.

The 2015 Plan is administered by the Compensation Committee of the Board of Directors, which selects the individuals to be granted options, restricted stock, and restricted stock units, determines the time or times at which options, restricted stock, and restricted stock units are to be granted, determines the number of shares to be granted subject to any option, restricted stock or restricted stock unit and the duration of each option, restricted stock, and restricted stock unit, and makes any other determinations necessary, advisable, and/or appropriate to administer the 2015 Plan. Under the 2015 Plan, each option granted expires no later than the tenth anniversary of the date of its grant. Since inception, the number of shares of common stock authorized for issuance under the 2015 Plan as of December 31, 2023 is 157,500 shares, plus shares underlying cancelled awards under the 2006 plan after the adoption of the 2015 plan. As of December 31, 2023, the Company had granted an aggregate of 124,796 shares either as restricted stock or shares subject to issuance upon the exercise of stock options under the 2015 Plan, of which 88,941 shares remained subject to outstanding options.

On April 14, 2016, the Compensation Committee of the Company's Board of Directors (the "Compensation Committee") approved the Acorda Therapeutics, Inc. 2016 Inducement Plan (the "2016 Plan") to provide equity compensation to certain individuals of the Company (or its subsidiaries) in order to induce such individuals to enter into employment with the Company or its subsidiaries. In 2023, no new stock option awards were issued under this plan to newly-hired executive officers as an inducement for them to become employed by the Company, and as of December 31, 2023, 8,500 shares remained outstanding and were the only awards that were outstanding under the 2016 Plan.

On June 19, 2019, the Company's stockholders approved the Company's 2019 Employee Stock Purchase Plan (the "2019 ESPP") at the annual meeting of stockholders pursuant to which up to 12,500 shares of the Company's common stock, par value $0.001 per share may be issued thereunder (the "Plan Shares). As of December 31, 2023, there were 12,500 shares of common stock remaining authorized for issuance under the 2019 ESPP.

The fair value of each option granted is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions:

	Year ended December 31,	
	2023	2022
Employees and directors:		
Estimated volatility%	103.84%	84.19%
Expected life in years	6.66	6.70
Risk free interest rate%	3.62%	2.69%
Dividend yield	—	—

The Company estimated volatility for purposes of computing compensation expense on its employee and director options using the historic volatility of the Company's stock price. The expected life used to estimate the fair value of employee and director options is based on the historical life of the Company's options based on exercise data.

The weighted average fair value per share of options granted to employees and directors for the years ended December 31, 2023 and 2022 amounted to approximately $9.86 and $0.84, respectively. No options were granted to non-employees for the years ended December 31, 2023 and 2022.

During the year ended December 31, 2023, the Company granted 62,270 stock options to employees and directors under all plans. The stock options were issued with a weighted average exercise price of $12.31 per share. As a result of these grants, the total compensation charge to be recognized over the estimated service period is $0.6 million, of which $0.3 million was recognized during the year ended December 31, 2023.

Compensation costs for options and restricted stock granted to employees and directors amounted to $0.5 million and $1.5 million, for the years ended December 31, 2023 and 2022, respectively. Compensation expense for options and restricted stock granted to employees and directors are classified in inventory, research and development, selling, general and administrative, and cost of sales expense based on employee job function. The following table summarizes share-based compensation expense included within the Company's consolidated statements of operations:

	Year ended December 31,	
(In thousands)	2023	2022
Research and development	$ 11	$ 75
Selling, general and administrative	467	1,421
Total	$ 478	$ 1,496

A summary of share-based compensation activity for the year ended December 31, 2023 is presented below:

Stock Option Activity

	Number of Shares (In thousands)	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Intrinsic Value (In thousands)
Balance at December 31, 2022	52	$ 1,571.06	—	—
Granted	62	12.31	—	—
Forfeited and expired	(11)	2,192.56	—	—
Exercised	—	—	—	—
Balance at December 31, 2023	103	$ 568.85	7.5	$ 183,963
Vested and expected to vest at December 31, 2023	103	$ 572.25	7.5	$ 182,555
Vested and exercisable at December 31, 2023	59	$ 976.95	6.3	$ 79,123

	Options Outstanding			Options Exercisable	
Range of exercise price	Outstanding as of December 31, 2023 (In thousands)	Weighted-average remaining contractual life (In years)	Weighted-average exercise price	Exercisable as of December 31, 2023 (Shares in thousands)	Weighted-average exercise price
$6.19 - $11.29	4	7.6	$ 8.51	2	$ 7.39
$11.72 - $11.72	20	9.3	11.72	8	11.72
$12.25 - $12.50	30	9.0	12.50	11	12.50
$12.99 - $72.80	15	8.7	37.20	8	38.31
$74.80 - $75.00	11	7.4	74.84	6	74.86
$79.92 - $1,656.00	10	5.1	524.29	10	525.69
$1,794.00 - $4,288.80	10	2.1	3,634.83	10	3,634.83
$4,324.80 - $4,760.40	3	0.2	4,714.71	3	4,714.71
$4,797.60 - $4,797.60	0	0.1	4,797.60	0	4,797.60
$4,928.40 - $4,928.40	0	1.0	4,928.40	0	4,928.40
	103	7.5	$ 568.85	59	$ 976.95

Restricted Stock Activity

Restricted Stock	Number of Shares (In thousands)
Nonvested at December 31, 2022	$ —
Granted	—
Vested	—
Forfeited	—
Nonvested at December 31, 2023	$ —

Unrecognized compensation cost for unvested stock options and restricted stock awards as of December 31, 2023 totaled $0.5 million and is expected to be recognized over a weighted average period of approximately 1.2 years.

(7) Debt

Convertible Senior Secured Notes Due 2024

On December 24, 2019, the Company completed the private exchange of $276.0 million aggregate principal amount of its outstanding 1.75% Convertible Senior Notes due 2021 (the "2021 Notes") for a combination of newly-issued 6.00% Convertible Senior Secured Notes due 2024 (the "2024 Notes") and cash. For each $1,000 principal amount of exchanged 2021 Notes, the Company issued $750 principal amount of the 2024 Notes and made a cash payment of $200 (the "Exchange"). In the aggregate, the Company issued approximately $207.0 million aggregate principal amount of the 2024 Notes and paid approximate $55.2 million in cash to participating holders. The Exchange was conducted with a limited number of institutional holders of the 2021 Notes pursuant to Exchange Agreements dated as of December 20, 2019. The 2021 Notes received by the Company in the Exchange were cancelled in accordance with their terms. Accordingly, upon completion of the Exchange, $69.0 million of the 2021 Notes remained outstanding. On June 15, 2021, the Company repaid the outstanding balance of the 2021 Notes at their maturity date using cash on hand.

The 2024 Notes were issued pursuant to an Indenture, dated as of December 23, 2019, among the Company, its wholly owned subsidiary, Civitas Therapeutics, Inc. (along with any domestic subsidiaries acquired or formed after the date of issuance, the "Guarantors"), and Wilmington Trust, National Association, as trustee and collateral agent (the "2024 Indenture"). The 2024 Notes are senior obligations of the Company and the Guarantors, secured by a first priority security interest in substantially all of the assets of the Company and the Guarantors, subject to certain exceptions described in the Security Agreement, dated as of December 23, 2019, between the grantors party thereto and Wilmington Trust, National Association, as collateral agent.

The 2024 Notes are scheduled to mature on December 1, 2024 unless earlier converted in accordance with their terms prior to such date. However, the commencement of the Intended Chapter 11 Proceedings will constitute an event of default under the Indenture governing the 2024 Notes, which will in turn result in the 2024 Notes becoming immediately due and payable, along with accrued and unpaid interest. In addition, the Company's common stock is likely to be delisted from Nasdaq following the consummation of the Intended Chapter 11 Proceedings, which would constitute a make-whole fundamental change that would provide holders of our 2024 Notes with the right to require the Company to repurchase their notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, if any. The Company does not have the cash to make such a payment, which may complicate its ability to effectively complete the Intended Chapter 11 Proceedings and may result in its liquidation under Chapter 7. Interest on the 2024 Notes is payable semi-annually in arrears at a rate of 6.00% per annum on each June 1 and December 1. Following the June 1, 2023 interest payment, the Company no longer has the option to pay interest on the 2024 Notes in its common stock and the Company has fully utilized the restricted cash that was set aside for the payment of interest on the 2024 Notes.

The 2024 Notes are convertible at the option of the holder into shares of common stock of the Company at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date. The adjusted conversion rate for the 2024 Notes is 2.3810 shares of the Company's common stock per $1,000 principal amount of 2024 Notes, representing an adjusted conversion price of approximately $420.00 per share of common stock. The conversion rate was adjusted to reflect the 1-for-6 reverse stock split effected on December 31, 2020, and adjusted again to reflect the 1-for-20 reverse split effected on June 2, 2023. As of December 31, 2023 the maximum number of shares that could be required to be issued would be 969,102 shares.

The Company may elect to settle conversions of the 2024 Notes in cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock. In addition, the Company will have the right to cause all 2024 Notes then outstanding to be converted automatically if the volume-weighted average price per share of the Company's common stock equals or exceeds 130% of the adjusted conversion price for a specified period of time and certain other conditions are satisfied.

Subject to a number of exceptions and qualifications, the 2024 Indenture restricts the ability of the Company and certain of its subsidiaries to, among other things, (i) pay dividends or make other payments or distributions on their capital stock, or purchase, redeem, defease or otherwise acquire or retire for value any capital stock, (ii) make certain investments, (iii) incur indebtedness or issue preferred stock, other than certain forms of permitted debt, which includes, among other items, indebtedness incurred to refinance the 2021 Notes, (iv) create liens on their assets, (v) sell their assets, (vi) enter into certain transactions with affiliates or (vii) merge, consolidate or sell of all or substantially all of their assets. The 2024 Indenture also requires the Company to make an offer to repurchase the 2024 Notes upon the occurrence of certain asset sales.

The 2024 Indenture provides that a number of events will constitute an event of default, including, among other things, (i) a failure to pay interest for 30 days, (ii) failure to pay the 2024 Notes when due at maturity, upon any required repurchase, upon declaration of acceleration or otherwise, (iii) failure to convert the 2024 Notes in accordance with the 2024 Indenture and the failure continues for five business days, (iv) not issuing certain notices required by the 2024 Indenture within a timely manner, (v) failure to comply with the other covenants or agreements in the 2024 Indenture for 60 days following the receipt of a notice of non-compliance, (vi) a default or other failure by the Company to make required payments under other indebtedness of the Company or certain subsidiaries having an outstanding principal amount of $30.0 million or more, (vii) failure by the Company or certain subsidiaries to pay final judgments aggregating in excess of $30.0 million, (viii) certain events of bankruptcy or insolvency, including the commencement of the Intended Chapter 11 Proceedings or a liquidation proceeding under Chapter 7, and (ix) the commercial launch in the United States of a product determined by the U.S. FDA to be bioequivalent to Inbrija. In the case of an event of default arising from certain events of bankruptcy or insolvency with respect to the Company, all outstanding 2024 Notes will become due and payable immediately without further action or notice. If any other event of default occurs and is continuing, the trustee or the holders of at least 25% in aggregate principal amount of the then outstanding 2024 Notes may declare all the notes to be due and payable immediately.

The Company determined that the exchange of the 2021 Notes for the 2024 Notes qualified for a debt extinguishment and recognized a gain on extinguishment of $55.1 million for the year ended December 31, 2019, representing the difference between the fair value of the liability component immediately before the exchange and the carrying value of the debt. The Company recorded an adjustment of $38.4 million to additional paid-in capital to adjust the equity component of 2021 Notes in connection with the extinguishment.

The Company assessed all terms and features of the 2024 Notes in order to identify any potential embedded features that would require bifurcation. As part of this analysis, the Company assessed the economic characteristics and risks of the 2024 Notes, including the conversion, put and call features. The Company concluded the conversion features required bifurcation as a derivative. The fair value of the conversion features derivative was determined based on the difference between the fair value of the 2024 Notes with the conversion options and the fair value of the 2024 Notes without the conversion options using a binomial model. The Company determined that the fair value of the derivative upon issuance of the 2024 Notes was $59.4 million and recorded this amount as a derivative liability with an offsetting amount as a debt discount as a reduction to the carrying value of the 2024 Notes on the closing date, or December 24, 2019. There are several embedded features within the 2024 Notes which, upon issuance, did not meet the conditions for equity classification. As a result, these features were aggregated together and recorded as the derivative liability conversion option. The conversion feature is measured at fair value on a quarterly basis and the changes in the fair value of the conversion feature for the period will be recognized in the consolidated statements of operations.

The Company received stockholder approval on August 28, 2020 to increase the number of authorized shares of the Company's common stock from 13,333,333 shares to 61,666,666 shares. As a result of the share approval, the Company determined that multiple embedded conversion options met the conditions for equity classification. The Company performed a valuation of these conversion options as of September 17, 2020, which was the date the Company completed certain securities registration obligations for the shares underlying the 2024 Notes. The resulting fair value of these conversion options was $18.3 million, which was reclassified to equity and presented in the statement of stockholder's equity as of September 30, 2020, net of the $4.4 million tax impact. The equity component is not re-measured as long as it continues to meet the conditions for equity classification. The Company performed a valuation of the derivative liability related to certain embedded conversion features that are precluded from equity classification. The fair value of these conversion features was calculated to be negligible as of December 31, 2023.

The outstanding 2024 Note balances as of December 31, 2023 and December 31, 2022 consisted of the following:

(In thousands)	December 31, 2023	December 31, 2022
Liability component:		
Principal	$ 207,000	$ 207,000
Less: debt discount and debt issuance costs, net	(20,857)	(39,969)
Net carrying amount	186,143	167,031
Equity component	18,257	$ 18,257
Derivative liability-conversion Option	$ —	$ —

The Company determined that the expected life of the 2024 Notes was equal to the period through December 1, 2024 as this represents the point at which the 2024 Notes will mature unless earlier converted in accordance with their terms prior to such date. Accordingly, the total debt discount of $75.1 million, inclusive of the fair value of the embedded conversion feature derivative at issuance, is being amortized using the effective interest method through December 1, 2024. For the year ended December 31, 2023, the Company recognized $31.5 million of interest expense related to the 2024 Notes at the effective interest rate of 18.13%. The fair value of the Company's 2024 Notes was approximately $157.3 million as of December 31, 2023.

In connection with the issuance of the 2024 Notes, the Company incurred approximately $5.7 million of debt issuance costs, which primarily consisted of underwriting, legal and other professional fees, and allocated these costs to the liability component and recorded as a reduction in the carrying amount of the debt liability on the balance sheet. The portion allocated to the 2024 Notes is amortized to interest expense over the expected life of the 2024 Notes using the effective interest method.

The following table sets forth total interest expense recognized related to the 2024 Notes for the years ended December 31, 2023 and 2022:

(In thousands)	Year ended December 31, 2023	Year ended December 31, 2022
Contractual interest expense	$ 12,421	$ 12,420
Amortization of debt issuance costs	1,358	1,137
Amortization of debt discount	17,754	14,870
Total interest expense	$ 31,533	$ 28,427

Non-Convertible Capital Loan

The Company's Biotie Therapies Ltd. subsidiary received fourteen non-convertible capital loans granted by Business Finland (formerly Tekes) for research and development of specific drug candidates, with an aggregate adjusted acquisition-date fair value of $20.5 million (€18.2 million). The loans were to be repaid only when consolidated retained earnings of Biotie Therapies Ltd. from the development of specific loan-funded product candidates is sufficient to fully repay the loans. In light of the decision to let lapse all patents having resulted from the funded projects, the Company filed an application with Business Finland for waiver of the loans and accrued interest. In July 2022, Business Finland granted these waivers, which became effective upon Biotie's compliance with specified conditions to be completed, including a residual payment of approximately $0.1 million for one of the loans. As of December 31, 2022, Biotie Therapies Ltd. met the conditions for the waivers to be effective. The Company recorded a gain on extinguishment of debt of $27.1 million for the carrying amount including interest.

Letters of Credit

As of December 31, 2023, the Company has $0.3 million of cash collateralized standby letters of credit outstanding. See Note 2 to the Company's Consolidated Financial Statements included in this report for a discussion of Restricted Cash.

(8) Liability Related to Sale of Future Royalties

As of October 1, 2017, the Company completed a royalty purchase agreement with HealthCare Royalty Partners, or HCRP (the "Royalty Agreement"). In exchange for the payment of $40 million to the Company, HCRP obtained the right to receive Fampyra royalties payable by Biogen under the Biogen Collaboration Agreement up to an agreed upon threshold of royalties. This threshold was met during the second quarter of 2022 and its obligations to HCRP expired upon Biogen's payment of royalties for that quarter.

Since the Company maintained rights under the Biogen Collaboration Agreement, therefore, the Royalty Agreement has been accounted for as a liability that will be amortized using the effective interest method over the life of the arrangement, in accordance with the relevant accounting guidance. The Company recorded the receipt of the $40 million payment from HCRP and established a corresponding liability in the amount of $40 million, net of transaction costs of approximately $2.2 million. The net liability was classified between the current and non-current portion of liability related to sale of future royalties in the consolidated balance sheets based on the recognition of the interest and principal payments received by HCRP. The total net royalties paid, less the net proceeds received is recorded to interest expense using the effective interest method over the life of the Royalty Agreement. The Company estimated the payments made to HCRP over the term of the Royalty Agreement based on forecasted royalties and calculated the interest rate required to discount such payments back to the liability balance. Over the course of the Royalty Agreement, the actual interest rate was affected by the amount and timing of net royalty revenue recognized and changes in the forecasted revenue. On a quarterly basis, the Company reassessed the effective interest rate and adjusted the rate prospectively as necessary.

The following table shows the activity within the liability account for the years ended December 31, 2023 and December 2022.

(In thousands)	**December 31, 2023**	**December 31, 2022**
Liability related to sale of future royalties - beginning balance	$ —	$ 4,460
Deferred transaction costs amortized	—	33
Non-cash royalty revenue payable to HCRP	—	(4,739)
Non-cash interest expense recognized	—	246
Liability related to sale of future royalties - ending balance	$ —	$ —

The interest and debt discount amortization expense is reflected as interest and amortization of debt discount expense in the Statement of Operations.

(9) Corporate Restructuring

For the years ended December 31, 2023 and 2022, the Company incurred pre-tax severance and employee separation related expenses of approximately $0.0 and $0.3 million, respectively, associated with the restructuring. Of the pre-tax severance and employee separation related expenses incurred, $0.0 and $0.3 million were recorded in selling, general and administrative expenses for the years ended December 31, 2023 and 2022, respectively.

A summary of the restructuring costs for the years ended December 31, 2023 and 2022 is as follows:

(In thousands)	**Restructuring Costs**
Restructuring Liability as of December 31, 2021	$ 1,851
2022 Restructuring costs	251
2022 Payments	(2,102)
Restructuring Liability as of December 31, 2022	$ —
2023 Restructuring costs	—
2023 Payments	—
Restructuring Liability as of December 31, 2023	$ —

(10) Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consisted of the following:

(In thousands)	December 31, 2023	December 31, 2022
Product allowances accruals	$ 9,750	$ 8,899
Bonus payable	3,719	4,329
Accrued interest	1,035	1,035
Sales force commissions and incentive payments payable	989	667
Administrative expenses	—	366
Vacation accrual	1,494	1,477
Research and development expense accruals	—	895
Commercial and marketing expense accruals	—	2,892
Royalties payable	1,167	—
Legal, accounting, and other professional services	1,521	50
Trade relations	—	278
Other accrued expenses	4,635	2,792
Total	$ 24,310	$ 23,680

(11) Commitments and Contingencies

The Company's long-term contractual obligations include commitments and estimated purchase obligations entered into in the normal course of business. Under certain supply agreements and other agreements with manufacturers and suppliers, the Company is required to make payments for the manufacture and supply of its clinical and approved products. The Company's major outstanding contractual obligations are for payments related to its convertible notes, operating leases and commitments to purchase inventory. The following table summarizes the contractual obligations at December 31, 2023 and the effect such obligations are expected to have on the Company's liquidity and cash flow in future periods:

	Payments due by period (1)			
(In thousands)	Total	Less than 1 year	1-3 years	4-5 years
Convertible Senior Notes (2)	$ 218,420	$ 218,420	$ —	$ —
Operating leases (3)	5,438	1,588	3,311	539
Inventory purchase commitments (4)	38,346	17,546	10,400	10,400
Catalent Termination (5)	4,000	4,000	—	—
Total	266,204	241,554	13,711	10,939

(1) Excludes a liability for uncertain tax positions totaling $6.0 million. This liability has been excluded because the Company cannot currently make a reliable estimate of the period in which the liability will be payable, if ever.

(2) Represents the future payments of principal and interest to be made on the convertible senior secured notes due 2024 issued in December 2019. The notes are scheduled to mature on December 1, 2024. However, the commencement of the Intended Chapter 11 Proceedings will constitute an event of default under the Indenture governing the 2024 Notes, which will in turn result in the 2024 Notes becoming immediately due and payable, along with accrued and unpaid interest. Refer to Note 7.

(3) Represents payments for the operating leases of the Company's Pearl River NY headquarters, the Company's lab and office space in Waltham, MA.

(4) Includes minimum purchase commitment from Catalent for Inbrija under the manufacturing services (supply) agreement. The Company terminated its existing supply agreement with Catalent on December 31, 2022 and renegotiated a new supply agreement effective January 1, 2023. Under the terms of the new supply agreement with Catalent, the Company is required to make minimum purchase obligations through 2024. Furthermore, the Company agreed that it would reimburse a portion of Catalent's costs in completing the installation and qualification of the PSD-7, which the Company believes will be beneficial to its future production needs, in the amount of up to $2 million. The Company paid $0.5 million in 2023 and will provide up to $1.5 million in 2024 in two quarterly installments.

(5) Represents the termination fee payable to Catalent that discontinued the Company's obligations under the 2021 MSA. The termination fee is payable in April 2024.

License Agreements

Under the Company's various other research, license and collaboration agreements with other parties, it is obligated to make milestone payments of up to an aggregate of approximately $18.7 million over the life of the contracts.

Under certain agreements, the Company is required to pay royalties for the use of technologies and products in its R&D activities and in the commercialization of products. The amount and timing of any of the foregoing payments are not known due to the uncertainty surrounding the successful research, development and commercialization of the products. See Note 13 to the Company's Consolidated Financial Statements included in this report for a discussion on license, research, and collaboration agreements.

Employment Agreements

The Company has, or has agreed to enter into, employment agreements with all of its executive officers which provide for, among other benefits, certain severance, bonus and other payments and COBRA premium coverage, as well as certain rights relating to their equity compensation awards, if their employment is terminated for reasons other than cause or if they terminate their employment for good reason (as those terms are defined in the agreements). The agreements also provide for certain increased rights if their employment terminates following a change in control (as defined in the agreements). The Company's contractual commitments table does not include these severance payment obligations.

Other

From time to time, the Company may be involved in litigation or other legal proceedings relating to claims arising out of operations in the normal course of its business, including the matters described below. The outcome of litigation and other legal proceedings is unpredictable, and regardless of outcome, they can have an adverse impact on the Company because of defense and settlement costs, diversion of management resources, and other factors.

In July 2020, the Company filed an arbitration demand with the American Arbitration Association against Alkermes plc ("Alkermes") after the parties were unable to resolve a dispute over license and supply royalties following the 2018 expiration of an Alkermes patent relating to Ampyra. In October 2022, an arbitration panel issued a final decision in this dispute and awarded to the Company $15 million plus prejudgment interest of $1.5 million. In addition, as a result of the panel's ruling, the Company no longer has to pay Alkermes any royalties on net sales for license and supply of Ampyra, and is free to use alternative sources for supply of Ampyra, which the Company has already secured. On October 21, 2022, the Company made a submission to the arbitration panel to correct the award to include an additional $1.6 million that was inadvertently omitted from the initial award calculation. In November 2022, the arbitration tribunal corrected the award amount and granted the Company another $1.6 million plus pre-judgment interest of $0.2 million.

On November 9, 2020, Drug Royalty III, L.P., and LSRC III S.ar.l. (collectively, "DRI") filed an arbitration claim against us with the American Arbitration Association under a September 26, 2003 License Agreement that the Company originally entered into with Rush-Presbyterian St. Luke's Medical Center ("Rush"). DRI previously purchased license royalty rights under the license agreement from Rush. DRI alleged a dispute over the last-to-expire patent covering sales of the drug Ampyra under the license agreement, and claimed damages based on unpaid license royalties of $6 million plus interest. On June 28, 2022, the Company settled DRI's claim in exchange for a payment by us to DRI of $750,000 expressly without any admission of wrongdoing. Although the Company believed they had valid defenses to this claim, the Company also believed that the settlement was in the best interests of the Company and our stockholders to avoid the future expense and distraction associated with continuing the arbitration. The Company recorded a liability of $2 million for the year ended December 31, 2020 in accrued expense and other current liabilities related to the dispute. As a result of the settlement, during the quarter ended September 30, 2022, this accrual was reduced to the $750,000 and a corresponding gain of $1.3 million was recorded in the consolidated statement of operations as other income.

On August 20, 2020, ratiopharm Gmbh (“ratiopharm”) filed nullity actions against us in the German Federal Patent Court seeking to invalidate both of the Company’s German patents that derived from its European patents, EP 1732548 (the ‘548 patent) and EP 2377536 (the ‘536 patent), with claims directed to the use of a sustained dalfampridine composition to increase walking speed in a patient with multiple sclerosis. In November 2021, the German Federal Patent Court issued preliminary opinions indicating that the claimed subject matter of the ‘548 patent lacked inventive step and the claimed subject matter of the ‘536 patent lacked novelty and inventive step. At oral hearings in February 2022 and April 2022, the German Federal Patent Court dismissed ratiopharm’s action against the ‘536 patent and the ‘548 patent, respectively, as inadmissible because of ongoing formality proceedings relating to these patents in the European Patent Office. Ratiopharm appealed the decision on the ‘536 patent but not the decision on the ‘548 patent. On December 6, 2022, the German Federal Court of Justice held that ratiopharm’s ‘536 nullity action was admissible and remanded the case back to the German Federal Patent Court. On January 11, 2022, Stada Arzneimittel (“Arzneimittel”) also filed a nullity action against the ‘536 patent. The ratiopharm and Arzneimittel ‘536 nullity actions have been consolidated. In November 2023, the German Federal Patent Court issued a preliminary opinion indicating that the claimed subject matter of the ‘536 patent lacked novelty and inventive step. At an oral hearing on March 4, 2024, the German Federal Patent Court held that the ‘536 patent was invalid. The Company is considering an appeal of this decision and will make a determination following receipt of the formal written decision. On July 27, 2022, Teva GmbH (“Teva”) also filed a nullity action against the ‘548 patent, in the same court as the ratiopharm nullity actions. On January 27, 2023, the German Federal Patent Court issued a preliminary opinion in the ‘548 Teva nullity action that the claimed subject matter of the ‘548 patent lacked inventive step. At an oral hearing on July 11, 2023, the German Federal Patent Court held that the ‘548 patent was invalid. The German Federal Patent Court issued its formal written decision on the ‘548 patent on November 10, 2023. The Company appealed the decision on December 11, 2023 and the appeal is now pending before the Federal Court of Justice The Company is working with Biogen to vigorously defend these actions and enforce its patent rights.

On February 10, 2021, the Company sold its Chelsea manufacturing operations to Catalent Pharma Solutions. In connection with the sale, the Company entered into a long-term, global manufacturing services (supply) agreement (the “2021 MSA") with a Catalent affiliate pursuant to which they agreed to manufacture Inbrija for the Company at the Chelsea facility. The manufacturing services agreement provided that Catalent would manufacture Inbrija, to the Company’s specifications, and the Company would purchase Inbrija exclusively from Catalent during the term of the manufacturing services agreement. Under the Company’s agreement with Catalent, it was obligated to make minimum purchase commitments for Inbrija of $18 million annually through the expiration of the agreement on December 31, 2030.

In December 2021, the Company and Catalent amended the manufacturing services agreement to adjust the structure of the minimum payment terms for the period from July 1, 2021 through June 30, 2022 (the “Adjustment Period”). Under the amendment, the minimum payment obligation for the Adjustment Period was replaced with payments to Catalent for actual product delivered during the Adjustment Period subject to a cap for the Adjustment Period that corresponds to its original minimum purchase obligation for that period (i.e., $17 million), and with certain payments being made in the first half of 2022 instead of during the second half of 2021. As a result of the amendment, payments to Catalent for product delivered during the Adjustment Period were approximately $8.4 million less than the $17 million minimum inventory purchase obligation for that period.

On December 31, 2022, the Company and Catalent entered into a termination letter, which was subsequently amended and restated in March 2023 (the “Termination Letter”), to terminate the 2021 MSA. In connection with the termination of the 2021 MSA, the Company will pay a $4 million termination fee to Catalent, payable in April 2024. The parties also entered into a Settlement and Release Agreement with respect to certain batches of Inbrija that were not delivered in 2022 as scheduled, and that are now expected in the first quarter of 2023, and to resolve all other outstanding manufacturing issues.

Effective January 1, 2023, the Company entered into a new manufacturing services agreement, which was subsequently amended in March 2023 (as amended in March 2023, the “New MSA”) with Catalent. Under the New MSA, Catalent will continue to manufacture Inbrija (levodopa inhalation powder) through 2030, with reduced minimum annual commitments through 2024 and significantly lower pricing thereafter. The New MSA provides for the scale-up of new spray drying equipment (“PSD-7”), which will provide expanded capacity for the long-term world-wide manufacturing requirements of Inbrija. The Company is subject to a purchase commitment in 2024 of at least 24 batches of Inbrija, at a total cost of $15.5 million. Thereafter, in 2025, the Company will pay Catalent a fixed per capsule fee based on the amount of Inbrija that is delivered for sale in the United States and other markets.

It is anticipated that by 2026, the PSD-7 equipment will be fully operational, which will significantly reduce the per capsule fees for all markets. The Company agreed to a minimum purchase requirement of at least three batches per year on the PSD-7 equipment. In addition, the Company paid Catalent $2.0 million in 2023 in connection with certain activities relating to the operational readiness of the PSD-7, and the Company paid $0.5 million in 2023 and will provide up to $1.5 million in 2024 for capital expenditures to assist in the capacity expansion efforts.

The New MSA, unless earlier terminated, will continue until December 31, 2030, and will be automatically extended for successive two-year periods unless either the Company or Catalent provides the other with at least 18-months' prior written notice of non-renewal. Either party may terminate the New MSA by written notice under certain circumstances, including material breach (subject to specified cure periods) or insolvency. The Company may also terminate the New MSA upon certain specified regulatory events and for convenience upon 180 days' prior written notice.

The Company agreed to purchase from Catalent all of our requirements for Inbrija for the United States, Germany, Spain and Latin America except in the case of termination or certain supply disruptions. For China, the Company is not required to purchase their supply from Catalent and may arrange for an alternate supplier. For other countries, the Company may be released from exclusivity as long as the Company purchases at least two batches from Catalent in the applicable year, subject to certain rights of first refusal on alternative source of supply arrangements.

During the year ended December 31, 2023, the Company incurred approximately $10.5 million of purchase commitments with Catalent, of which $10.5 million are recognized as inventory within our balance sheet for the period. Under the New MSA with Catalent, the Company has a minimum remaining purchase of $15.5 million through December 31, 2024, and $5.2 million annually from January 1, 2026 through December 31, 2030.

In January 2023, the Company filed a petition in the District Court for the Southern District of New York to confirm and modify the arbitral award. In that arbitration, the arbitration panel found in the Company's favor that Alkermes leveraged its patent to illegally obtain royalties beyond the life of the patent in which was a violation of federal law. The panel held that Alkermes' conduct in continuing to charge royalties after the patent expired was unlawful per se and that the underlying agreements were unenforceable. The panel awarded the Company approximately $18.3 million, including interest, representing license royalties overpaid since July 2020. The Company is asking the District Court to confirm the Award, with modifications to the extent the panel disregarded federal law by declining to award royalties the Company paid prior to July 2020 and after July 2018, the date on which the panel found that the parties' agreements were unenforceable as a matter of law. The Company is seeking restitution of the remaining illegal royalties that the panel found were demanded and collected by Alkermes in violation of the law in the amount of approximately $65 million together with pre- and post-award interest and costs. On February 8, 2023, Alkermes filed a brief opposing the relief requested in the Company's petition and requesting that the award be confirmed without modification. The Company filed a brief in response on February 22, 2023. The District Court will likely schedule oral argument on the petition and render its decision sometime thereafter.

(12) Fair Value Measurements

The Company defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the market in which the reporting entity transacts. The Company bases fair value on the assumptions market participants would use when pricing the asset or liability. In general, fair values determined by Level 1 inputs utilize quoted prices (unadjusted) in active markets for identical assets or liabilities. Fair values determined by Level 2 inputs utilize data points that are observable, such as quoted prices, interest rates, exchange rates and yield curves. Fair values determined by Level 3 inputs utilize unobservable data points for the asset or liability.

The following table presents information about the Company's assets and liabilities measured at fair value on a recurring and non-recurring basis as of December 31, 2023 and December 31, 2022 and indicates the fair value hierarchy of the valuation techniques utilized to determine such fair value.

(In thousands)	Level 1	Level 2	Level 3
2023			
Recurring:			
Assets Carried at Fair Value:			
Money market funds	$ —	$ —	$ —
Liabilities Carried at Fair Value:			
Acquired contingent consideration	—	—	29,500
Non-Recurring:			
Assets Carried at Fair Value:			
Impaired finite-lived intangible asset	—	—	22,987
2022			
Recurring:			
Assets Carried at Fair Value:			
Money market funds	$ 15,322	$ —	$ —
Liabilities Carried at Fair Value:			
Acquired contingent consideration	—	—	41,200

Items Measured at Fair Value on a Recurring Basis

The Company's Level 1 assets consist of investments in a Treasury money market fund and U.S. government securities. The Company's Level 3 liabilities represent acquired contingent consideration related to the acquisition of Civitas which are valued using a probability weighted discounted cash flow valuation approach and derivative liabilities related to conversion options for the convertible senior notes due December 2024 which are valued using a binomial model. For assets and liabilities not accounted for at fair value, the carrying values of these accounts approximates their fair values at December 31, 2023, except for the fair value of the Company's convertible senior notes due December 2024, which was approximately $157.3 million as of December 31, 2023. The Company estimates the fair value of its notes utilizing market quotations for the debt (Level 2).

The following table presents additional information about liabilities measured at fair value on a recurring basis and for which the Company utilizes Level 3 inputs to determine fair value.

Acquired contingent consideration

(In thousands)	Year ended December 31, 2023	Year ended December 31, 2022
Acquired contingent consideration:		
Balance, beginning of period	$ 41,200	$ 49,600
Fair value change to contingent consideration (unrealized) included in the statement of operations	(9,634)	(6,659)
Royalty payments	(2,066)	(1,741)
Balance, end of period	$ 29,500	$ 41,200

The Company estimates the fair value of its acquired contingent consideration using a probability weighted discounted cash flow valuation approach based on estimated future sales expected from Inbrija (levodopa inhalation powder), an FDA approved drug for the treatment of OFF periods of Parkinson's disease. Using this approach, expected future cash flows are calculated over the expected life of the agreement and discounted to estimate the current value of the liability at the period end date. Some of the more significant assumptions made in the valuation include (i) the estimated revenue forecast for Inbrija, and (ii) discount period and rate. The milestone payment outcomes ranged from $0 to $18.7 million for Inbrija. The valuation is performed quarterly and changes to the fair value of the contingent consideration are included in the statement of operations. For the year ended December 31, 2023, changes in the fair value of the acquired contingent consideration were primarily due to the change in projected revenue and the recalculation of cash flows for the passage of time, as well as a decrease in the discount rate. See Note 13 to the Company's Consolidated Financial Statements included in this report for a discussion about the Alkermes ARCUS agreement.

The acquired contingent consideration is classified as a Level 3 liability as its valuation requires substantial judgment and estimation of factors that are not currently observable in the market. If different assumptions were used for the various inputs to the valuation approach including, but not limited to, assumptions involving sales estimates for Inbrija and estimated discount rates, the estimated fair value could be significantly higher or lower than the fair value determined.

Derivative Liability

The following table represents a reconciliation of the derivative liability recorded in connection with the issuance of the convertible senior secured notes due 2024:

(In thousands)	Year ended December 31, 2023	Year ended December 31, 2022
Derivative Liability-Conversion Option		
Balance, beginning of period	$ —	$ 37
Fair value adjustment	—	(37)
Balance, end of period	$ —	$ —

During 2019, a derivative liability was initially recorded as a result of the issuance of the 6.00% Convertible Senior Secured Notes due 2024 (see Note 7 to the Consolidated Financial Statements included in this report for more information on the Convertible Senior Notes due 2024). The fair value measurement of the derivative liability is classified as Level 3 under the fair value hierarchy as it has been valued using certain unobservable inputs. These inputs include: (1) share price as of the valuation date, (2) assumed timing of conversion of the Notes, (3) historical volatility of share price and (4) the risk-adjusted discount rate used to present value the probability-weighted cash flows. Significant increases or decreases in any of those inputs in isolation could result in a significantly lower or higher fair value measurement. The fair value of the derivative liability was determined using a binomial model that calculates the fair value of the Notes with the conversion feature as compared to the fair value of the Notes without the conversion feature, with the difference representing the value of the conversion feature, or the derivative liability. There are several embedded features within the Notes which, upon issuance, did not meet the conditions for equity classification. As a result, these features were aggregated together and recorded as a derivative liability conversion option. The derivative liability conversion feature is measured at fair value on a quarterly basis and changes in the fair value will be recorded in the consolidated statement of operations. The Company received stockholder approval on August 28, 2020 to increase the number of authorized shares of the Company's common stock from 13,333,333 shares to 61,666,666 shares. As a result of the share approval, the Company determined that multiple embedded conversion options met the conditions for equity classification. The Company performed a valuation of these conversion options as of September 17, 2020, which was the date the Company completed certain securities registration obligations. The resulting fair value of these conversion options was calculated to be $18.3 million, which was reclassified to equity and presented in the statement of stockholder's equity as of September 30, 2020, net of the $4.4 million tax impact. The equity component is not re-measured as long as it continues to meet the conditions for equity classification. The Company performed a valuation of the derivative liability related to certain embedded conversion features that are precluded from equity classification. The fair value of these conversion features was calculated to be negligible as of December 31, 2023. Key inputs used in the calculation of the fair value include stock price, volatility, risky (bond) rate, and the last observed bond price during the year ended December 31, 2023.

Items Measured at Fair Value on a Non-Recurring Basis

During the year ended December 31, 2023, the Company performed a recoverability test on its long-lived assets, and determined carrying amount of the finite-lived Inbrija intangible asset exceeded its fair value. The Company recorded a $251.3 million impairment charge for the year ended December 31, 2023. The recoverable portion of the finite-lived Inbrija intangible asset was adjusted to fair value using an income approach. The fair value measurement was categorized as a Level 3 based on inputs in the valuation technique used. The key assumptions used in the calculation of fair value include management's projections of future cash flows. Other key assumptions include a growth rate, discount rate, and earnings before interest depreciation and amortization ("EBITDA") margins based on the estimated weighted average cost of capital that incorporates risks specific to the Company. The Company used an average growth rate of 8.2%. The Company used a discount rate of 27.0%.

(13) License, Research and Collaboration Agreements

Alkermes plc

The Company is a party to a 2003 amended and restated license agreement and a 2003 supply agreement with Alkermes for Ampyra. Under the license agreement, the Company has exclusive worldwide rights to Ampyra, as well as Alkermes' formulation for any other mono or di-aminopyridines, for all indications, including multiple sclerosis and spinal cord injury. The Company is obligated to pay Alkermes milestone payments and royalties based on a percentage of net product sales and the quantity of product shipped by Alkermes to the Company.

Subject to early termination provisions, the Alkermes license terminates on a country by country basis on the latter to occur of fifteen years from the date of the agreement, the expiration of the last Alkermes patent to expire or the existence of competition in that country.

Under the supply agreement, Alkermes has the right to manufacture for the Company, subject to certain exceptions, Ampyra and other products covered by these agreements at specified prices calculated as a percentage of net product sales of the product shipped by Alkermes to the Company. In the event Alkermes does not manufacture 100% of the products, it is entitled to a compensating payment for the quantities of product provided by the alternative manufacturer.

Supply Agreements

Alkermes

Prior to October 2022, the Company was a party to a 2003 supply agreement with Alkermes relating to the manufacture and supply of Ampyra by Alkermes. The Company was obligated to purchase at least 75% of its annual requirements of Ampyra from Alkermes, unless Alkermes was unable or unwilling to meet its requirements, for a percentage of net product sales and the quantity of product shipped by Alkermes to the Company. In those circumstances, where the Company elected to purchase less than 100% of its requirements from Alkermes, the Company was obligated to make certain compensatory payments to Alkermes. Alkermes was required to assist the Company in qualifying a second manufacturer to manufacture and supply the Company with Ampyra subject to its obligations to Alkermes.

In July 2020, the Company filed an arbitration demand with the American Arbitration Association against Alkermes after the parties were unable to resolve a dispute over license and supply royalties following the 2018 expiration of an Alkermes patent relating to Ampyra. In October 2022, a three-judge arbitration panel issued a final decision in this dispute and awarded to the Company an aggregate of $18.3 million including prejudgment interest and subsequent correction of a calculation error in the initial award. In addition, the arbitration panel ruled the agreements with Alkermes as unenforceable, and as a result the Company no longer pays Alkermes any royalties on net sales for license and supply of Ampyra, and the Company is using an alternative source for supply of Ampyra. The cost savings associated with this decision have greatly benefited Ampyra's value to the Company.

In 2020 Biogen paid the Company $15 million based on achievement of a specified sales milestone (all subject to the Company's payment obligations to Alkermes under the Company's license agreement with them). The Company is entitled to receive additional payments from Biogen that exceed $300 million in the aggregate based on achievement of future regulatory and sales milestones, although the Company does not anticipate achievement of any of those milestones in the foreseeable future. Biogen is also required to make double-digit tiered royalty payments to the Company on sales of Fampyra. In January 2024, the Company received notice of termination from Biogen of the Collaboration Agreement. Accordingly, the Company will regain global commercialization rights to Fampyra. Biogen exercised its right to terminate the Collaboration Agreement in order to shift resources towards upcoming launches and programs that align with its priorities. The termination will be effective as of January 1, 2025. Refer to Note 17 for more information.

Patheon

As a result of the arbitration ruling in October 2022, the Company was free to obtain supply of Ampyra from alternative sources and Patheon became the Company's sole manufacturer and packager of Ampyra for sales in the United States.

The manufacturing services agreement with Patheon is automatically renewed for successive one-year periods on December 31 of each year, unless either the Company or Patheon provide the other party with at least 12-months' prior written notice of non-renewal. Either party may terminate manufacturing services agreement by written notice under certain circumstances, including material breach (subject to specified cure periods) or insolvency. The Company may also terminate the manufacturing services agreement upon certain regulatory actions or objections. Patheon may terminate the manufacturing services agreement if the Company assigns the agreement to a third party under certain circumstances.

The Company relies on a single third-party manufacturer to supply dalfampridine, the active pharmaceutical ingredient, or API, in Ampyra, and also on a single supplier for a critical excipient used in the manufacture of Ampyra. If these companies experience any disruption in their operations, the Company's supply of Ampyra could be delayed or interrupted until the problem is solved or the Company locates another source of supply or another packager, which may not be available. The Company may not be able to enter into alternative supply or packaging arrangements on terms that are commercially reasonable, if at all. Any new supplier or packager would also be required to qualify under applicable regulatory requirements. Because of these and other factors, the Company could experience substantial delays before they are able to obtain qualified replacement products or services from any new supplier or packager.

Biogen Inc.

The Company has an exclusive collaboration and license agreement with Biogen Inc., (Biogen) to develop and commercialize Ampyra (known as Fampyra outside the U.S.) in markets outside the United States (the Collaboration Agreement). Under the Collaboration Agreement, Biogen was granted the exclusive right to commercialize Ampyra and other products containing aminopyridines developed under that agreement in all countries outside of the U.S., which grant includes a sublicense of the Company's rights under an existing license agreement between the Company and Alkermes. Biogen has responsibility for regulatory activities and future clinical development of Fampyra in ex-U.S. markets worldwide. The Company also entered into a related supply agreement with Biogen (the Supply Agreement), pursuant to which the Company will supply Biogen with its requirements for the licensed products through the Company's existing supply agreement with Alkermes.

In October 2022, an arbitration panel issued a decision in our dispute with Alkermes and awarded to the Company approximately $18.3 million including prejudgment interest and subsequent correction of an error in calculating the initial award. In addition, as a result of the panel's ruling, the Company no longer has to pay Alkermes any royalties on net sales for license and supply of Ampyra, and the Company is free to use alternative sources for supply of Ampyra, which the Company has already secured for U.S. supply. However, the arbitration panel also ruled that the existing license and supply agreements with Alkermes are unenforceable. Accordingly, absent a new supply agreement with Alkermes or another supplier, the Company will not be able to exclusively supply Fampyra to Biogen under the terms of our supply arrangement with them. While the Company has engaged in discussions with Biogen relating to the supply of Fampyra, there can be no assurance that such discussions will result in a continuation of supply by the Company, Alkermes or a third party manufacturer. If Biogen is unable to obtain supply of the licensed product could constitute a breach under the existing supply agreement with Biogen resulting in termination of the license and supply agreements with Biogen or otherwise result in the cessation of sales of Fampyra and loss of royalty revenue in the future.

In January 2024, the Company received notice of termination from Biogen of the Collaboration Agreement. Accordingly, the Company will regain global commercialization rights to Fampyra. Biogen exercised its right to terminate the Collaboration Agreement in order to shift resources towards upcoming launches and programs that align with its priorities. The termination will be effective as of January 1, 2025. The Company plans to assume commercialization responsibilities during 2024 as marketing authorization transfers and distribution arrangements are finalized for each territory and the Company expects to enter into additional collaborations and distribution arrangements with third parties to transition commercialization of Fampyra.

Alkermes (ARCUS products)

In December 2010, Civitas, the Company's wholly owned subsidiary, entered into the Asset Purchase and License Agreement ("Alkermes Agreement"), in which Civitas licensed or acquired from Alkermes certain pulmonary development programs and INDs, underlying intellectual property and laboratory equipment associated with the pulmonary business of Alkermes. The assets acquired includes (i) patents, patent applications and related know-how and documentation; (ii) a formulation of inhaled L-dopa; (iii) several other pulmonary development programs and INDs, which are part of the platform device and formulation IP; (iv) instruments, laboratory equipment and apparatus; and (v) inhalers, inhaler molds, tools, and the associated assembled equipment. In addition, Civitas leased the facility where the Alkermes operations were previously housed in Chelsea, Massachusetts.

Under the terms of the Alkermes Agreement, Civitas will also pay to Alkermes royalties for each licensed product as follows: (i) for all licensed products sold by Civitas, Civitas will pay Alkermes a mid-single digit percentage of net sales of such licensed products and (ii) for all licensed products sold by a collaboration partner, Civitas will pay Alkermes the lower of a mid-single digit percentage of net sales of such licensed products in a given calendar year or a percentage in the low-to-mid-double digits of all collaboration partner revenue received in such calendar year. Notwithstanding the foregoing, in no event shall the royalty paid be less than a low-single digit percentage of net sales of a licensed product in any calendar year.

As consideration for the agreement with Alkermes, Civitas issued stock and also agreed to pay Alkermes royalties on future net product sales from products developed from licensed technology under the Alkermes Agreement. The fair value of the future royalties is classified as contingent consideration. The Company estimates the fair value of this contingent consideration based on future revenue projections and estimated probabilities of receiving regulatory approval and commercializing such products. Refer to Note 12 – *Fair Value Measurements* for more information about the contingent consideration liability.

(14) Income Taxes

The domestic and foreign components of (loss) income before income taxes were as follows:

(In thousands)	Year ended December 31, 2023	Year ended December 31, 2022
Domestic	$ (295,429)	$ (60,179)
Foreign	(592)	24,932
Total	$ (296,021)	$ (35,247)

The benefit (expense) from income taxes in 2023 and 2022 consists of current and deferred federal, state and foreign taxes as follows:

(In thousands)	Year ended December 31, 2023	Year ended December 31, 2022
Current:		
Federal	$ (118)	$ (243)
State	(850)	(115)
Foreign	(71)	(37)
	(1,039)	(395)
Deferred:		
Federal	25,909	(30,234)
State	18,297	(40)
Foreign	—	—
	44,206	(30,274)
Total benefit from income taxes	$ 43,167	$ (30,669)

As of December 31, 2023, the Company's U.S. consolidated federal NOL carryforwards on a tax return basis are approximately $114.7 million which can be carried forward indefinitely and, under the Act, limited to 80% of taxable income in any year in which it will be utilized.

Biotie Therapies, Inc. ("Biotie US"), which was converted to an LLC during 2023 and now a wholly owned subsidiary of Acorda, filed a separate company federal income tax return and has a net operating loss carryforward of approximately $120.8 million as of December 31, 2023. These losses, which begin to expire in 2026, were historically not more likely than not to be realized and had been fully offset with a full valuation allowance.

The Company's capital loss carryforward of approximately $42.3 million is fully offset with a valuation allowance. The capital loss carryforward will expire in 2026.

The Company had available state NOL carryforwards of approximately $312.9 million as of December 31, 2023 and 2022. The state losses are expected to begin to expire in 2027, although not all states conform to the federal carryforward period and occasionally limit the use of net operating losses for a period of time.

The Company has $7.3 million of net operating loss carryforwards outside of the U.S. as of December 31, 2023, that expired in 2024, all of which are fully reserved with a valuation allowance.

The Company's U.S. federal research and development and orphan drug credit carryforwards of $35.0 million and $35.1 million as of December 31, 2023 and 2022, respectively, begin to expire in 2024.

The timing differences between the financial reporting and tax treatment of income and expenses results in deferred tax assets and liabilities, which are included within the consolidated balance sheet. The Company must assess the likelihood that any recorded deferred tax assets will be recovered against future taxable income. To the extent the Company believes it is more likely than not that any portion of the deferred tax asset will not be recoverable, a valuation allowance must be established. To the extent the Company establishes a valuation allowance or changes the allowance in a future period, income tax expense will be impacted. The Company continued to maintain a full valuation allowance against its net U.S. and net foreign deferred tax assets of Biotie at December 31, 2023. During 2023, the Company recorded a full valuation allowance on the Acorda filling group's deferred balances. The Company had a net increase of $23.9 million of valuation allowance. The increase was primarily due to the impairment of the Civitas IPR&D intangible asset which resulted in an overall net deferred tax asset position as of December 31, 2023. Due to the weight of the negative evidence, a full valuation allowance was recorded against the Company's net deferred tax assets.

The reconciliation of the statutory U.S. federal income tax rate to the Company's effective income tax rate is as follows:

	Year ended December 31, 2023	Year ended December 31, 2022
U.S. federal statutory tax rate	21.0%	21.0%
State and local income taxes	4.6%	(0.3)%
Stock option compensation	—	(0.2)%
Stock option shortfall	(0.7)%	(8.8)%
GILTI Inclusion	—	(8.3)%
Uncertain tax positions	0.1%	0.4%
Other nondeductible and permanent differences	(0.9)%	(7.7)%
U.S. write-off/expiration	—	(255.8)%
Valuation allowance, net of foreign tax rate differential	(9.4)%	151.6%
Biotie Finland cancellation of debt exclusion	—	21.7%
Federal return to provision differences	(0.1)%	(0.6)%
Effective income tax rate	14.6%	(87.0)%

The Company's overall effective tax rate is affected by the increase in the valuation allowance state income taxes and, the forfeitures of equity based compensation for which no tax deduction is recorded.

Provisions have been made for deferred taxes based on the differences between the basis of the assets and liabilities for financial statement purposes and the basis of the assets and liabilities for tax purposes using currently enacted tax rates and regulations that will be in effect when the differences are expected to be recovered or settled. The components of the deferred tax assets and liabilities are as follows:

(In thousands)	December 31, 2023	December 31, 2022
Deferred tax assets:		
Net operating loss carryforward	$ 70,007	$ 74,576
Capital loss carryforward	11,227	11,100
Tax credits	34,292	34,301
Stock based compensation	6,475	8,896
Contingent consideration	7,827	10,807
Employee compensation	1,296	1,438
Rebate and returns reserve	2,419	2,003
Capitalized R&D	895	1,191
Other	5,424	5,421
Total deferred tax assets	$ 139,862	$ 149,733
Valuation allowance	(130,642)	(106,702)
Total deferred tax assets net of valuation allowance	$ 9,220	$ 43,031
Deferred tax liabilities:		
Intangible assets	(4,327)	(77,876)
Convertible debt	(4,812)	(9,190)
Depreciation	(81)	(167)
Total deferred tax liabilities	$ (9,220)	$ (87,233)
Net deferred tax liability	$ —	$ (44,202)

The Company follows authoritative guidance regarding accounting for uncertainty in income taxes, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return.

The beginning and ending amounts of unrecognized tax benefits reconciles as follows:

(In thousands)	Year ended December 31, 2023	Year ended December 31, 2022
Beginning of period balance	$ 6,237	$ 6,370
Decreases for tax positions taken during a prior period	(212)	(133)
End of period balance	$ 6,025	$ 6,237

Accrued interest and penalties would be disclosed within the related liabilities lines in the consolidated balance sheet and recorded as a component of income tax expense. All of its unrecognized tax benefits, if recognized, would impact the effective tax rate.

The Company is subject to taxation in the United States and various state and foreign jurisdictions. The Company has operations in the United States and Puerto Rico, as well as filing obligations in Finland, Switzerland and Germany. Typically, the period for the statute of limitations ranges from 3 to 5 years, however, this could be extended due to the Company's NOL carryforward position in a number of its jurisdictions. The tax authorities generally have the ability to review income tax returns for periods where the statute of limitations has previously expired and can subsequently adjust the NOL carryforward or tax credit amounts. Accordingly, the Company does not expect to reverse any portion of the unrecognized tax benefits within the next year.

The beginning and ending amounts of valuation allowances reconcile as follows:

(In thousands)	Balance at Beginning of Period	Additions	Deductions	Balance at End of Period
Valuation allowance for deferred tax assets:				
Year ended December 31, 2022	$ 193,253	233	(86,784)	$ 106,702
Year ended December 31, 2023	$ 106,702	27,866	(3,926)	$ 130,642

(15) Loss Per Share

The following table sets forth the computation of basic and diluted earnings per share for the years ended December 31, 2023 and 2022:

(In thousands, except per share data)	Year ended December 31, 2023	Year ended December 31, 2022
Basic and diluted		
Net loss	$ (252,854)	$ (65,916)
Weighted average common shares outstanding used in computing net loss per share—basic	1,242	1,011
Plus: net effect of dilutive stock options and unvested restricted common shares	—	—
Weighted average common shares outstanding used in computing net loss per share—diluted	1,242	1,011
Net loss per share—basic	$ (203.57)	$ (65.23)
Net loss per share—diluted	$ (203.57)	$ (65.23)

The difference between basic and diluted shares is that diluted shares include the dilutive effect of the assumed exercise of outstanding securities. The Company's stock options and unvested shares of restricted common stock could have the most significant impact on diluted shares.

Securities that could potentially be dilutive are excluded from the computation of diluted loss per share when a loss from continuing operations exists or when the exercise price exceeds the average closing price of the Company's common stock during the period, because their inclusion would result in an anti-dilutive effect on per share amounts.

The following amounts were not included in the calculation of net income per diluted share because their effects were anti-dilutive:

(In thousands)	Year ended December 31, 2023	Year ended December 31, 2022
Denominator		
Stock options and restricted common shares	103	50

Performance share units are excluded from the calculation of net loss per diluted share as the performance criteria has not been met for the years ended December 31, 2023 and 2022. Additionally, the impact of the convertible debt was determined to be anti-dilutive and excluded from the calculation of net income per diluted share for the years ended December 31, 2023 and 2022.

(16) Employee Benefit Plan

Effective September 1, 1999, the Company adopted a defined contribution 401(k) savings plan (the 401(k) plan) covering all employees of the Company. Participants may elect to defer a percentage of their annual pretax compensation to the 401(k) plan, subject to defined limitations. The plan includes an employer match contribution to employee deferrals. For each dollar an employee invests up to 6% of his or her earnings, the Company will contribute an additional 50 cents into the funds. The Company's expense related to the plan was $0.7 million and $0.8 million for the years ended December 31, 2023 and 2022, respectively.

(17) Subsequent Events

Global Commercialization Rights to Fampyra

On January 8, 2024, the Company received notice of termination from Biogen of the Collaboration Agreement. Accordingly, the Company will regain global commercialization rights to Fampyra. Biogen exercised its right to terminate the Collaboration Agreement in order to shift resources towards upcoming launches and programs that align with its priorities. The termination will be effective as of January 1, 2025. The Company will continue to receive double-digit tiered royalties on net sales of Fampyra until the transfer of regulatory authorizations have been completed on a country-by-country basis. Thereafter, the Company will receive revenues directly in markets serviced by the Company or through distributors or partners

Effective as of January 1, 2025, the Collaboration Agreement will be terminated in its entirety and the license rights granted by the Company to Biogen will terminate. Following January 1, 2025, the Company will not be entitled to receive any further royalty or milestone payments from Biogen. The Company and Biogen are working together toward a transition for the Company to commercialize and supply Fampyra for the great majority of people with multiple sclerosis outside the U.S. currently being served. The Company plans to assume commercialization responsibilities as soon as possible during 2024 as marketing authorization transfers and distribution arrangements are finalized for each territory.

Asset Purchase Agreement

Prior to the commencement of the Intended Chapter 11 Proceedings, on March 31, 2024 the Company entered into a "stalking horse" Asset Purchase Agreement (the "Asset Purchase Agreement") Merz Pharmaceuticals, LLC a North Carolina limited liability company (the "Purchaser"), and, solely with respect to the guarantee of purchaser's obligations thereunder, Merz Pharma GmbH & Co. KGaA, a German partnership (the "Purchaser Parent"). The Asset Purchase Agreement provides for the sale of substantially all of the Company's assets (the "Purchased Assets") to the Purchaser for $185.0, subject to certain adjustments as specified in the Asset Purchase Agreement. The Purchase Agreement is subject to Court approval and compliance with agreed-upon bidding procedures under Section 363 of the Code ("Section 363") allowing for the submission of higher or otherwise better offers and satisfaction of other agreed-upon conditions. In accordance with the sale process under Section 363, notice of the proposed sale to the Purchaser will be given to third parties and competing bids will be being solicited over a specified period of time. The Company will manage the bidding process and evaluate the bids, in consultation with its advisors and as overseen by the Court. The Company cannot provide any assurance that it will be able to successfully complete a sale of the Purchased Assets or that it will be able to continue to fund its operations throughout the Intended Chapter 11 Proceedings.

Restructuring Support Agreement

Prior to the commencement of the Intended Chapter 11 Proceedings, on April 1, 2024 the Company entered into a Restructuring Support Agreement with the holders of a majority of its 2024 Notes (the "RSA Noteholders" and such agreement, the "Restructuring Support Agreement"). As contemplated in the Restructuring Support Agreement, the Company will seek to sell substantially all of its assets in a sale pursuant to Section 363. The Restructuring Support Agreement sets out certain milestones and conditions of the Company relating to the Section 363 sale process, subject to the terms and conditions contained therein.

DIP Credit Agreement

In order to fund the continued operations of the Company during the pendency of the Intended Chapter 11 Proceedings, the Company and certain of the RSA Noteholders agreed to the terms of a form of Debtor-in-Possession Credit Agreement (the "DIP Credit Agreement") to be entered into by and among the Company, as borrower, and the lenders from time to time party thereto (collectively, the "DIP Lenders", GLAS USA LLC, as administrative agent (the "DIP Administrative Agent"), and GLAS Americas, LLC, collateral agent (collectively, with the DIP Administrative Agent, the "DIP Agent"), pursuant to which the DIP Lenders would provide the Company with a senior secured, superpriority debtor-in-possession term loan facility in the maximum aggregate amount of $60.0 million (the "DIP Credit Facility," and the commitments of the DIP Lenders thereunder, the "DIP Commitments" and, the loans thereunder, the "DIP Loans"), which, subject to the satisfaction of certain conditions precedent to drawing as set forth in the DIP Credit Agreement, including the approval of the Court, will be made available to the Company in multiple drawings as follows: (i) up to $10.0 million ("Interim DIP Loan Commitment") will be made available for drawing upon entry by the Court of an interim order authorizing and approving the DIP Credit Facility on an interim basis (the "Interim DIP Order"),00 (ii) up to $10.0 million ("Final DIP Loan Commitments") will be made available for drawing upon entry of the Court of a final order authorizing and approving the DIP Credit Facility on a final basis (the "Final DIP Order" and together with the Interim DIP Order, the "DIP Orders"), and (iii) upon subject to entry of the Final Order, a roll-up facility in the aggregate maximum principal amount of $40.0 million, representing a roll-up of obligations under the 2024 Notes on a two dollars to one dollar basis of the DIP Commitments under the DIP Facility made by the RSA Noteholders. See *Financing Arrangements* in Part II, Item 7 of this Annual Report for more information.

(b) Exhibits.

The following Exhibits are incorporated herein by reference or are filed with this Annual Report on Form 10-K as indicated below. Except as specified below, all exhibits incorporated herein by reference have been filed under the Company's former and current SEC File Numbers 000-50513 and 001-31938, respectively.

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation of the Registrant. Incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on June 2, 2023.
3.2	Bylaws of the Registrant, as amended and restated on March 7, 2024. Incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on March 13, 2024.
4.1	Description of Common Stock.
4.2	Indenture, dated as of December 23, 2019, among the Company, the guarantors party thereto, and Wilmington Trust, National Association, as trustee and collateral agent. Incorporated herein by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K filed December 26, 2019.
4.3	Form of 6.00% Convertible Senior Secured Note due 2024 (included in Exhibit 4.3). Incorporated herein by reference to Exhibit 4.2 to the Registrant's Current Report on Form 8-K filed December 26, 2019.
10.1*	Acorda Therapeutics 2006 Employee Incentive Plan. Incorporated herein by reference to Exhibit 10.4 to the Registrant's Registration Statement on Form S-1/A, No. 333-128827, filed on January 5, 2006.
10.2*	Acorda Therapeutics 2006 Employee Incentive Plan as amended as of January 13, 2006. Incorporated herein by reference to Exhibit 10.5 to the Registrant's Registration Statement on Form S-1/A, No. 333-128827, filed on January 18, 2006.
10.3*	Forms of Equity Award Documents. Incorporated herein by reference to Exhibit 10.58 to the Registrant's Annual Report on Form 10-K filed on March 1, 2011.
10.4*	Acorda Therapeutics 2015 Omnibus Incentive Compensation Plan. Incorporated herein by reference to Appendix A to the Registrant's 2015 Proxy Statement filed as Schedule 14A on April 30, 2015.
10.5*	Acorda Therapeutics 2015 Omnibus Incentive Compensation Plan as amended June 8, 2016. Incorporated herein by reference to Appendix A to the Registrant's 2016 Proxy Statement filed as Schedule 14A on April 29, 2016.
10.6*	Acorda Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan as amended June 27, 2018. Incorporated herein by reference to Appendix A to the Registrant's 2018 Proxy Statement filed as Schedule 14A on April 27, 2018.
10.7*	Forms of equity award documents for awards under the Acorda Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan. Incorporated herein by reference to Exhibit 10.10 to the Registrant's Quarterly Report on Form 10-Q filed on August 7, 2015.
10.8*	Revised forms of equity award documents for certain awards under the Acorda Therapeutics 2015 Omnibus Incentive Compensation Plan. Incorporated herein by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on August 8, 2017.
10.9*	Form of Performance Unit Agreement for awards under the Acorda Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan. Incorporated herein by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on November 7, 2016.

Exhibit No.	Description
10.10*	Acorda Therapeutics 2016 Inducement Plan. Incorporated herein by reference to Exhibit 10.10 to the Registrant's Annual Report on Form 10-K filed on March 18, 2022.
10.11*	Form of stock option certificate under the Acorda Therapeutics 2016 Inducement Plan. Incorporated herein by reference to Exhibit 10.11 to the Registrant's Annual Report on Form 10-K filed on March 18, 2022.
10.12*	Acorda Therapeutics, Inc. 2019 Employee Stock Purchase Plan. Incorporated herein by reference to Appendix A to the Registrant's 2019 Proxy Statement filed as Schedule 14A on April 26, 2019.
10.13*	Employment letter agreement, dated August 11, 2002, by and between the Registrant and Ron Cohen. Incorporated herein by reference to Exhibit 10.5 to the Registrant's Registration Statement on Form S-1, No. 333-128827, filed on October 5, 2005.
10.14*	Amendment to August 11, 2002 Employment Agreement, dated September 26, 2005, by and between the Registrant and Ron Cohen. Incorporated herein by reference to Exhibit 10.6 to the Registrant's Registration Statement on Form S-1, No. 333-128827, filed on October 5, 2005.
10.15*	Amendment to August 11, 2002 Employment Agreement, dated May 10, 2007, by and between the Registrant and Ron Cohen. Incorporated herein by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on May 14, 2007.
10.16*	Amendment to August 11, 2002 Employment Agreement dated December 28, 2007, by and between the Registrant and Ron Cohen. Incorporated herein by reference to Exhibit 10.52 to the Registrant's Annual Report on Form 10-K filed on March 14, 2008.
10.17*	Amendment to August 11, 2002 Employment Agreement dated June 21, 2011, by and between the Registrant and Ron Cohen. Incorporated herein by reference to Exhibit 10.61 to the Registrant's Quarterly Report on Form 10-Q filed on August 8, 2011.
10.18*	Employment letter agreement, dated as of September 1, 2020, by and between the Registrant and Kerry Clem. Incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on September 9, 2021.
10.19*	Employment offer letter, dated November 4, 2021, by and between the Registrant and Michael Gesser. Incorporated herein by reference to Exhibit 10.27 to the Registrant's Annual Report on Form 10-K filed on March 18, 2022.
10.20*	Employment offer letter, dated November 4, 2021, by and between the Registrant and Neil Belloff. Incorporated herein by reference to Exhibit 10.28 to the Registrant's Annual Report on Form 10-K filed on March 18, 2022.
10.21*	Form of Amendment to Employment Offer Letter, dated March 26, 2024.
10.22	Amended and Restated License Agreement, dated September 26, 2003, by and between the Registrant and Elan Corporation, plc. Incorporated herein by reference to Exhibit 10.14 to the Registrant's Amendment No. 1 to its Quarterly Report on Form 10-Q/A filed on July 20, 2011.
10.23**	Supply Agreement, dated September 26, 2003, by and between the Registrant and Elan Corporation, plc. Incorporated herein by reference to Exhibit 10.15 to the Registrant's Registration Statement on Form S-1/A, No. 333-128827, filed on January 25, 2006.
10.24	Side Agreement, dated September 26, 2003, by and among the Registrant, Rush-Presbyterian-St. Luke's Medical Center, and Elan Corporation, plc. Incorporated herein by reference to Exhibit 10.11 to the Registrant's Registration Statement on Form S-1, No. 333-128827, filed on October 5, 2005.

Exhibit No.	Description
10.25**	Payment Agreement, dated September 26, 2003, by and among the Registrant, Rush-Presbyterian-St. Luke's Medical Center, and Elan Corporation, plc. Incorporated herein by reference to Exhibit 10.18 to the Registrant's Registration Statement on Form S-1/A, No. 333-128827, filed on January 25, 2006.
10.26**	Amendment No. 1 to the Payment Agreement, dated as of October 27, 2003, by and between the Registrant and Elan Corporation, plc. Incorporated herein by reference to Exhibit 10.19 to the Registrant's Registration Statement on Form S-1/A, No. 333-128827, filed on January 25, 2006.
10.27	Amendment No. 1 Agreement and Sublicense Consent Between Elan Corporation, plc and the Registrant dated June 30, 2009. Incorporated herein by reference to Exhibit 10.56 to the Registrant's Quarterly Report on Form 10-Q filed on August 10, 2009.
10.28	Amendment No. 2 to Amended and Restated License Agreement and Supply Agreement between the Registrant and Alkermes Pharma Ireland Limited dated March 29, 2012. Incorporated herein by reference to Exhibit 10.46 to the Registrant's Annual Report on Form 10-K filed on February 28, 2013.
10.29	Amendment No. 3 to the Amended and Restated License Agreement and Supply Agreement between the Registrant and Alkermes Pharma Ireland Limited dated February 14, 2013. Incorporated herein by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on May 10, 2013.
10.30**	Collaboration and License Agreement Between Biogen Idec International GmbH and the Registrant dated June 30, 2009. Incorporated herein by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed on August 7, 2019.
10.31**	Supply Agreement Between Biogen Idec International GmbH and the Registrant dated June 30, 2009. Incorporated herein by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed on August 7, 2014.
10.32**	Addendum Number 3 to Collaboration and License Agreement and to Supply Agreement between the Registrant and Biogen Idec International GmbH dated February 14, 2013. Incorporated herein by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed on May 10, 2013.
10.33**	Amended and Restated Addendum #2 effective June 6, 2016 to the Supply Agreement between the Registrant and Biogen Idec International GmbH dated June 30, 2009, as Amended. Incorporated herein by reference to Exhibit 10.2 to the Registrant's Quarterly Report on Form 10-Q filed on August 4, 2016.
10.34**	Asset Purchase and License Agreement, dated as of December 27, 2010, between Civitas Therapeutics, Inc. (f/k/a Corregidor Therapeutics, Inc.) and Alkermes, Inc. Incorporated herein by reference to Exhibit 10.75 to the Registrant's Annual Report on Form 10-K filed on February 27, 2015.
10.35**	Amendment to Asset Purchase and License Agreement, dated as of December 9, 2011, by and between Civitas Therapeutics, Inc. and Alkermes, Inc. Incorporated herein by reference to Exhibit 10.76 to the Registrant's Annual Report on Form 10-K filed on February 27, 2015.
10.36**	Second Amendment to Asset Purchase and License Agreement, dated as of December 19, 2014, by and between Civitas Therapeutics, Inc. and Alkermes, Inc. Incorporated herein by reference to Exhibit 10.77 to the Registrant's Annual Report on Form 10-K filed on February 27, 2015.
10.37	Security Agreement, dated as of December 23, 2019, from the grantors named therein to Wilmington Trust, National Association, as collateral agent. Incorporated herein by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed December 26, 2019.

Exhibit No.	Description
10.38	Registration Rights Agreement, dated as of December 20, 2019, among the Registrant and the investors party thereto. Incorporated herein by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K filed December 26, 2019.
10.39***	Asset Purchase Agreement, dated as of January 12, 2021, by and between the Registrant and Catalent Pharma Solutions, Inc. Incorporated herein by reference to Exhibit 10.49 to the Registrant's Annual Report on Form 10-K filed on March 16, 2021.
10.40***	Manufacturing Services Agreement, dated February 10, 2021, by and between the Registrant and Catalent Massachusetts LLC. Incorporated herein by reference to Exhibit 10.50 to the Registrant's Annual Report on Form 10-K filed on March 16, 2021.
10.41***	First Amendment to Manufacturing Services Agreement dated as of October 28, 2021, by and between the Registrant and Catalent Massachusetts, LLC. Incorporated herein by reference to Exhibit 10.51 to the Registrant's Annual Report on Form 10-K filed on March 18, 2022.
10.42***	Second Amendment to Manufacturing Services Agreement dated as of December 31, 2021, by and between the Registrant and Catalent Massachusetts, LLC. Incorporated herein by reference to Exhibit 10.52 to the Registrant's Annual Report on Form 10-K filed on March 18, 2022.
10.43***	Manufacturing Services Agreement, dated September 30, 2010, and First Amendment to Manufacturing Services Agreement, dated as of August 29, 2011, by and between the Registrant and Patheon, Inc., as amended by Amendment No. 1, dated as of August 29, 2011. Incorporated herein by reference to Exhibit 10.53 to the Registrant's Annual Report on Form 10-K filed on March 15, 2023.
10.44***	Settlement and Release Agreement, dated December 31, 2022, by and between the Registrant and Catalent Massachusetts LLC. Incorporated herein by reference to Exhibit 10.54 to the Registrant's Annual Report on Form 10-K filed on March 15, 2023.
10.45***	Manufacturing Services Agreement, effective January 1, 2023, by and between the Registrant and Catalent Massachusetts LLC. Incorporated herein by reference to Exhibit 10.55 to the Registrant's Annual Report on Form 10-K filed on March 15, 2023.
10.46***	First Amendment to the Manufacturing Services Agreement dated March 9, 2023, by and between the Registrant and Catalent Massachusetts LLC. Incorporated herein by reference to Exhibit 10.56 to the Registrant's Annual Report on Form 10-K filed on March 15, 2023.
10.47***	Amended and Restated Termination Letter, dated March 9, 2023, by and between the Registrant and Catalent Massachusetts LLC. Incorporated herein by reference to Exhibit 10.57 to the Registrant's Annual Report on Form 10-K filed on March 15, 2023.
10.48	Asset Purchase Agreement, dated March 31, 2024 by and between the Registrant, Civitas Therapeutics, Inc., and Merz Pharmaceuticals, LLC and Merz Pharma GmbH & Co. KGaA.
10.49	Restructuring Support Agreement, dated April 1, 2024, by and between the Registrant and Consenting Convertible Noteholders
10.50	Form of Debtor-in-Possession Credit Agreement
21	List of Subsidiaries of the Registrant.
23	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
31.1	Certification by the Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.

Exhibit No.	Description
31.2	Certification by the Principal Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
32.1	Certification by the Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification by the Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document.
101.SCH	Inline XBRL Taxonomy Extension Schema with Embedded Linkbases Document.
104	Cover Page Interactive Data File, formatted in Inline XBRL (included in Exhibit 101).

* Indicates management contract or compensatory plan or arrangement.

** Portions of this exhibit are redacted pursuant to a confidential treatment order granted by the Securities and Exchange Commission pursuant to Rule 406 under the Securities Act of 1933, as amended, or Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

*** Portions of this exhibit are redacted because they both are not material and it would be competitively harmful if publicly disclosed.

Item 16. Form 10-K Summary.

Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, Acorda Therapeutics, Inc. has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 1st day of April, 2024.

ACORDA THERAPEUTICS, INC.

/s/ RON COHEN, M.D.
Ron Cohen, M.D.
President and Chief Executive Officer

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/ RON COHEN, M.D. Ron Cohen, M.D.	President, Chief Executive Officer and Director (Principal Executive Officer)	April 1, 2024
/s/ MICHAEL GESSER Michael Gesser	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 1, 2024
/s/ THOMAS BURNS Thomas Burns	Director	April 1, 2024
/s/ PEDER K. JENSEN, M.D. Peder K. Jensen, M.D.	Director	April 1, 2024
/s/ JOHN P. KELLEY John P. Kelley	Director and Chair	April 1, 2024
/s/ SANDRA PANEM, PH.D. Sandra Panem, Ph.D.	Director	April 1, 2024
/s/ JOHN VARIAN John Varian	Director	April 1, 2024

Exhibit 4.1

DESCRIPTION OF COMMON STOCK

We are a corporation formed under the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law") pursuant to our Certificate of Incorporation, as amended and restated on June 2, 2023 (the "Certificate of Incorporation"). The following is a description of the material terms of our common stock. This description does not purport to be complete and is subject to and qualified in its entirety by reference to the Delaware General Corporation Law and our Certificate of Incorporation and Bylaws, as amended and restated on March 7, 2024 (the "Bylaws"), as they may be further amended from time to time. Our Certificate of Incorporation has been filed with the Securities and Exchange Commission as Exhibit 3.1, and a copy of our Bylaws has been filed as Exhibit 3.2, to the Annual Report on Form 10-K of which this Exhibit 4.1 is a part.

Common Stock

We have the authority to issue 3,083,333 shares of common stock, $0.001 par value per share.

Holders of common stock have one vote per share and have no preemption rights. Holders of common stock have the right to participate ratably in all distributions, whether of dividends or assets in liquidation, dissolution or winding up, subject to any superior rights of holders of preferred stock outstanding at the time. There are no redemption or sinking fund provisions applicable to the common stock. Holders of our common stock are not liable under our Certificate of Incorporation for further calls or to assessment by us.

Computershare Trust Company, N.A. is the transfer agent and registrar for our common stock. Their address is P.O. Box 505000, Louisville, KY 40233-5000 and their telephone number is (800) 368-5948.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the Delaware General Corporation Law, which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the time that such stockholder became an interested stockholder, unless:

- prior to such time, the board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (but not the outstanding shares of voting stock owned by the interested stockholder) those shares owned (a) by persons who are directors and also officers and (b) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

In general, Section 203 defines "business combination" to include the following:

- any merger or consolidation involving the corporation and the stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exception, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines "interested stockholder" as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation or any entity or person who is an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is determined whether such person is an interested stockholder, and the affiliates or associates of such person.

Our Certificate of Incorporation and Bylaws

Our Certificate of Incorporation and Bylaws include a number of provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control or our management. For example, our Certificate of Incorporation authorizes the issuance of up to 20,000,000 shares of preferred stock, $0.001 par value per share. Our board of directors has the authority, without approval of the stockholders, to issue and determine the rights and preferences of series of preferred stock. The ability to authorize and issue preferred stock with voting or other rights or preferences makes it possible for our board of directors to issue preferred stock with super voting, special approval, dividend or other rights or preferences on a discriminatory basis that could impede the success of any attempt to acquire us.

Our Certificate of Incorporation and Bylaws also provide that our board of directors is divided into three classes, each serving staggered three-year terms ending at the annual meeting of our stockholders in the third year of their term. All directors elected to our classified board of directors will serve until the election and qualification of their respective successors or their earlier resignation or removal. Members of the board of directors may only be removed for cause and only by the affirmative vote of 75% of our outstanding voting stock. These provisions are likely to increase the time required for stockholders to change the composition of our board of directors.

Our Certificate of Incorporation and Bylaws provide that a meeting of stockholders may only be called by our board of directors, the chairman of our board of directors or our chief executive officer. Our Bylaws also specify requirements as to the form and content of a stockholder's notice. The provisions may delay or preclude stockholders from calling a meeting of stockholders, bringing matters before a meeting of stockholders or from making nominations for directors at a stockholders' meeting, which could delay or deter takeover attempts or changes in management. Our Certificate of Incorporation also does not provide for cumulative voting. The absence of cumulative voting may make it more difficult for stockholders owning less than a majority of our stock to elect any directors to our board of directors.

Our Bylaws provide that any matter to be voted upon when a quorum is present, other than an adjournment and the election of directors to be voted upon by the stockholders at a meeting of stockholders, shall be decided based on the majority of votes cast, except where a different vote is otherwise required by the Bylaws, applicable law or our Certificate of Incorporation. The Bylaws further provide that directors shall be elected by a plurality of votes cast by the stockholders entitled to vote on the election; provided, however that in an uncontested election, a director who receives a majority "withhold" vote shall be required to tender his or her resignation for consideration by the board of directors. The Bylaws provide that a decision to adjourn a meeting may be made by a majority of votes cast, regardless of whether a quorum is present, or if no stockholder is present, by any officer entitled to preside at or act as secretary of the meeting.

Our Bylaws provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware or, if the Court of Chancery does not have jurisdiction, the Superior Court of the State of Delaware or, if the Superior Court of the State of Delaware does not have jurisdiction, the United States District Court for the District of Delaware (in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein) will be the sole and exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of a fiduciary duty; any action asserting a claim arising against the corporation or any current or former director, officer, stockholder, employee or agent of the corporation arising out of or relating to any provision of the Delaware General Corporation Law, our Certificate of Incorporation or Bylaws; any action or proceeding to interpret, apply, enforce or determine the validity of our Certificate of Incorporation or Bylaws, including any right, obligation or remedy thereunder; or any action asserting a claim against the corporation or any current or former director, officer, stockholder, employee or agent of the corporation governed by the internal affairs doctrine. Additionally, if the subject matter of any action within the scope of the preceding sentence is filed in a court other than a court located within the State of Delaware (a "foreign action"), in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the foreign action as agent for such stockholder. In addition, our Bylaws also provide that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, shall be the federal district courts of the United States of America.

Exhibit 10.21

March 26, 2024

[_____]
[Address]
[City, State, Zip Code]

Re: **Amendment to Letter Agreement**

Dear Neil:

This AMENDMENT TO LETTER AGREEMENT (this "Amendment") is made and entered into on March 26, 2024 ("Effective Date") by and between [_____] ("Executive") and Acorda Therapeutics, Inc., for itself and its parents, subsidiaries and affiliates ("Employer" or "Company").

WHEREAS, the Company and Executive entered into a Letter Agreement on [_____] (the "Letter Agreement");

WHEREAS, the Company has been conducting over an extended period an exhaustive review of strategic alternatives regarding the Company's financial and operational condition (the "Strategic Analysis"), including possibly filing petitions for relief (a "Chapter 11 Case") under Chapter 11 of Title 11 of the United States Code;

WHEREAS, in connection with the Strategic Analysis, the Company has agreed to make Executive eligible to participate in an Insider Key Employee Retention Plan (the "Insider KERP") and earn a retention payment in the amount set forth herein if Executive agrees to the amendments to the Letter Agreement set forth herein;

WHEREAS, the Company and Executive desire to amend the Letter Agreement as provided below;

NOW, THEREFORE, in accordance the terms of the Letter Agreement and in consideration of the rights and benefits conveyed to Executive and the mutual covenants and agreements set forth herein, the Company and Executive hereby agree and amend the Letter Agreement as follows:

1. Section 3 shall be deleted in its entirety and replaced with the following:

"*Retention Bonus.* Executive shall be eligible to participate in the Insider Key Employee Retention Plan (the "Insider KERP") and earn an executive retention payment in the amount of $[_____], less the gross value of Executive's accrued but unused PTO accruals through the effective date of this Agreement ($[_____]), which shall also be paid to Executive, for a total payment of $[_____], reduced by any

required tax withholdings. The retention payment under the Insider KERP shall only be earned if Executive meets all of the following terms and conditions: (i) Executive shall not voluntarily resign from employment with the Company prior to the earlier of December 31, 2024, or the effective date of the Chapter 11 plan in connection with the Chapter 11 Case (the "Retention Period"), (ii) Executive's employment with the Company shall not be terminated by the Company for Cause, and (iii) Executive executes the release of claims attached hereto as Exhibit A no later than March 27, 2024. Executive acknowledges and agrees that if Executive voluntarily resigns or is terminated for Cause by the Company prior to the end of the Retention Period, Executive must repay to the Company the after-tax amount of the award. The retention payment shall be made on or around March 29, 2024."

2. Section 4(b) shall be deleted in its entirety and replaced with the following:

"*Vacation*. Executive acknowledges and agrees that Executive has received payment of all of Executive's accrued but unused paid time off as of March 31, 2024. Executive shall be entitled to paid vacation in accordance with the Company's vacation policy as that policy may be amended from time to time; provided, however, any unused vacation time accrued on or after the effective date of this Agreement shall not be carried over to the following calendar year and accrued but unused vacation (accrued on or after the effective date of this Agreement) shall not be paid out upon termination for any reason."

3. Sections 6(a), 6(b), 6(c), 6(d), 6(e), and 6(f) shall be deleted in their entirety.

4. Insert the following as a new Section 6(a):

"*Termination.* Upon a termination of employment for any reason, Executive shall be entitled to Executive's base salary accrued through the termination date and any other amounts earned but unpaid as of the termination date. For the avoidance of doubt, Executive shall not be entitled to any severance compensation of any kind, including but not limited to severance payments, salary continuation, COBRA payments or any other type of payment. Any outstanding equity awards held by Executive shall be treated as provided for in the underlying plan and award agreements."

5. Section 9(d) shall be deleted in its entirety and replaced with the following:

"*Assignment*. This Agreement shall inure to the benefit of and be enforceable by Executive's personal or legal representatives, executors, administrators, successors, heirs, distributes, devisees and legatees. This Agreement may not be assigned or pledged by Executive."

6. Section 9(g) shall be deleted in its entirety and replaced with the following:

"*Entire* Agreement. This Agreement, together with the surviving provisions of the Letter Agreement, set forth the entire agreement and understanding between the parties and supersedes any prior oral or written agreement or understandings between them regarding its subject matter. Notwithstanding the preceding sentence, the provisions of any Restricted Stock Agreements and all Option, SAR and Stock Award Agreements

("Awards") granted pursuant to any Plan, entered into between you and the Company, shall constitute additional agreements between the Company and you."

For the avoidance of any doubt, the amendments described herein shall not entitle Executive to participate in any Company change in control or other severance polices that may otherwise be applicable to such Executive. Notwithstanding the foregoing, in the event Company files a Chapter 11 Case and therein seeks and obtains bankruptcy court approval of a key employee incentive plan, Executive shall be entitled to any payments that may become due and owing thereunder in addition to the retention payment contemplated in Section 3.

Except as expressly amended and modified herein, all other terms and conditions of the Letter Agreement shall remain the same, unchanged and in full force and effect. Executive understands, acknowledges and agrees that Executive has not relied on any representations, promises or agreements of any kind in connection with the decision to enter into this Agreement except for those set forth herein. This Agreement may be signed in one or more counterparts, including facsimile or electronic counterparts, all of which together shall constitute one agreement, and each of which separately shall constitute an original document.

IN WITNESS WHEREOF, the Company and Executive have caused this Amendment to be executed as of the date first written above.

Acorda Therapeutics, Inc.	Agreed and Accepted
By: _____	By: _____
John Kelley	[Executive Name]
Chairperson of the Compensation Committee	
	Date: _____
Date: _____	

Exhibit 10.48

Execution Version

ASSET PURCHASE AGREEMENT

BY AND AMONG

ACORDA THERAPEUTICS, INC.,

CIVITAS THERAPEUTICS, INC.,

MERZ PHARMACEUTICALS, LLC

and

MERZ PHARMA GMBH & CO. KGAA
(solely for the purposes set forth herein)

Dated as of March 31, 2024

TABLE OF CONTENTS

SCHEDULES AND EXHIBITS

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of March 31, 2024 (this "**Agreement**"), is made by and among Acorda Therapeutics, Inc., a Delaware corporation ("**Seller Parent**"), Civitas Therapeutics, Inc., a Delaware corporation (together with Seller Parent, "**Sellers**" and each of them, individually, a "**Seller**"), Merz Pharmaceuticals, LLC, a North Carolina limited liability company ("**Purchaser**"), and, solely with respect to Section 4.3, Section 8.19 and Article VIII (solely as such Article relates to Section 8.19), Merz Pharma GmbH & Co. KGaA, a German partnership limited by shares, with its general partner being a German limited liability company, and registered with the commercial register of the local court of Frankfurt am Main under number HRB 54072 and with its business address at Eckenheimer Landstraße 100, 60318 Frankfurt am Main, Germany ("**Purchaser Parent**"). Each Seller and Purchaser, and for purposes of Article VIII, Purchaser Parent, are referred to individually herein as a "**party**" and collectively as the "**parties**". Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in Article IX.

WHEREAS, Sellers are engaged in the Business;

WHEREAS, each Seller intends to file a voluntary petition for relief commencing a case (collectively, the "**Chapter 11 Cases**") under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**");

WHEREAS, Purchaser desires to purchase and accept, and Sellers desire to sell, convey, assign, transfer and deliver, or cause to be sold, conveyed, assigned, transferred and delivered, to Purchaser, all of the Acquired Assets, and Purchaser is willing to assume, and Sellers desire to assign and delegate to Purchaser, all of the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth herein and in accordance with sections 105, 363 and 365 of the Bankruptcy Code, subject to Purchaser's right to assign its rights and obligations hereunder to one or more of its Affiliates (such sale and purchase of the Acquired Assets and such assignment and assumption of the Assumed Liabilities, the "**Acquisition**");

WHEREAS, the parties acknowledge and agree that the purchase by Purchaser of the Acquired Assets and the assumption by Purchaser of the Assumed Liabilities are being made at arm's length and in good faith and without intent to hinder, delay or defraud creditors of Sellers or their Affiliates; and

WHEREAS, the execution and delivery of this Agreement and Sellers' ability to consummate the Transactions are subject to, among other things, the entry of the Sale Order under, *inter alia*, sections 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

THE ACQUISITION

Section 1.1 Acquired Assets. On the terms and subject to the conditions set forth in this Agreement and, subject to approval of the Bankruptcy Court, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, at the Closing, Sellers shall, and shall cause each other applicable member of the Seller Group to, sell, assign, transfer, convey and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to Purchaser, and Purchaser shall purchase and accept from Sellers and the applicable members of the Seller Group, free and clear of all Encumbrances of any and every kind, nature and description, other than Permitted Post-Closing Encumbrances, all right, title and interest of Seller Parent and its Subsidiaries (the "**Seller Group**") in, to or under all of the assets, properties and rights of every kind and nature, in each case, as of the Closing, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), in each case which are Primarily Related to any Product as Exploited by or on behalf of, or the Business as operated by or on behalf of, the Seller Group, including the following (collectively, other than, in each case, to the extent an Excluded Asset, the "**Acquired Assets**"):

(a) the Products;

(b) all Accounts Receivable and the Biogen Royalty Receivable;

(c) the Specified Pre-Paid Expenses;

(d) to the extent assignable pursuant to sections 363 and 365 of the Bankruptcy Code and subject to Section 1.5, the Contracts listed on Schedule 1.1(d) (as such schedule may be amended from time to time pursuant to Section 1.5(h), the "**Assigned Contracts Schedule**", and such Contracts listed on the Assigned Contracts Schedule, the "**Assigned Contracts**") and all rights thereunder;

(e) all Inventory, including as set forth on Schedule 1.1(e) to the extent still owned by a member of the Seller Group as of Closing, (the "**Acquired Inventory**");

(f) all Seller Intellectual Property, including the Seller Registered Intellectual Property listed or identified on Schedule 1.1(f), and all of the rights of each member of the Seller Group therein, including all rights to sue for and recover and retain damages for present and past infringement thereof and, in the case of Trademarks that are Seller Intellectual Property, all goodwill appurtenant thereto;

(g) except for those rights relating to an Excluded Asset set forth in Schedule 1.2(o), all rights under each Seller Confidentiality Agreement, and each other non-disclosure or confidentiality agreements and invention and Intellectual Property assignment agreements, including any such agreements executed for the benefit of any member of the Seller Group or their respective predecessors with current or former employees, consultants or contractors of each member of the Seller Group or their respective predecessors;

(h) all Books and Records other than Retained Books and Records (the "**Acquired Books and Records**");

(i) all Regulatory Materials;

(j) all Regulatory Authorizations held by any member of the Seller Group for each Product or that are otherwise Primarily Related to the Business, including the Regulatory Authorizations listed on Schedule 1.1(j) (the "**Acquired Regulatory Authorizations**");

(k) all sales literature, promotional literature, and other selling and advertising material, including Internet website pages, creative materials, advertising, studies, reports, and other printed or written materials, in each case whether in hard copy or electronic format and whether draft or final form, used, or created or developed for use by any member of the Seller Group (the "**Acquired Promotional Materials**");

(l) all Permits (including pending applications therefor), to the extent transferrable (the "**Acquired Permits**");

(m) all goodwill associated with the Business, any Product, and the Acquired Assets;

(n) the tangible assets, including equipment, devices, machinery, tools or supplies, listed on Schedule 1.1(n);

(o) any and all insurance proceeds, condemnation awards or other compensation in respect of loss or damage to any of the tangible Acquired Assets to the extent occurring on or after the date hereof, and all rights and claims of any member of the Seller Group to any such insurance proceeds, condemnation awards or other compensation not paid by the Closing, net in each case of any associated deductible paid or otherwise borne by a member of the Seller Group and any reasonable costs and expenses incurred by any member of the Seller Group in connection with obtaining such proceeds, condemnation awards or other compensation; provided that nothing in this Section 1.1 shall obligate any member of the Seller Group to obtain any such proceeds, condemnation awards or other compensation on Purchaser's or any of its Affiliates' behalf;

(p) all assets acquired by any member of the Seller Group pursuant to the Civitas APLA and still owned as of the Closing by a member of the Seller Group, to the extent not otherwise included in this Section 1.1;

(q) all proceeds from chargebacks, Rebates, cash discounts and fees for services payable to Sellers from wholesalers, distributors, hospital customers, and payors including Medicaid Drug Rebate Program rebates pursuant to 42 U.S.C § 1396r-8, to the extent arising from the sale of any Product after the Closing;

(r) all NDC numbers (including the Seller Group's corresponding five (5)-digit labeler codes) and any other product-specific identifiers other than as not otherwise included in the Seller Intellectual Property for any Product;

(s) all of the issued share capital, partnership interests, membership interests or other equity interests, of Seller Parent in Acorda Therapeutics Ireland Limited (the "**Shares**"), a private

company limited by shares incorporated in Ireland ("**Acorda Ireland**"), and all warrants and options for, and other securities exchange for or convertible or exercisable into, any of the foregoing; and

(t) the assets and rights set forth in Schedule 1.1(t).

Section 1.2 Excluded Assets. Notwithstanding anything contained in this Agreement to the contrary, the Acquired Assets shall not include any right, title or interest of any member of the Seller Group in, to or under any of the assets, properties or rights set forth below (collectively, the "**Excluded Assets**"):

(a) (i) those compounds set forth in Schedule 1.2(a), (ii) any product or product candidate that is comprised of or contains any such compound and (iii) any precursors, intermediates, improvements, modifications, derivatives or formulations of or delivery systems for any of the foregoing, provided that none of the items in clauses (ii) or (iii) comprise or contain any Compound;

(b) other than as set forth in Section 1.1(c) or Section 1.1(q), all Cash, including all restricted cash, and any security and utility deposits, escrow deposits, cash collateral (including cash collateral given to obtain or maintain letters of credit and cash drawn or paid on letters of credit), credits, allowance or other similar assets, or charges, setoffs, prepaid expenses and other prepaid items;

(c) other than as set forth in Section 1.1(o), all insurance policies of Sellers (including all current and prior director and officer or similar fiduciary or errors and omissions insurance policies and all rights thereunder and all proceeds and refunds thereof or other insurance policies as set forth on Section 3.23 of the Sellers Disclosure Schedule), including any Rights thereunder;

(d) other than as set forth in Section 1.1(s), all shares of capital stock, partnership interests, membership interests or other equity interests of Sellers or any of their Subsidiaries, and all warrants and options for, and other securities exchange for or convertible or exercisable into, any of the foregoing;

(e) all Leases, including those for the Pearl River Facility and the Waltham Facility;

(f) other than as set forth in Section 1.1(e), Section 1.1(h), Section 1.1(i), Section 1.1(k) and Section 1.1(n), all tangible personal property or assets, including furniture, fixtures, equipment, devices, machinery, tools or supplies, including those set forth in Schedule 1.2(f);

(g) the Retained Books and Records;

(h) all avoidance claims or causes of action available to Sellers or any other members of the Seller Group under Chapter 5 of the Bankruptcy Code (including sections 544, 545, 547, 548, 549, 550 and 553) or any similar actions under any other applicable Law;

(i) all Rights of Sellers arising under this Agreement or the Ancillary Documents, including (subject to Section 8.18) Deal Communications;

(j) all Seller Benefit Plans, all assets of such Seller Benefit Plans and all trust agreements, administrative service contracts, insurance policies and other Contracts related thereto and all rights of Sellers with respect to any of the foregoing;

(k) all Contracts that are not Assigned Contracts, including those disclosed or required to be disclosed pursuant to Section 3.8;

(l) all Rights to or arising from the Alkermes Dispute;

(m) any Right to any refund or credit with respect to Taxes relating to any Pre-Closing Tax Period;

(n) all Rights, including Rights as to any Intellectual Property, in those assets set forth in Schedule 1.2(n);

(o) other than as set forth in Section 1.1(b), all proceeds from chargebacks, Rebates, cash discounts and fees for services payable to Sellers from wholesalers, distributors, hospital customers, and payors including Medicaid Drug Rebate Program rebates pursuant to 42 U.S.C § 1396r-8, to the extent arising from the sale of any Product prior to or at the Closing; and

(p) the other assets and Rights set forth in Schedule 1.2(p) (the "**Excluded Assets Schedule**").

Section 1.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, in consideration for the sale, assignment, conveyance, transfer and delivery of the Acquired Assets to Purchaser, Purchaser shall assume from Sellers and agree to pay, perform and discharge, when due, in accordance with their respective terms and subject to the respective conditions thereof, and Purchaser and its Affiliates shall be solely and exclusively liable with respect to, the Liabilities described in this Section 1.3 (collectively, the "**Assumed Liabilities**"). The Transactions shall in no way expand the rights or remedies of any third party against Purchaser or any Seller or any of their respective Affiliates as compared to the rights and remedies that such third party would have had against Sellers absent the Chapter 11 Cases had Purchaser not assumed such Assumed Liabilities. The Assumed Liabilities shall consist of the following Liabilities of Sellers or any of their Affiliates:

(a) all Liabilities in respect of (i) any CMO Payables, (ii) any GTN Liabilities and (iii) the Alkermes Royalty Payable, in each case solely to the extent included in the calculation of Final Net Working Capital or arising from the facts, actions, omissions, circumstances or conditions giving rise to the amounts included in such calculations;

(b) all Liabilities arising under any Assigned Contract solely to the extent such Liabilities arise after the Closing based on facts, actions, omissions, circumstances or conditions occurring or accruing after the Closing, including any such Liabilities related to any breach, default under, failure to perform, torts related to the performance of, violations of Law, infringements or indemnities under, guaranties pursuant to and overcharges, underpayments or penalties in respect of, any Assigned Contract after the Closing;

(c) all Liabilities arising from or related to the ownership and operation of the Business and Acquired Assets and Exploitation of Products, solely to the extent such Liabilities arise after the Closing based on facts, actions, omissions, circumstances or conditions occurring or accruing after the Closing, including any such Liability arising out of or relating to any recalls, infringement of third party Intellectual Property or product liability, breach of warranty or similar claim for injury to person or property, in each case, to the extent arising out of, in respect of or related to the Products sold by or on behalf of Purchaser or any Affiliate thereof after the Closing;

(d) all Liabilities arising from or related to any Action related to the Business, any Product, the Acquired Assets or the Assumed Liabilities, solely to the extent based on facts, actions, omissions, circumstances or conditions occurring or accruing after the Closing;

(e) all Liabilities relating to the employment, engagement or termination of the Transferred Service Providers, solely to the extent based on facts, actions, omissions, circumstances or conditions occurring or accruing after the Closing (other than the Excluded Liabilities);

(f) all Liabilities for (i) Taxes relating to the Acquired Assets for any Tax period (or portion thereof) beginning after the Closing Date (but excluding all income or franchise Taxes of Sellers for any Tax period), and (ii) Transfer Taxes, in each case, other than Excluded Taxes;

(g) all Liabilities for the payment of the Purchaser Cure Costs; and

(h) all Liabilities of Acorda Ireland.

Section 1.4 Excluded Liabilities. Notwithstanding anything contained in this Agreement to the contrary, neither Purchaser nor any of its Affiliates shall assume, be obligated to assume, be deemed to have assumed, or be obliged to pay, perform or otherwise discharge, and Sellers shall be solely and exclusively liable with respect to, any Liabilities of any Seller or any Affiliate thereof other than the Assumed Liabilities (such Liabilities other than Assumed Liabilities, the "**Excluded Liabilities**"), including the following Excluded Liabilities:

(a) all Liabilities, including the Seller Cure Costs, arising out of facts or circumstances in existence at or prior to the Closing or from or related to any breach, default under, failure to perform, torts related to the performance of, violations of Law, infringements or indemnities under, guaranties pursuant to and overcharges, underpayments or penalties on the part of any Seller or any Affiliate thereof under any Contract to which any Seller or any Affiliate thereof is a party prior to the Closing;

(b) all Liabilities, including the Seller Cure Costs, arising from or related to any Action against any Seller or any Affiliate thereof, or related to the Business, any Product, the Acquired Assets or the Assumed Liabilities, pending or threatened or based on facts, actions, omissions, circumstances or conditions existing, occurring or accruing at or prior to the Closing even if instituted after the Closing;

(c) all Liabilities, including the Seller Cure Costs, arising from or related to any Product or the operation of the Business or condition of the Acquired Assets at or prior to the Closing or facts, actions, omissions, circumstances or conditions existing, occurring or accruing at

or prior to the Closing, including any Liability arising out of or relating to any recalls, infringement of third party Intellectual Property or product liability, breach of warranty or similar claim for injury to person or property, in each case, to the extent arising from or related to the Products sold by or on behalf of any Seller or any Affiliate thereof prior to the Closing;

(d) all Indebtedness of any Seller or any Affiliate thereof;

(e) all Liabilities to any current or former owner of capital stock or other equity interests of any Seller or any Affiliate thereof or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of any Seller or any Affiliate thereof or, in respect of obligations for indemnification or advancement of expenses, any current or former officer or director of any Seller or any Affiliate thereof;

(f) all drafts or checks outstanding at the Closing under which any Seller or any Affiliate thereof is obligated;

(g) all Liabilities of any Seller or any Affiliate thereof under futures contracts, options on futures, swap agreements or forward sale agreements;

(h) all Liabilities arising from or related to the Alkermes Dispute;

(i) all Liabilities for or in respect of Excluded Taxes;

(j) all Liabilities (i) relating to the Seller Benefit Plans (whether arising prior to, on or after the Closing Date), (ii) relating to the employment, engagement or termination of any of Sellers' or any of its Affiliates' current or former employees, advisors or independent contractors (other than any Transferred Service Providers), whether arising prior to, at or after the Closing or (iii) relating to the employment, engagement or termination of the Transferred Service Providers, solely to the extent based on facts, actions, omissions, circumstances or conditions existing, occurring or accruing prior to or at the Closing;

(k) all fees, charges, expenditures, expenses, costs and other payments incurred or otherwise payable by any Seller or any Affiliate thereof, or for which any Seller or any Affiliate thereof is liable, in connection with the administration of the Chapter 11 Cases or the negotiation, execution and consummation of the Transactions (including any preparation for a transaction process, bankruptcy process, any sale process involving other potential purchasers or any contemplated public offering or financing), including the fees and expenses of financial advisors, accountants, legal counsel, consultants, brokers and other advisors with respect thereto, whether incurred, accrued or payable on, prior to or after the date of this Agreement or the Closing;

(l) all Liabilities to the extent relating to the ownership, possession or use of the Excluded Assets;

(m) all Liabilities under Environmental Laws to the extent relating to actions by or omissions of any Seller or any Affiliate thereof, or any circumstances or conditions existing, occurring or accruing, at or prior to the Closing, including such Liabilities relating to (i) any noncompliance with or violations of Environmental Laws by any Seller or any Affiliate thereof at or prior to the Closing, (ii) the transportation, off-site storage or off-site disposal of any Hazardous

Substances generated by or on behalf of any Seller or any Affiliate thereof on or before the Closing, (iii) the release of any Hazardous Substances by or on behalf of any Seller or any Affiliate thereof at or prior to the Closing, or (iv) for toxic torts arising as a result of or in connection with loss of life or injury to Persons in connection with the exposure to Hazardous Substances at or prior to the Closing (whether or not such loss or injury was made manifest at or after the Closing);

(n) all Liabilities of any Seller or any Affiliate thereof for chargebacks, Rebates, cash discounts and fees for services paid or payable to wholesalers, distributors, hospital customers, and payors including Medicaid Drug Rebate Program rebates pursuant to 42 U.S.C § 1396r-8, to the extent relating to or arising out of, in respect of or related to the Business or the sale of any Product at or prior to the Closing;

(o) all Liabilities of any Seller or any Affiliate thereof under this Agreement, the Ancillary Documents and the Confidential Disclosure Agreement or from the consummation of the Transactions; and

(p) the Seller Cure Costs.

Section 1.5 Assignment of Assigned Contracts; Cure Costs.

(a) Schedule 1.5(a) sets forth, with respect to each Assigned Contract, the estimated amount required to be paid as of the date hereof with respect to each Assigned Contract to cure all monetary defaults under such Assigned Contract to the extent required by section 365(b) and otherwise satisfy all requirements imposed by sections 365(b) and (d) of the Bankruptcy Code (the actual amount of such costs with respect to the Assigned Contracts, the "**Cure Costs**"). Prior to the Sale Hearing, Sellers shall notify non-Seller counterparties to such Assigned Contracts listed on the Assigned Contracts Schedule as of the date hereof of the deadline to object to the Cure Costs, if any, and the Bankruptcy Court shall have determined the Cure Costs with respect to any Assigned Contract entered into prior to the Petition Date. Notwithstanding the foregoing, prior to the applicable Designation Deadline, Purchaser may identify any Contract (other than as set forth on the Excluded Assets Schedule or to the extent otherwise an Excluded Asset other than pursuant to Section 1.2(k)) that Purchaser desires to have included as, or excluded from being, an Assigned Contract in accordance with Section 1.5(h).

(b) To the maximum extent permitted by the Bankruptcy Code and subject to the other provisions of this Section 1.5, Sellers agree to promptly satisfy all Cure Costs (other than the Purchaser Cure Costs, the "**Seller Cure Costs**") as and when such Cure Costs become due in respect of Assigned Contracts for which Bankruptcy Court approval to transfer has been obtained; provided that, notwithstanding the foregoing, Purchaser agrees to promptly satisfy all Cure Costs in respect of any Additional Assigned Contracts (the "**Purchaser Cure Costs**"); provided, further, that on the Closing Date, Sellers shall have paid or otherwise satisfied the Seller Cure Costs and Purchaser shall have paid or otherwise satisfied the Purchaser Cure Costs, in each case, for which Bankruptcy Court approval to transfer have been obtained on or prior to the Closing Date. Following the payment of any such Cure Costs, Sellers shall assign to Purchaser the Assigned Contracts pursuant to section 365 of the Bankruptcy Code and the Sale Order, subject to the provision of adequate assurance by Purchaser in respect of the Assigned Contracts as may be required under section 365 of the Bankruptcy Code as determined by the Bankruptcy Court.

(c) To the maximum extent permitted by the Bankruptcy Code and subject to the other provisions of this Section 1.5, Sellers shall assume and assign all of the Assigned Contracts to Purchaser and Purchaser shall assume all of the Assigned Contracts from Sellers, as of the Closing Date, pursuant to sections 363 and 365 of the Bankruptcy Code. Nothing in this Agreement nor the consummation of the Transactions shall be construed as an attempt or agreement to Transfer any Acquired Asset, including any Contract, Permit, certificate, approval, authorization or other right, which is not capable of being Transferred pursuant to sections 363 and 365 of the Bankruptcy Code.

(d) Notwithstanding anything in this Agreement to the contrary, to the extent that the sale, transfer, assignment, conveyance or delivery or attempted sale, transfer, assignment, conveyance or delivery to Purchaser of any asset that would be an Acquired Asset or any claim or right or any benefit arising thereunder or resulting therefrom is prohibited by any applicable Law, is the subject of an objection to assignment or assumption or would require any consent from any Governmental Entity or third party and such consents shall not have been obtained prior to the Closing (and such consent cannot be effectively overridden or canceled by Sale Order or other related order of the Bankruptcy Court) or such objection has not been resolved prior to the Closing Date (the **"Non-Assignable Assets**"), the Closing shall proceed without any reduction in Purchase Price or Closing Consideration without the sale, transfer, assignment, conveyance or delivery of such asset unless there is a failure of one or more of the conditions set forth in Article VI; in which case, the Closing shall proceed only if each failed condition is resolved or waived by the party entitled to the benefit thereof. In the event the Closing proceeds without the transfer or assignment of any such Non-Assignable Asset, then following the Closing, Purchaser and Sellers, to the extent Sellers are still in existence and have the resources and personnel to do so, shall use commercially reasonable efforts subject to any approval of the Bankruptcy Court that may be required, to cooperate with the other party, to obtain such consent as promptly as practicable following the Closing; provided, that no party shall be obligated to incur any costs or expenses or provide any financial accommodation or other consideration of any nature to any Person to facilitate obtaining such consent to transfer any Non-Assignable Asset. Pending the receipt of such consent, the parties shall, subject to any approval of the Bankruptcy Court that may be required, reasonably cooperate with each other to provide Purchaser with all of the benefits of, and for Purchaser to bear the burdens of and Liabilities for, including indemnifying Sellers for any Liabilities arising from the performance (as directed by Purchaser) by any Seller under the Non-Assignable Assets, use of such Non-Assignable Asset. Once consent for the sale, transfer, assignment, conveyance or delivery of any such asset not sold, transferred, assigned, conveyed or delivered at the Closing is obtained, Sellers shall promptly transfer, assign, convey and deliver such asset to Purchaser. To the extent that any such asset cannot be transferred or the full benefits or use of any such asset cannot be provided to Purchaser, then as promptly as practicable following the Closing, Purchaser and Sellers shall enter into such arrangements (including subleasing, sublicensing or subcontracting), and shall reasonably cooperate with each other to provide Purchaser with all of the benefits of, and for Purchaser to bear the burdens of and Liabilities for, including indemnifying Sellers for any Liabilities arising from the performance (as directed by Purchaser) by any Seller under the Non-Assignable Assets, use of such Non-Assignable Asset. Sellers shall hold in trust for, and pay to Purchaser, promptly upon receipt thereof, all income, proceeds and other monies received by any member of the Seller Group derived from their use of any asset that would be an Acquired Asset in connection with the arrangements under this Section 1.5(d). No member of the

Seller Group shall have any obligation to renew any Non-Assignable Asset upon the expiration or termination thereof.

(e) The parties agree to treat any asset the benefits of which are transferred pursuant to Section 1.5(d) as having been sold to Purchaser for Tax purposes to the extent permitted by Law. Each Seller and Purchaser agree to notify the other parties promptly in writing if it determines that such treatment (to the extent consistent with the relevant arrangement agreed to by Sellers and Purchaser pursuant to Section 1.5(d)) is not permitted for Tax purposes under applicable Law.

(f) If a counterparty to a Contract set forth on the Assigned Contracts Schedule timely objects to the assumption or assignment or the amount of the Cure Costs payable with respect to such contract or lease, as applicable, Sellers shall request that the Bankruptcy Court hear and determine such objection on an expedited basis. If such objection has not been resolved prior to the Closing (whether by an order of the Bankruptcy Court or by agreement with the contract or lease counterparty), Purchaser may elect to (i) treat such contract as a Non-Assignable Asset or (ii) temporarily treat the contract as a Non-Assignable Asset (a "**Designated Agreement**"), proceed to Closing without any reduction in Purchase Price or Closing Consideration without the sale, transfer, assignment, conveyance or delivery of such Designated Agreement, unless there is a failure of one or more of the conditions set forth in Article VI (in which case, the Closing shall proceed only if each failed condition is resolved or waived by the party entitled to the benefit thereof), with respect to all other Acquired Assets, and determine whether to treat the Designated Agreement as an Assigned Contract, as applicable, or a Non-Assignable Asset within five (5) Business Days after resolution of such objection (whether by an order of the Bankruptcy Court or by agreement of Purchaser and the contract or lease counterparty).

(g) To the extent that any Contract or Permit to be sold, transferred, conveyed or assigned (any sale, transfer, conveyance or assignment, a "**Transfer**") to Purchaser pursuant to the terms of Section 1.5 is not capable of being Transferred to Purchaser (after giving effect to the Sale Order) without the consent of a third Person, or if such Transfer or attempted Transfer would, or if the subsequent Transfer or attempted Transfer of the equity interests of Purchaser would, constitute a breach thereof or a violation of any Law, nothing in this Agreement or in any document, agreement or instrument delivered pursuant to this Agreement will constitute a Transfer or an attempted Transfer thereof prior to the time at which all consents necessary for such Transfer will have been obtained unless an Order of the Bankruptcy Court effects such Transfer without consent.

(h) Notwithstanding anything in this Agreement to the contrary, Purchaser may, in its sole and absolute discretion, by written notice to Sellers amend or revise the Assigned Contracts Schedule in order to, in each case with respect to a Contract that is not set forth on the Excluded Assets Schedule or an Excluded Asset other than pursuant to Section 1.2(k), (i) eliminate any Contract from such schedule at any time during the period commencing from the date hereof and ending two (2) Business Days before the commencement of the Sale Hearing or (ii) add any Contract to such schedule at any time and from time to time, until the date which is thirty (30) days before the Closing Date; provided that the counter-party to such Contract or Permit is provided sufficient notice and an opportunity to object to such assumption and assignment (in each case, as applicable, the "**Designation Deadline**"). Automatically upon the addition of any Contract to the Assigned Contracts Schedule, it shall be an Assigned Contract for all purposes of this Agreement,

until such time (if any) as such Contract is eliminated from the Assigned Contracts Schedule. If Purchaser adds one or more Contracts to the Assigned Contracts Schedule after the date hereof and Sellers have not previously notified the non-Seller counterparties to such Contracts pursuant to Section 1.5(a) (such Contracts, the "**Additional Assigned Contracts**"), Sellers shall file any supplemental motion required to assume and assign such Additional Assigned Contracts and shall provide such supplemental notice as is required, and the hearing with respect to the assumption and assignment of such Additional Assigned Contracts may occur after the Sale Hearing. Automatically upon the removal of any Contract from the Assigned Contracts Schedule, such Contract shall be an Excluded Asset (and for the avoidance of doubt shall cease to be an Assigned Contract) for all purposes of this Agreement, and no Liabilities arising thereunder shall be assumed or borne by Purchaser.

Section 1.6 Purchase Price; Escrow Funds.

(a) *Aggregate Consideration.* The aggregate consideration for the purchase and sale of the Acquired Assets will be (i) the payment of the Closing Consideration in accordance with Section 2.2(b)(i) and this Section 1.6 and (ii) the assumption of the Assumed Liabilities by Purchaser in accordance with Section 1.3. For purposes of this Agreement, "**Closing Consideration**" shall mean an amount equal to:

(i) $185,000,000 (the "**Purchase Price**"), *plus*

(ii) the amount, if any, of the Net Working Capital Adjustment (which may be a negative number).

(b) *Escrow Funds; Deposit Funds Release.* Purchaser shall deposit into escrow with the Escrow Agent amounts equal to (i) $18,500,000 within three (3) Business Days of the execution of this Agreement (such amount, together with all interest and other earnings accrued thereon, the "**Deposit Funds**") and (ii) $5,000,000 at the Closing (such amount, together with all interest and other earnings accrued thereon, the "**Working Capital Escrow Funds**," and collectively with the Deposit Funds, the "**Escrow Funds**"), by wire transfer of immediately available funds into separate accounts pursuant to the terms of the Escrow Agreement. The Deposit Funds shall be released by the Escrow Agent and delivered to either (x) Purchaser or (y) Seller Parent, on behalf of Sellers, as follows:

(i) if the Closing shall occur, the Deposit Funds shall be applied towards the portion of the Closing Consideration payable by Purchaser to Sellers pursuant to Section 1.6(a) and shall be released to Seller Parent at the Closing;

(ii) if this Agreement is terminated by Seller Parent pursuant to Section 7.1(b)(iii), unless at the time of such termination Purchaser had an independent right to terminate this Agreement pursuant to the other terms of Section 7.1, then the Deposit Funds shall be released to Seller Parent within two (2) Business Days following such termination; or

(iii) if this Agreement is terminated pursuant to Section 7.1 other than pursuant to Section 7.1(b)(iii) (or this Agreement is terminated pursuant to Section 7.1(b)(iii) and at such time Purchaser had an independent right to terminate this Agreement pursuant to the

other terms of Section 7.1), in addition to any of Purchaser's rights pursuant to Section 7.2(b) and Section 7.2(c), the Deposit Funds shall be released to Purchaser within two (2) Business Days after such termination.

(c) *Estimated Closing Consideration; Post-Closing Adjustment.*

(i) Estimated Closing Consideration. No later than five (5) Business Days prior to the Closing, Seller Parent shall provide Purchaser with a statement (the "**Estimated Closing Statement**") setting forth its good faith calculations of (A) the Net Working Capital as of the Calculation Time (the "**Estimated Net Working Capital**) and (B) the estimated Closing Consideration based on the Estimated Net Working Capital (the "**Estimated Closing Consideration**"), together with such schedules and data as are reasonably necessary to support the calculation thereof, including a corresponding (1) Accounts Receivable Schedule, (2) Specified Pre-Paid Expenses Schedule, (3) Inventory Schedule, (4) CMO Payables Schedule, (5) GTN Liabilities Schedule and (6) Royalty Payment Schedule (such schedules, collectively, the "**Working Capital Schedules**"). Seller Parent will, subject to and in accordance with Section 5.2, permit Purchaser and its Representatives reasonable access to the personnel, properties, books and records involved in or utilized in preparing the Estimated Closing Statement. If Purchaser raises any reasonable objections to the calculations set forth in the Estimated Closing Statement, Seller Parent will consider in good faith such objections prior to the Closing to the extent submitted in writing to Seller Parent at least one (1) Business Day prior to the Closing; *provided that*, in no event will (x) Purchaser have any right to delay or prevent the Closing based on objections raised to the calculations set forth in the Estimated Closing Statement or the inability to access timely the foregoing personnel, properties, books and records in compliance with Section 5.2 for the purpose of evaluating the foregoing calculations or (y) Seller Parent have any obligation to agree to any adjustments to the Estimated Net Working Capital or the Estimated Closing Consideration based on such objections or access limitations.

(ii) Proposed Actual Closing Consideration. No later than sixty (60) days following the Closing, Purchaser shall deliver to Seller Parent a statement (the "**Closing Statement**") setting forth its good faith calculations of (A) the actual Net Working Capital as of the Calculation Time (the "**Actual Net Working Capital**") and (B) the actual Closing Consideration based on the Actual Net Working Capital (the "**Actual Closing Consideration**"), together with such schedules and data as are reasonably necessary to support the calculation thereof, including corresponding Working Capital Schedules. The parties agree that the purpose of determining the Actual Net Working Capital and the Actual Closing Consideration contemplated by this Section 1.6 is to measure the difference in Actual Net Working Capital as compared to the Estimated Working Capital, and such processes are not intended to permit the introduction of different or new judgments, accounting methods, policies, principles, practices, procedures, classifications or estimation methodologies for the purpose of determining the Final Net Working Capital or the Final Closing Consideration than those set forth in the Accounting Principles and the applicable definitions set forth herein. The Estimated Closing Statement and the Closing Statement shall be prepared in accordance with the terms of this Agreement, the Accounting Principles and the applicable definitions set forth herein.

(iii) Final Closing Consideration Determination.

(A) No later than sixty (60) days following the delivery by Purchaser of the Closing Statement, Seller Parent shall notify Purchaser in writing whether it accepts or disputes the accuracy of the calculation of the Actual Net Working Capital or the Actual Closing Consideration. During such sixty (60) day period, Seller Parent and its Representatives shall be provided with such access to personnel and other Representatives of Purchaser and its Affiliates, as well as any work papers and books and records, including any Acquired Books and Records, of Purchaser, its Affiliates or its or their respective Representatives, as it may reasonably request to enable it to evaluate the calculations of Actual Net Working Capital and Actual Closing Consideration prepared by Purchaser. If Seller Parent accepts the calculations of Actual Net Working Capital and Actual Closing Consideration prepared by Purchaser pursuant to Section 1.6(c)(ii), or if Seller Parent fails within such sixty (60) day period to notify Purchaser of any dispute with respect thereto, then the calculations of Actual Net Working Capital and Actual Closing Consideration pursuant to Section 1.6(c)(ii) shall be the "Final Net Working Capital" and the "Final Closing Consideration" which shall be deemed final and conclusive and binding upon all parties in all respects.

(B) If Seller Parent disputes the calculation of the Actual Net Working Capital or the Actual Closing Consideration, Seller Parent shall provide written notice to Purchaser no later than sixty (60) days following the delivery by Purchaser to Seller Parent of the Closing Statement (the "**Dispute Notice**"), setting forth in reasonable detail those items and dollar amounts that Seller Parent disputes (and the basis for such dispute), together with Seller Parent's alternative calculation of each disputed item; *provided*, that Purchaser and Seller Parent shall be deemed to have agreed on all items contained in the Closing Statement that are not subject to the Dispute Notice. During the forty-five (45) day period following delivery of the Dispute Notice, Purchaser and Seller Parent shall negotiate in good faith with a view to resolving their disagreements over the disputed items. All negotiations between Purchaser and Seller Parent regarding the matters set forth in a Dispute Notice shall be governed by Rule 408 of the Federal Rules of Evidence and any comparable applicable state or foreign rule. During such forty-five (45) day period and until the final determination of Actual Net Working Capital and Actual Closing Consideration in accordance with this Section 1.6(c)(iii)(B) or Section 1.6(c)(iii)(C), as the case may be (as so determined, or as determined pursuant to Section 1.6(c)(iii)(A), "**Final Net Working Capital**" and "**Final Closing Consideration**", respectively), Seller Parent and its Representatives shall be provided with such access to personnel and other Representatives of Purchaser and its Affiliates, as well as any work papers and books and records, including any Acquired Books and Records, of Purchaser, its Affiliates or its or their respective Representatives, as it may reasonably request to enable it to address all matters set forth in any Dispute Notice. If the parties resolve their differences over the disputed items in accordance with the foregoing procedure, the "Final Net Working Capital" and "Final Closing Consideration" shall be the amounts agreed upon by them. If the parties fail to resolve their differences over the disputed items within such

forty-five (45) day period, then Purchaser and Seller Parent shall forthwith jointly request that a nationally recognized independent public accounting firm as shall be mutually agreed by Purchaser and Seller Parent (or if no such firm can be engaged, another independent public accounting firm as mutually agreed by Purchaser and Seller Parent, in good faith) (the "**Accounting Expert**") make a binding determination, as an expert and not as an arbitrator, as to the disputed items in accordance with this Agreement; provided that (1) the basis of the Accounting Expert's determination must be based solely on the definitions and other applicable provisions of this Agreement or correcting mathematical errors; and (2) each party agrees that it shall not engage in any *ex parte* communications with the Accounting Expert.

(C) The Accounting Expert will under the terms of its engagement have no more than thirty (30) days from the date of referral within which to render its written decision with respect to the disputed items (and only with respect to any unresolved disputed items set forth in the Dispute Notice) and the final calculations of Actual Net Working Capital and Actual Closing Consideration shall be based solely on the resolution of such disputed items. The Accounting Expert shall review such submissions and base its determination solely on such submissions. In resolving any disputed item, the Accounting Expert may not assign a value to any item greater than the maximum value for such item claimed by either party or less than the minimum value for such item claimed by either party. The decision of the Accounting Expert shall be deemed final and binding upon the parties and enforceable by any court of competent jurisdiction and the Accounting Expert's final calculation of the Actual Net Working Capital shall be deemed the "Final Net Working Capital" and of the Actual Closing Consideration shall be deemed the "Final Closing Consideration". The fees and expenses of the Accounting Expert shall be allocated to be paid by Purchaser, on the one hand, and Seller Parent, on the other, based upon the percentage that the portion of the contested amount not awarded to each party bears to the amount actually contested by such party, as determined by the Accounting Expert.

(iv) Final Closing Consideration Payment. Following the final determination of the Final Net Working Capital and Final Closing Consideration pursuant to Section 1.6(c)(iii):

(A) if the Final Closing Consideration is greater than or equal to the Estimated Closing Consideration, then (x) Purchaser shall pay to Seller Parent the amount, if any, by which the Final Closing Consideration is in excess of the Estimated Closing Consideration; provided, that in no event shall Purchaser be required to pay an amount pursuant to this clause (x) in excess of $5,000,000 and (y) Purchaser and Sellers shall provide joint written instructions, executed by their respective authorized representatives under the Escrow Agreement, to the Escrow Agent that instruct the Escrow Agent to release the Working Capital Escrow Funds to Seller Parent, on behalf of Sellers; and

(B) if the Final Closing Consideration is less than the Estimated Closing Consideration, then Purchaser and Seller shall provide joint written instructions, executed by their respective authorized representatives under the Escrow Agreement, to the Escrow Agent that instruct the Escrow Agent to release (x) to Purchaser, an amount of the Working Capital Escrow Funds equal to the amount by which the Estimated Closing Consideration is in excess of the Final Closing Consideration and (y) to Seller Parent, on behalf of Sellers, any amounts remaining in the Working Capital Escrow Funds, after giving effect to the release contemplated by the preceding clause (x).

Notwithstanding the foregoing, (A) in the event that the full amount (if any) by which the Estimated Closing Consideration exceeds the Final Closing Consideration is greater than the Working Capital Escrow Funds, neither Purchaser nor any of its Affiliates or its or their respective Representatives shall have any recourse with respect to such shortfall against Seller Parent, any of its Affiliates, its or their respective Representatives or any other Person and (B) in the event that the full amount (if any) by which the Final Closing Consideration exceeds the Estimated Closing Consideration is greater than $5,000,000, neither Seller Parent nor any of its Affiliates or its or their respective Representatives shall have any recourse with respect to such shortfall against Purchaser, any of its Affiliates, its or their respective Representatives or any other Person. All payments pursuant to this Section 1.6(c)(iv), including all such payments and releases from the Working Capital Escrow Funds, shall be made (to an account (or accounts) designated in writing in advance by Seller Parent or Purchaser, as applicable) by wire transfer of immediately available funds on or prior to the second (2nd) Business Day following the final determination of the Final Closing Consideration pursuant to Section 1.6(c)(iii). For purposes of any calculations with respect to the Closing Consideration, the parties acknowledge and agree that any effects of Purchaser's or any of its Affiliates' purchase accounting with respect to the Transactions shall not be considered with respect to any calculations of the Closing Consideration.

Section 1.7 Withholding. Purchaser and Sellers shall be entitled to deduct and withhold from any consideration payable hereunder such amounts as are required to be deducted and withheld with respect thereto under the Code or any other Tax Law; provided that each of Purchaser and Sellers shall use commercially reasonable efforts to provide the other party at least five (5) Business Days written notice prior to withholding any amounts pursuant to this Section 1.7, and shall work together in good faith to minimize or eliminate any such withholding. To the extent that amounts are so deducted and withheld, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made.

Section 1.8 Closing Consideration Allocation. The parties agree to allocate for Tax purposes (and, as applicable, to cause their respective Affiliates to allocate for Tax purposes) the Closing Consideration *plus* Assumed Liabilities and any other amounts treated as additional consideration for Tax purposes among the Acquired Assets in accordance with the following procedures and, to the extent applicable, in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder. Within ninety (90) days after the Closing Date, Purchaser shall deliver to Seller Parent, on behalf of Sellers, a proposed allocation of the Closing

Consideration, the Assumed Liabilities (to the extent properly taken into account for income Tax purposes) and any other amounts treated as additional consideration for income Tax purposes as of the Closing Date (the "**Allocation**"). If Seller Parent notifies Purchaser in writing of any reasonable objections to one or more items reflected in the Allocation within thirty (30) days after Purchaser's delivery thereof, Seller Parent and Purchaser shall negotiate in good faith to resolve such dispute. If Purchaser and Seller Parent cannot resolve such dispute within twenty (20) days after Seller Parent notifies Purchaser of such objections, the parties shall be free to take different reporting positions on their Tax Returns and none of Purchaser or Sellers shall be required to report consistent with the Allocation. If Purchaser and Sellers agree in writing on all items reflected in the Allocation, the Allocation (including as finally determined and adjusted to reflect any Closing Consideration adjustments) shall be final and binding on the parties, and each of the parties (a) shall (and shall cause its Affiliates to) prepare and file all Tax Returns (and Internal Revenue Service Forms 8594) in a manner consistent with the Allocation and (b) shall not (and shall cause its Affiliates not to) take any position on any Tax Return or in connection with any Tax proceeding inconsistent with the Allocation, in each case, except to the extent otherwise required by a "determination" within the meaning of Section 1313(a) of the Code (or any analogous provision of applicable state, local or non-U.S. Law). Promptly after any time that the Closing Consideration is treated as being adjusted for applicable Tax purposes, Purchaser shall make adjustments to the Allocation as in its reasonable discretion are necessary to reflect such adjustments to the Closing Consideration.

ARTICLE II

THE CLOSING

Section 2.1 Closing. Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the "**Closing**") shall take place remotely by exchange of documents and signatures via email or other manner as may be mutually agreed upon by Purchaser and Seller Parent, at 10:00 a.m. Eastern Time as soon as possible (and in any event within five (5) Business Days) after the conditions set forth in Article VI have been satisfied or (if permissible under applicable Law) waived (except for such conditions that, by their nature, can only be satisfied at the Closing, but subject to the satisfaction or (if permissible) waiver thereof at the Closing), or at such time, date and place as Purchaser and Seller Parent may mutually agree (the date of the Closing being herein referred to as the "**Closing Date**"). For financial, accounting and economic purposes, including risk of loss, and for all other purposes under this Agreement, upon the occurrence of the Closing, the Closing shall be deemed to have occurred at 12:01 a.m. Eastern Time, on the Closing Date.

Section 2.2 Deliveries at the Closing.

(a) At the Closing, Sellers shall deliver to Purchaser:

(i) a duly executed bill of sale and assignment and assumption agreement substantially in the form of Exhibit A (the "**Bill of Sale & Assignment and Assumption Agreement**"), transferring the Acquired Assets and Assumed Liabilities to Purchaser (or its designated Affiliate or Affiliates);

(ii) duly executed assignments of Seller Intellectual Property, including the Seller Registered Intellectual Property, each substantially in the form of Exhibit B (the "**Intellectual Property Assignment Agreements**");

(iii) a duly executed and properly completed IRS Form W-9 for each of Seller Parent and Civitas Therapeutics, Inc.;

(iv) the certificates described in Section 6.3(e);

(v) a copy of the Sale Order entered by the Bankruptcy Court;

(vi) the Seller FDA Transfer Letters duly executed by Sellers;

(vii) a stock transfer form substantially in the form of Exhibit G (the "**Stock Transfer Form**"), transferring the Shares to Purchaser (or its designee), duly executed by Seller Parent;

(viii) the relevant share certificate(s) representing the Shares (or in the case of any share certificate(s) found to be missing, an indemnity for lost share certificate in a form satisfactory to Purchaser (or its designee));

(ix) resolutions of the board of directors of Seller Parent, in which the directors of Seller Parent approved the transfer of the Shares to Purchaser (or its designee);

(x) resolutions of the board of directors of Acorda Ireland, in which the directors of Acorda Ireland shall (A) approve the transfer of the Shares to Purchaser (or its designee) and the registration of Purchaser (or its designee) as a member in respect of the Shares pursuant to the Stock Transfer Form (subject to the discharge of the liability to stamp duty arising on the transfer of the Shares), and (B) appoint such persons as Purchaser (or its designee) may nominate in writing as directors, company secretary and auditor of Acorda Ireland;

(xi) a duly executed irrevocable power of attorney whereby Purchaser (or its designee) is appointed as attorney of Seller Parent to exercise all voting and other rights attaching to the Shares pending registration of their transfer to Purchaser (or its designee);

(xii) in respect of each natural person that is a beneficial owner or senior managing official of Acorda Ireland within the meaning of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No.110 of 2019), their name, address, date of birth, nationality and either personal public services number (PPSN) or RBO number (as applicable);

(xiii) the common seal and all registers, minute books, and other statutory books of Acorda Ireland that are required to be kept pursuant to the Companies Act 2014 of Ireland;

(xiv) the Irish tax reference number of Seller Parent sufficient to enable Purchaser (or its designee) to make the relevant tax filing in order to discharge the liability to Irish stamp duty arising on the transfer of all the interests held by Seller Parent in Acorda Ireland;

(xv) evidence of the payment, satisfaction, compromise or waiver of all Seller Cure Costs paid in accordance with Section 1.5(b);

(xvi) a certificate, executed by an executive officer of Seller Parent, confirming, on behalf of the Sellers, that all GTN Liabilities with invoices due prior to the Closing have been fully paid and satisfied or, without further action by Sellers, will be fully paid and satisfied by Sellers; and

(xvii) such other instruments of sale, transfer and conveyance consistent with the terms and provisions of this Agreement as Purchaser may reasonably request in writing no later than three (3) Business Days prior to the Closing Date in order to give effect to the Acquisition.

(b) At the Closing, Purchaser shall deliver to Seller Parent, on behalf of Sellers:

(i) the Estimated Closing Consideration, *minus* the Working Capital Escrow Funds, *minus* the Deposit Funds, by wire transfer of immediately available funds to an account or accounts designated by Seller Parent;

(ii) the Intellectual Property Assignment Agreements, duly executed by Purchaser (or its designated Affiliate or Affiliates);

(iii) the certificate(s) described in Section 6.2(e);

(iv) the Bill of Sale & Assignment and Assumption Agreement, duly executed by Purchaser (or its designated Affiliate or Affiliates);

(v) the Purchaser FDA Transfer Letters, duly executed by Purchaser (or its designated Affiliate or Affiliates);

(vi) such other instruments of sale, transfer and conveyance consistent with the terms and provisions of this Agreement as Sellers may reasonably request in writing no later than three (3) Business Days prior to the Closing Date in order to give effect to the Acquisition; and

(vii) evidence of the payment, satisfaction, compromise or waiver of all Purchaser Cure Costs paid in accordance with Section 1.5(b).

(c) At the Closing, (i) Purchaser and Sellers shall provide joint written instructions, executed by their respective authorized representatives under the Escrow Agreement, to the Escrow Agent that instruct the Escrow Agent to release the Deposit Funds to Seller Parent, on behalf of Sellers, in accordance with Section 1.6(b)(i) and (ii) Purchaser shall deposit the Working Capital Escrow Funds pursuant to Section 1.6(b).

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except (x) as disclosed in the Seller SEC Documents (other than any disclosures set forth under the headings "Risk Factors" or "Forward-Looking Statements" and any other disclosures included therein to the extent they are forward-looking in nature) publicly available on the SEC's Electronic Data Gathering Analysis and Retrieval System as of the Business Day prior to the date hereof (or, with respect to the Seller 10-K, to the extent otherwise provided to Purchaser) or (y) as set forth in the Sellers Disclosure Schedule (it being understood that any information, item or matter set forth in one section or subsection of the Sellers Disclosure Schedule shall be deemed disclosure with respect to, and shall be deemed to apply to and qualify, the section or subsection of this Agreement to which it corresponds in number and each other section or subsection of this Agreement solely to the extent that it is reasonably apparent based upon the context and content of such disclosure that such information, item or matter is relevant to such other section or subsection), Sellers, jointly and severally, represent and warrant to Purchaser, as of the date hereof and as of the Closing, as follows:

Section 3.1 Qualification, Organization, Subsidiaries

Each Seller and Acorda Ireland is a legal entity duly organized, validly existing and in good standing (where such concept is recognized under applicable Law) under the Laws of its state of incorporation or formation, as applicable, and has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Each Seller and Acorda Ireland is qualified to do business and is in good standing as a foreign corporation or other entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or, where relevant, in good standing, has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each Seller and Acorda Ireland has made available to Purchaser a complete and accurate copy of the organizational documents of such Seller, or, where applicable, Acorda Ireland, as in effect on the date hereof. Acorda Ireland is not in violation of any of the provisions of its certificate of incorporation or bylaws, or equivalent organizational documents. Except as described in Section 3.1 of the Sellers Disclosure Schedule, neither any Seller nor Acorda Ireland has any Subsidiaries.

Section 3.2 Authority of Sellers

Subject to the entry of the Bidding Procedures Order and Sale Order, each Seller has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement and each of the Ancillary Documents to which such Seller is a party. Subject to the entry of the Bidding Procedures Order and Sale Order, the execution, delivery and performance of this Agreement and such Ancillary Documents by each Seller and the consummation of the Transactions have been duly and validly authorized and approved by all requisite corporate action of each Seller, and no other corporate proceedings on the part of any Seller is necessary to authorize the consummation of, and to consummate, the Transactions. This Agreement and each such Ancillary Document have been (or, in the case of Ancillary Documents to be executed, upon execution thereof will be) duly and validly executed and delivered by Sellers, and, assuming the

due authorization, execution and delivery of this Agreement and each such Ancillary Document by Purchaser, as applicable, constitute (or, in the case of Ancillary Documents to be executed, will constitute) a valid and binding agreement of each Seller, enforceable against each Seller in accordance with its terms, subject to the entry of the Bidding Procedures Order and Sale Order and except, notwithstanding such entries, to the extent enforcement may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law) (the "**Enforceability Exceptions**").

Section 3.3 Consents and Approvals

No consent, approval, permit or authorization of, or declaration, filing or registration with, any Governmental Entity is necessary or required to be made or obtained by any Seller or any Affiliate thereof in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents to which such Seller is a party and the consummation of the Transactions, except (a) in connection with or compliance with any applicable requirements of the Chapter 11 Cases, (b) except as listed in Section 3.3 of the Sellers Disclosure Schedule, and (c) any such other consents, approvals, permits or authorizations of, or declarations, filings or registrations as to which the failure to obtain (i) would not reasonably be expected to be materially adverse to Business, taken as a whole, or (ii) would not reasonably be expected to materially impair or materially delay the ability of Sellers to timely consummate the Transactions or to perform their obligations hereunder.

Section 3.4 No Violations

Neither the execution, delivery or performance of this Agreement and the Ancillary Documents by any Seller nor the consummation by Sellers of the Transactions will (a) conflict with or result in any violation or breach of any provisions of the certificate of incorporation, bylaws or other organizational documents of any Seller or Acorda Ireland, (b) with or without notice or lapse of time or both, conflict with or result in any breach or violation of or constitute a default or change of control under, or give rise to a right of, or result in, termination, modification, cancellation, first offer, first refusal or acceleration of any obligation or to the loss of a benefit under any Assigned Contract to which any member of the Seller Group is a party or by or to which any of its properties, rights or assets are bound or subject, except as described in Section 3.4(b) of the Sellers Disclosure Schedule which shall not, in any event, include any such violation the need for which is obviated by the Sale Order or otherwise by the provisions of the Bankruptcy Code, (c) conflict with or violate any Order or Law applicable to any member of the Seller Group, the Business, any Product or the Acquired Assets or (d) result in the creation or imposition of any Encumbrance on any Acquired Asset other than (i) with respect to the execution and delivery of this Agreement, Permitted Pre-Closing Encumbrances and (ii) with respect to the execution and delivery of the Ancillary Documents and with respect to the performance of this Agreement and the Ancillary Documents and the consummation of the Transactions, the Permitted Post-Closing Encumbrances, except in the case of the foregoing clauses (b), (c) and (d), for breaches, violations, defaults or terminations that (i) would not reasonably be expected to be materially adverse to Business, taken as a whole or (ii) would not reasonably be expected to materially impair or

materially delay the ability of Sellers to timely consummate the Transactions or to perform their obligations hereunder.

Section 3.5 Financial Statements; No Undisclosed Liabilities.

(a) The audited consolidated financial statements (including all related notes and schedules) and the unaudited consolidated interim financial statements included or incorporated by reference in any Seller SEC Documents (collectively, the "**Financial Statements**"), when filed, complied in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. The Financial Statements fairly present in all material respects the consolidated financial position of the Seller Group, as at the respective dates thereof, and the results of their operations and their cash flows for the respective periods then ended (subject, in the case of the unaudited quarterly or other interim financial statements, to normal year-end audit adjustments that are not material and the absence of notes) in conformity with GAAP, applied on a consistent basis during the periods involved (except as indicated in the notes thereto and, in the case of the unaudited quarterly or other interim financial statements, for normal and recurring year-end adjustments that are not material and for the absence of notes).

(b) Seller Parent has established and maintains, and at all times since January 1, 2021 has maintained, disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act, designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. Since January 1, 2021, no principal executive officer or principal financial officer of any member of the Seller Group has disclosed to such Seller's or Seller Parent's auditors and the audit committee of such Seller's or Seller Parent's Board of Directors or equivalent body (x) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting, (y) any fraud, whether or not material, that involves management or other employees or (z) any claim or allegation regarding any of the foregoing. Since January 1, 2021, no member of the Seller Group has received any material, unresolved, complaint, allegation, assertion or claim regarding the accounting or auditing practices, procedures, methodologies or methods of such Seller or its internal accounting controls.

(c) No member of the Seller Group has any Liabilities with respect to the Business, except for (i) the Liabilities described on Section 3.5(c) of the Sellers Disclosure Schedule, (ii) Liabilities that have arisen since December 31, 2023 in Ordinary Course of Business, (iii) Liabilities reflected or reserved against in the Financial Statements, (iv) the Excluded Liabilities, (v) Liabilities incurred in connection with the Transactions or arising from the preparation for or commencement of the Chapter 11 Cases, (vi) Liabilities arising from performance obligations under any Contract in accordance with its terms, or (vii) any Liabilities that have not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) Acorda Ireland does not have any material Liabilities except for the Liabilities arising in the Ordinary Course of Business in connection with Acorda Ireland's ownership and maintenance of the marketing authorization issued by the European Commission for Inbrija®.

Section 3.6 Title to Property; Sufficiency of Assets.

(a) (i) Except as would not be materially adverse to the Business, taken as a whole, Sellers have good, valid, and marketable title to, a valid leasehold interest in or all rights to use, all of the tangible Acquired Assets free and clear of all Encumbrances other than Permitted Pre-Closing Encumbrances, and (ii) upon the entry and effectiveness of the Sale Order, Sellers will have the power and right to sell, assign, transfer, convey and deliver, as the case may be, to Purchaser the tangible Acquired Assets, and at the Closing, Sellers will sell, assign, transfer, convey and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to Purchaser good, valid and marketable title to, the tangible Acquired Assets, free and clear of all Encumbrances other than Permitted Post-Closing Encumbrances.

(b) The Acquired Assets in all material respects (i) constitute all of the assets, rights and properties Primarily Related to the Products or the Business, and (ii) are sufficient, when taken together with the Excluded Assets other than Section 1.2(a) and Section 1.2(d), to conduct the Business as it is conducted by (including by the incurrence of any Excluded Liabilities) the Seller Group as of the date hereof and as of Closing.

(c) No Affiliate of Seller Parent other than the Sellers and Acorda Ireland have conducted any activities in connection with the conduct of the Business as conducted as of the date hereof and no member of the Seller Group other than Sellers owns any material asset that, if owned by any Seller, would constitute an Acquired Asset.

(d) The ten (10) ordinary shares of €1.00 each in the capital of Acorda Ireland held by Seller Parent constitute the whole of the issued and allotted share capital of Acorda Ireland, have been properly allotted or issued in compliance with the constitution of Acorda Ireland and all applicable Laws, and are fully paid or credited as fully paid.

Section 3.7 Absence of Certain Changes.

(a) Since December 31, 2023, through the date hereof, (x) the Business has been conducted in all material respects in the Ordinary Course of Business, and (y) Sellers have not taken any action that, if taken after the date hereof, would constitute a breach of, or require the consent of Purchaser under Section 5.1(b)(i), (ii), (iii), (iv), (v), (x) or (xi), except (i) as set forth on Section 3.7 of the Sellers Disclosure Schedule, (ii) for the preparation and filing of the Chapter 11 Cases, including solicitation of, discussions and negotiations with, any Requisite Noteholders in connection with the Plan Support Agreement, and (iii) for the solicitation of, discussions and negotiations with, presentations and provision of other diligence to and similar engagement with other potential bidders for the Business, the Acquired Assets or the Seller Group and the negotiation and execution of this Agreement and any Ancillary Agreements related thereto.

(b) Since December 31, 2023, through the date hereof, except for any Effects arising from the filing of the Chapter 11 Cases, there has not occurred any Effect that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Since December 31, 2023, no member of the Seller Group has engaged in the practice of "channel stuffing" or any program, activity or other action (including any Rebate, discount, chargeback or refund policy or practice), that would reasonably be expected to result,

directly or indirectly, in purchases of any Product that is materially in excess of normal customer purchasing patterns in the Ordinary Course of Business.

Section 3.8 Brokers or Finders. Other than as set forth on Section 3.8 of the Sellers Disclosure Schedule, Sellers have not employed or engaged any investment banker, broker or finder who is entitled to any fee or any commission in connection with this Agreement, the Ancillary Documents or the Transactions.

Section 3.9 Litigation. Except as set forth in Section 3.9 of the Sellers Disclosure Schedule and except where such Actions, Orders, or settlement agreements, as applicable, have not been and would not reasonably be expected to be materially adverse to the Business, taken as a whole, there are no, and, since January 1, 2021, there have not been any, (a) Actions pending or, to the Knowledge of Sellers, threatened against any member of the Seller Group or relating to the Business, any Product, the Acquired Assets or the Assumed Liabilities, or (b) Orders, or settlement agreements with any Governmental Entity, relating to, against or affecting any member of the Seller Group, the Business, any Product, the Acquired Assets or the Assumed Liabilities. No member of the Seller Group has any plan to initiate any Action relating to the Business, any Product, the Acquired Assets or the Assumed Liabilities, against any other Person and, to the Knowledge of Sellers, there is no basis for any such present or future Action.

Section 3.10 Intellectual Property.

(a) (i) Section 3.10(a)(i) of the Sellers Disclosure Schedule sets forth a true, accurate, and complete list, as of the date hereof, of all Patents material to the Current Products that are included in the Seller Intellectual Property, (ii) Section 3.10(a)(ii) of the Sellers Disclosure Schedule sets forth a true, accurate, and complete list, as of the date hereof, of all registered and unregistered Trademarks material to the Current Products that are included in the Seller Intellectual Property, and (iii) Section 3.10(a)(iii) of the Sellers Disclosure Schedule sets forth a true, accurate, and complete list, as of the date hereof, of all Internet Properties material to the Current Products that are included in the Seller Intellectual Property, in the case of each of subsections (i) and (ii), including the jurisdiction in which each item has been registered or filed, the application or serial number or similar identifier, the filing date, and the applicable issuance, registration or grant date. Sellers exclusively own all of the Patents, Trademarks, and Internet Properties listed in Section 3.10(a)(i)-(iii) of the Sellers Disclosure Schedule. To the Knowledge of Sellers, there are no Copyrights material to the Current Products. Other than as provided for in Section 3.10(a)(i)-(iii) of the Sellers Disclosure Schedule, each item of Seller Registered Intellectual Property set forth on or required to be set forth on such schedules is subsisting, and to the Knowledge of Sellers, valid and enforceable. Other than as provided for in Section 3.10(a)(i)-(iii) of the Seller Disclosure Schedules, no interference, opposition, reissue, reexamination or other Action in which the scope, validity or enforceability of any Seller Registered Intellectual Property is contested or challenged, is pending or, to the Knowledge of Sellers, threatened against any item of Seller Registered Intellectual Property set forth thereon or required to be set forth thereon. All necessary filing, examination, registration, maintenance, annuity and renewal fees due or actions required (including proofs and working or use) in connection with the Seller Registered Intellectual Property material to the Current Products and having a non-extendable due date on or before the date hereof: (x) have been taken, paid, or have been instructed to be paid and, to the Knowledge of Sellers, have been paid or (y) an extension of time for meeting the requisite deadline is available,

has been taken, or will be taken without loss of any of Seller Intellectual Property rights therein. Section 3.10(a)(iv) of the Sellers Disclosure Schedule sets forth a complete list, as of March 24, 2024, of the deadlines falling within six (6) months of the date hereof for any such fees due or actions required with respect to the Seller Registered Intellectual Property material to the Current Products.

(b) No member of the Seller Group has received a notice of an Abbreviated New Drug Application ("**ANDA**") filing in the U.S., or received a similar notification of any corresponding regulatory filing or submission in any jurisdiction outside the U.S., and, to the Knowledge of Sellers, no third party intends to file an ANDA or foreign equivalent thereof for, or intends to otherwise initiate marketing or sale of a generic version of Inbrija®.

(c) Sellers exclusively own all right, title and interest in and to all material Seller Intellectual Property, free and clear of any Encumbrances, except for Permitted Pre-Closing Encumbrances. Sellers have taken all reasonable or necessary actions and followed all practices common in the industry to maintain, protect and enforce all material Seller Intellectual Property. Other than as listed on Section 3.10(c) of the Sellers Disclosure Schedule, the Seller Intellectual Property is sufficient for the operation of the Business as currently conducted. To the Knowledge of Sellers, the Seller Intellectual Property rights transferred to Purchaser under Section 1.1(f) and the Assigned Contracts transferred to Purchaser under Section 1.1(d) include all Seller Intellectual Property that encompasses, incorporates, or is necessary for the Exploitation of the ARCUS Platform. Following the Closing, Purchaser will exclusively own all right, title and interest in and to all material Seller Intellectual Property free and clear of any Encumbrances, except for Permitted Post-Closing Encumbrances. No Seller Intellectual Property is or was, subject to (i) any Order, or (ii) in the past four (4) years, any Action or settlement agreement that restricts in any material respect the exercise, use, provision, transfer, assignment or licensing and sublicensing thereof, as the case may be, by Sellers or that may affect the exercise, validity, ownership, use, enforceability, or defense of any Seller Intellectual Property.

(d) Except as set forth on Section 3.10(d) of the Sellers Disclosure Schedule, no Seller is a party to, nor has any Seller initiated or, to the Knowledge of Sellers, threatened in the past four (4) years, any Action that challenges the legality, validity, enforceability, registration, use or ownership of a third party's Intellectual Property.

(e) No Actions are pending or, to the Knowledge of Sellers (i) threatened against any Seller or any Affiliate thereof or (ii) any third party who may be entitled to be indemnified, defended, held harmless or reimbursed by such Seller or Affiliate with respect to such Action, alleging that such Seller, Affiliate or such third party is infringing, misappropriating, diluting or otherwise violating the Intellectual Property of any Person. To the Knowledge of Sellers, neither the operation of the Business, nor any Product or Exploitation thereof, (i) infringes, misappropriates, or violates (or has in the past infringed, misappropriated, or violated to the extent there is any current Liability therefor or a Liability is reasonably expected to arise) any Intellectual Property of any Person and (ii) following the Closing will (when conducted in substantially the same manner by Purchaser) infringe or misappropriate any Intellectual Property of any Person. No Seller has received, in the past four (4) years, any written offer to license, charge, complaint, claim, demand, notice or other written communication claiming or alleging that the operation of the Business, or the Products (or the Exploitation thereof), conflicts with, infringes, misappropriates,

dilutes or otherwise violates the Intellectual Property of any Person, or constitutes unfair competition or trade practices under the Laws of any jurisdiction.

(f) Except as set forth on Section 3.10(f) of the Sellers Disclosure Schedule, in the past four (4) years, no member of the Seller Group has brought, or, to the Knowledge of Sellers, threatened in writing to bring, any Action against a third party alleging infringement or, misappropriation or violation of any Seller Intellectual Property. To the Knowledge of Sellers, none of the Seller Intellectual Property has been or is being infringed, misappropriated or otherwise violated by any Person.

(g) Except as would not reasonably be expected to be materially adverse to the Business, taken as a whole, in each case in which any member of the Seller Group has engaged or hired an officer, employee, consultant or contractor (whether current or former) who has or had or does have access to confidential Seller Intellectual Property, or who contributes or contributed to developing or creating any Seller Intellectual Property, such Seller has entered into a written agreement with such Person regarding the protection of proprietary information and obtained a written assignment or transfer of (and waiver of such Person's moral rights in) all such Intellectual Property to a Seller or such Seller otherwise is the owner of such Intellectual Property by operation of Law, including all right, title and interest therein. Sellers have taken commercially reasonable actions to maintain and protect the confidentiality and trade secret status of all Know-How of the Seller Group, or any third party, in its possession or used or held for use in the Business or Exploitation of the Products in any jurisdiction. To the Knowledge of Sellers, there has been no unauthorized disclosure of any material Know-How that constitutes Seller Intellectual Property.

(h) (i) Section 3.10(h)(i) of the Sellers Disclosure Schedule sets forth a true, accurate and complete list of all material Contracts that grant any member of the Seller Group a license (including covenants not to sue), whether exclusive or non-exclusive, ownership rights, or other rights in or to (x) any Seller Intellectual Property or (y) any other Intellectual Property or technology (including any Software) owned by a third party that is material to the operation of the Business or Exploitation of the Products, other than Ordinary Course Licenses, and (ii) Section 3.10(h)(ii) of the Sellers Disclosure Schedule sets forth a true and complete list of all material Contracts to which any member of the Seller Group is a party under which such member grants any third party a license or sublicense (including covenants not to sue), whether exclusive or non-exclusive, or other rights in or to any Seller Intellectual Property, other than immaterial non-exclusive licenses or sublicenses pursuant to written agreements entered into in the Ordinary Course of Business (the foregoing ((i) and (ii)), together with the Ordinary Course Licenses, the "**IP Contracts**").

(i) The consummation of the Transactions will not result in (i) a material breach, violation, modification, cancellation, termination, or suspension of any rights under any IP Contract constituting an Assigned Contract, (ii) the grant of (or requirement to grant) any material license, covenant not to assert, release, agreement not to enforce or prosecute, or other immunity to any Seller Intellectual Property (or any Intellectual Property of Purchaser) to any Person, (iii) Purchaser being obligated to perform any material obligations for, or pay any royalties, other amounts, to any third party in excess of those payable or performable by, or required to be offered by, any of them, respectively, in the absence of this Agreement or the Transactions, or (iv) any

other impairment of any rights in or to the material Seller Intellectual Property or grant to any Person rights in or to the material Seller Intellectual Property.

(j) Except as set forth on Section 3.10(j) of the Sellers Disclosure Schedule, subject to requisite Bankruptcy Court approvals, including entry of the Sale Order, (i) all IP Contracts that are Assigned Contracts are in full force and effect, and are fully transferable and assumable by Purchaser pursuant to the Transactions and shall remain in full force and effect and transferable and assumable following the Closing in accordance with their terms, and (ii) as of immediately after the Closing, Purchaser will be entitled to exercise all of Sellers' rights under all IP Contracts to the same extent as prior to the Closing.

(k) Except as set forth on Section 3.10(k) of the Sellers Disclosure Schedule, no Seller is obligated to pay to any Person any royalties, fees, commissions or other amounts for the use by Sellers of any Seller Intellectual Property, other than as provided in the Assigned Contracts.

Section 3.11 Privacy and Data Protection.

(a) Each member of the Seller Group has complied in all material respects with (i) all applicable Information Privacy and Security Laws and (ii) all applicable policies and procedures (which meet or exceed applicable industry standards) adopted by Sellers relating to Protected Information, including the Privacy Statements.

(b) Except as set forth on Section 3.11(b) of the Sellers Disclosure Schedule, in the four (4) years prior to and including the Closing Date, there has been no data security breach with respect to any Protected Information maintained by or for any member of the Seller Group, and no data security breach or privacy breach has occurred that would constitute a breach for which notification to individuals or Governmental Entities is required under any applicable Information Privacy and Security Laws or Contracts to which any member of the Seller Group is a party.

(c) Sellers have implemented safeguards designed to prevent unauthorized access to Protected Information and the Seller Group's computer and information systems in accordance with standards in the industry in which Seller Group operates.

(d) In the four (4) years prior to and including the Closing Date, no Person has (i) provided a written notice or audit request to any member of the Seller Group, (ii) made any written claim against any member of the Seller Group or (iii) commenced any Action against any member of the Seller Group or, to the Knowledge of Sellers, any party acting on behalf of any member of the Seller Group, in each case, with respect to (A) any alleged violation of Information Privacy and Security Laws by any member of the Seller Group or any authorized third party acting on any member's behalf or (B) any member of the Seller Group's privacy or data security practices, including any loss, damage or unauthorized access, acquisition, use, disclosure, modification or other misuse of any Protected Information maintained by or on behalf of any member of the Seller Group. The execution, delivery, and performance of this Agreement will not cause, constitute, or result in a breach or violation of any contractual obligation of any member of the Seller Group relating to Protected Information. All Protected Information included in the Acquired Assets is freely transferrable in accordance with Sellers' Privacy Statements and applicable Law, and no

impediments to the sale, transfer, conveyance and assignment to Purchaser (or its designee(s)) at Closing exist.

(e) The Seller Group has maintained a cyber insurance policy that is adequate and suitable for the nature and volume of Protected Information processed by or on behalf of each member of the Seller Group in the conduct of the Business and is sufficient for compliance with all applicable Information Privacy and Security Laws and Contracts to which any member of the Seller Group is a party or by which it is bound. Section 3.11(e) of the Sellers Disclosure Schedule sets forth a complete and accurate list of all pending claims and the claims history for each member of the Seller Group under such cyber insurance policy. The Seller Group has delivered or made available to Purchaser a true, complete, and correct copy of such cyber insurance policy.

Section 3.12 Real Property Leases.

(a) No member of the Seller Group owns any real property or is under any Contract to acquire any real property.

(b) Section 3.12(b) of the Sellers Disclosure Schedule sets forth a complete and correct list, as of the date hereof, of (i) all real property leased, subleased or licensed by or from any member of the Seller Group or otherwise used or occupied by any member of the Seller Group in connection with the Business (the "**Leased Real Property**"), (ii) each Contract pursuant to which any member of the Seller Group leases, subleases or occupies such Leased Real Property (the "**Leases**") and (iii) identifies the name of the lessor, and all amendments, modifications or terminations thereof, and the name of the Person holding such leasehold interest.

(c) Except as expressly set forth in Section 3.12(c) of the Sellers Disclosure Schedule, no member of the Seller Group has subleased, licensed or otherwise granted a third party the right to occupy any Leased Real Property. Each member of the Seller Group has good and valid leasehold interest in or contractual right to use or occupy, subject to the terms of the applicable Lease, any Permitted Pre-Closing Encumbrance and the Enforceability Exceptions, the Leased Real Property.

(d) To the Knowledge of Sellers, such Leased Real Property does not violate in any material respect any applicable Contract or Law relating to such Leased Real Property. To the Knowledge of Sellers, there is no pending, or threatened, appropriation, condemnation (including a sale or disposition in lieu thereof) or similar proceeding affecting the Leased Real Property except as would not reasonably be expected to be materially adverse to the Business, taken as a whole.

Section 3.13 Material Contracts.

(a) Section 3.13(a) of the Sellers Disclosure Schedule contains a true, accurate and complete list of the following Contracts under which any of the Acquired Assets or Assumed Liabilities are bound or affected, or that are otherwise Primarily Related to any Product or the Business to which any member of the Seller Group is a party or has rights (each such Contract in effect as of the date hereof as required to be listed on Section 3.13(a) of the Sellers Disclosure Schedule being referred to herein as the "**Material Contracts**"):

(i) any Contract that creates any partnership, joint venture, collaboration, strategic alliance, limited liability company agreement, sharing of profits or losses by any member of the Seller Group with any third party, or any similar Contract, as to which there remain material outstanding rights or obligations;

(ii) (A) any Contract that relates to the acquisition, disposition or divestiture by any member of the Seller Group of any operating business or assets, other than Contracts relating to purchase or sale of Inventory entered into in the Ordinary Course of Business, or (B) any Contract that contains "earnout" or other contingent payment obligations that would reasonably be expected to result in the receipt or making by any member of the Seller Group of any future payments in excess of $200,000 in the twelve (12) month period following the date thereof;

(iii) each IP Contract (other than Ordinary Course Licenses);

(iv) any Contract with a Governmental Entity, university or academic research institute;

(v) each Contract not otherwise described in any other subsection of this Section 3.13(a) pursuant to which any member of the Seller Group is obligated to pay, or entitled to receive, payments in excess of $200,000 in the twelve (12)-month period following the date hereof (other than Contracts with any current or former employees, advisors or independent contractors entered into in the Ordinary Course of Business);

(vi) any Contract that obligates any member of the Seller Group to make any capital investment or capital expenditure outside the Ordinary Course of Business in excess of $200,000;

(vii) each Contract with any Material Supplier or any Material Customer;

(viii) each warehousing or similar Contract with respect to the Products or inventory thereof;

(ix) any Contract (A) containing covenants restricting competition which have or would have the effect of prohibiting, or limiting the ability of, any member of the Seller Group from engaging in any business or activity in any geographic area or with any Person, or that otherwise has the effect of restricting any member of the Seller Group from the Exploitation of the Products; (B) in which any member of the Seller Group has granted "exclusivity" or that requires any member of the Seller Group to deal exclusively with or grant exclusive rights or rights of first refusal to, any customer, vendor, supplier, distributor, contractor or other Person; or (C) containing a "most-favored-nation," best pricing or other similar term or provision;

(x) any Contract for the purchase or sale of goods or services, materials, supplies or equipment that involved or is reasonably expected to involve the payment of more than $200,000;

(xi) any Contract that if terminated, or if allowed to expire without being renewed, would have a Material Adverse Effect;

(xii) each Contract relating to outstanding Indebtedness (or commitments in respect thereof) of any member of the Seller Group (whether incurred, assumed, guaranteed or secured by any asset) in an amount in excess of $200,000;

(xiii) any Contract held by a member of the Seller Group that relates to the commercialization, distribution, marketing, supply or manufacturing of any Product, including any manufacturing or supply agreements (and associated quality agreements), collaboration agreements, grant agreements, pharmacovigilance agreements, medical information agreements, that involved or is reasonably expected to involve payment in excess of $200,000 annually;

(xiv) any Contract requiring (or purporting to require) a Person to purchase or sell a minimum quantity of goods or services, or containing "take-or-pay" or similar requirements;

(xv) any Contract involving any resolution or settlement of any actual or threatened Action which would reasonably be expected to involve payments in excess of $200,000 after the date hereof;

(xvi) any Contract under which any of the Acquired Assets are bound or subject, or that are otherwise Primarily Related to the Business, Product or Acquired Assets not otherwise described in any other subsection of this Section 3.13(a) that would constitute a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) with respect to any Seller; and

(xvii) any amendments or modifications to any of the foregoing Contracts.

(b) True, accurate and complete copies of each Material Contract and each Assigned Contract as of the date hereof and in effect as of the date hereof have been made available to Purchaser prior to the date hereof. No member of the Seller Group is in breach of or default under the terms of any Material Contract or any Assigned Contract, except where such breach or default has not been and would not reasonably be expected to be materially adverse to the Business, taken as a whole. Except where such breach, default or event, as applicable, has not been and would not reasonably be expected to be materially adverse to the Business, taken as a whole, to the Knowledge of Sellers, no other party to any Material Contract or Assigned Contract is in breach of or default under the terms of any such Contract as of the date hereof and no event exists as of the date hereof which upon notice or the passage of time, or both, would reasonably be expected to (i) give rise to any default, in the performance by any member of the Seller Group, or, to the Knowledge of Sellers, by any other party under any of the Material Contracts or Assigned Contracts or (ii) cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Except as set forth on Section 3.13(b) of the Sellers Disclosure Schedule, and except as would not, (i) reasonably be expected to be materially adverse to the Business, taken as a whole, or (ii) would not reasonably be expected to materially impair or materially delay the ability of Sellers to timely consummate the Transactions or to perform their

obligations hereunder, each of the Material Contracts and the Assigned Contracts is a legal, valid, binding and enforceable obligation of the applicable member of the Seller Group and, to the Knowledge of Sellers, of each other party thereto, and is in full force and effect, subject to the Enforceability Exceptions. No member of the Seller Group has given any notice to any such third party that is a party to any Material Contract or Assigned Contract as of the date hereof that such third party is in breach of, or that it intends to terminate, such Material Contract or Assigned Contract and has not received any written notice, or to the Knowledge of Sellers, any other notice from a third party stating that any member of the Seller Group is in breach of such Material Contract or Assigned Contract or that such third party intends to terminate as of the date hereof any Material Contract or Assigned Contract or intends to submit to any member of the Seller Group any claim of breach with respect to the performance of any of such member of the Seller Group's obligations under any such Material Contract or Assigned Contract as of the date hereof.

(c) Section 3.13(c) of the Sellers Disclosure Schedule sets forth a true and complete list of each Material Contract and each other Assigned Contract, if any, for which consent is required to assign such Contract to Purchaser (or one or more of its designated Affiliates), except with respect to any consent the need for which is obviated by the Sale Order or otherwise by the provisions of the Bankruptcy Code.

Section 3.14 Compliance with Laws; Permits.

(a) Since January 1, 2021, each member of the Seller Group is and has been in compliance in all material respects with and is not and has not been in material default in any material respect under or in violation in any material respect of any Laws (including Environmental Laws), in each case, as applicable to the Acquired Assets, the Assumed Liabilities, the Products or the Business.

(b) Since January 1, 2021, each member of the Seller Group, with respect to operation of the Business and the ownership and use of the Acquired Assets, is and has been in possession of all material Permits necessary for such member of the Seller Group to own, lease and use its respective properties and assets or to carry on its businesses at the relevant time (i) all such Permits are in full force and effect; (ii) no default (with or without notice, lapse of time or both) has occurred under any such Permit; (iii) and no member of the Seller Group has received any written notice from any Governmental Entity threatening to suspend, revoke, withdraw or modify any such Permit.

(c) Neither any member of the Seller Group nor, to the Knowledge of Sellers, any distributor or other Person acting on behalf of any member of the Seller Group, has (i) taken any action in violation of any applicable Anti-Corruption Law, (ii) offered, authorized or provided any payment or thing of value to any Person for the purpose of influencing such Person to unlawfully obtain or retain business or other advantage or (iii) taken any other action that would constitute an offer to pay, promise to pay, or payment of money or anything else of value, to any Representative of another company or entity in the course of their business dealings with any member of the Seller Group, in order to unlawfully induce such Person to act against the interest of his or her employer or principal.

(d) No member of the Seller Group is or has been, in any way relating to the Business, the Products, the Acquired Assets or the Assumed Liabilities, subject to any actual, pending, or, to the Knowledge of Sellers, threatened civil, criminal, or administrative actions, demands, hearings, notices of violation, investigations, settlements, or enforcement actions, or made any disclosures to any Governmental Entity, involving any member of the Seller Group in any way relating to applicable Anti-Corruption Laws. The Seller Group maintains a reasonably designed compliance program appropriate to the risk profile of the Business to provide reasonable assurance that the requirements of applicable Anti-Corruption Laws have been met in connection with the operation the Business, the Products, the Acquired Assets or the Assumed Liabilities.

(e) Each member of the Seller Group is conducting and has conducted, in any way relating to the Business, the Products, the Acquired Assets or the Assumed Liabilities, its business in all material respects in accordance with Sanctions Laws and all other applicable Import Restrictions and Export Controls. Each member of the Seller Group is maintaining and has maintained all records required to be maintained in such member of the Seller Group's possession as required under the Import Restrictions and Export Controls.

(f) Neither any member of the Seller Group nor, to the Knowledge of Sellers, any distributor or other Person acting on behalf of any member of the Seller Group has, in any way relating to the Business, the Products, the Acquired Assets or the Assumed Liabilities, sold, exported, reexported, transferred or diverted any products, or technology to any destination, entity, or Person prohibited by the Laws of the United States or any other country, without obtaining prior authorization from the competent Governmental Entities as required by those Laws. Each member of the Seller Group has, in any way relating to the Business, the Products, the Acquired Assets or the Assumed Liabilities, complied in all material respects with all terms and conditions of any license issued or approved by any other authority under Sanctions Laws or Export Controls. Except pursuant to valid licenses, no member of the Seller Group has released or disclosed controlled technical data or technology to any foreign national whether in the United States or abroad.

(g) Neither any member of the Seller Group nor, to the Knowledge of Sellers, any director, officer, agent, employee or Affiliate thereof: (i) is, or is owned or controlled by, a Person or entity targeted under Sanctions Laws or Export Controls (such Persons, collectively, the "**Restricted Parties**") or (ii) has conducted any business with or engaged in any transaction with or involving any Restricted Parties or countries targeted by comprehensive economic or trade sanctions, or has otherwise been in violation of any such sanctions, restrictions or any similar Law. No member of the Seller Group is subject to any pending or, to the Knowledge of Sellers, threatened action by any Governmental Entity that would restrict its ability to engage in export transactions. No member of the Seller Group has received any written notice of deficiencies in connection with any Export Controls, trade embargoes or Sanctions Law matter nor has made any disclosures to OFAC, BIS or any other Governmental Entity of facts that could result in any action being taken or any penalty being imposed by a Governmental Entity against any member of the Seller Group.

(h) Subject to the entry of the Bidding Procedures Order and Sale Order, each member of the Seller Group is complying and has complied in all material respects with all requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure in connection with

obtaining approval of the sale of the Acquired Assets (including the assumption and assignment to Purchaser of any Assigned Contracts) to Purchaser pursuant to this Agreement.

Section 3.15 Employee Benefit Matters.

(a) Section 3.15(a) of the Sellers Disclosure Schedule sets forth a complete and correct list of each Seller Benefit Plan (other than at-will employment offer letters on any Seller's (or any of its Affiliates')) standard form that may be terminated without notice and with no penalty to any member of the Seller Group, agreements with consultants entered into in the Ordinary Course of Business on any Seller's (or any of its Affiliates') standard form, and individual compensatory equity award agreements made pursuant to Sellers' standard forms, in which case only the standard forms of such agreements and any agreements that materially deviate from the standard form shall be scheduled) as of the date hereof. Sellers have delivered or made available to Purchaser copies of documents embodying each of the Seller Benefit Plans (or if unwritten, a summary thereof) including all plan documents current summary plan descriptions, summaries of material modifications, and any trust agreements, funding arrangements, insurance contracts or policies and any other similar documents governing the operation and administration of such Seller Benefit Plan.

(b) Each Seller Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received an Internal Revenue Service determination or opinion letter issued with respect to each such Seller Benefit Plan and, to the Knowledge of Sellers, nothing has occurred since the date of such determination or opinion letter that could be expected to cause the loss of the tax-qualified status of such Seller Benefit Plan.

(c) (i) Each Seller Benefit Plan has been established and administered in all material respects in accordance with its terms and in compliance in all material respects with applicable Law; (ii) none of the Seller Benefit Plans promises or provides retiree medical or other retiree welfare benefits (including life insurance) to any person except as required by applicable Law; (iii) all contributions, premiums, or payments required to be made by Sellers or any ERISA Affiliate of Sellers to any Seller Benefit Plan or corresponding trust or other funding arrangement have been paid when due in compliance with the terms of such Seller Benefit Plan and applicable Law and properly accrued for in accordance with applicable accounting principles; (iv) there have been no prohibited transactions or breaches of any of the duties imposed on "fiduciaries" (within the meaning of Section 3(21) of ERISA) by ERISA with respect to any Seller Benefit Plan and (v) no Action (other than routine claims for benefits) is currently pending or, to the Knowledge of Sellers, is threatened, against or with respect to any Seller Benefit Plan, including any audit, investigation, or inquiry by the Internal Revenue Service, the United States Department of Labor, or other Governmental Entity.

(d) Neither Sellers, nor any ERISA Affiliate of any Seller, maintains, sponsors, participates in, or contributes to, or has any obligation to contribute to, or has, within the last six (6) years, maintained, sponsored, participated in, contributed to, or been obligated to contribute to, or otherwise incurred any Liability (including any contingent Liability) under any (i) "multiemployer plan" (as defined in Section 3(37) of ERISA or Section 414(f) of the Code); (ii) any defined benefit plan or other "pension plan" (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA or Section 412 of the Code; (iii) "multiple employer plan" (as defined in Section

210(a) of ERISA or Section 413(c) of the Code); or (iv) a "multiple employer welfare arrangement" or "MEWA" (as defined in Section 3(40) of ERISA).

(e) Each Seller Benefit Plan that is a nonqualified deferred compensation plan has been maintained in all material respects in operational and documentary compliance with Section 409A of the Code and the rules and regulations thereunder. No Tax penalties or additional Taxes have been imposed or would be reasonably expected to be imposed on any Business Employee under the terms of any Seller Benefit Plan. No Seller Benefit Plan includes any obligation to compensate any Person for excise Taxes payable pursuant to Section 4999 of the Code or Section 409A of the Code.

(f) Except as set forth on Section 3.15(f) of the Sellers Disclosure Schedule, the consummation of the Transactions, whether alone or in combination with any other event, will not (i) entitle any Business Employee or Business Contractor to any compensation or benefit (including any severance payment or benefit) under any Seller Benefit Plan; (ii) result in any breach or violation of or default under or limit Sellers' right to amend, modify or terminate any Seller Benefit Plan; (iii) accelerate the time of payment or vesting, or trigger any payment or funding, of any compensation or benefits for any Business Employee or Business Contractor; or (iv) result in any "excess parachute payments" within the meaning of Section 280G(b) of the Code.

(g) No Seller Benefit Plan is maintained outside of the United States or covers any employees or other service providers of any Seller or its ERISA Affiliates who reside or work outside of the United States.

Section 3.16 Labor Matters.

(a) Section 3.16(a) of the Sellers Disclosure Schedule sets forth a complete and correct list, as of the date hereof, of each employee of any member of the Seller Group involved in the Business by employee identification number and job title (each, a "**Business Employee**" and such list, the "**Business Employee Census**"). Seller Group has made available to Purchaser the following information for each Business Employee: (i) name (to the extent permitted by applicable Law) and entity with which such individual is employed, (ii) original date of hire, and service date (if different), (iii) work location (state), (iv) vacation entitlement formula and amount of accrued but unused vacation as of the date of this Agreement, (v) position / job title, (vi) employment status (including full/part-time status, exempt/non-exempt status under the Fair Labor and Standards Act, and leave status (and if on leave, the anticipated return date, if known)), (vii) annual rate of base salary or hourly compensation, (viii) estimated or target annual incentive compensation, (ix) annual incentive compensation paid with respect to fiscal year 2023, (x) confirmation of eligibility to work in the United States and visa status (as applicable) and (xi) any pending disciplinary actions with respect to any such Business Employee. Each Business Employee is employed "at-will" and no such Business Employee has given notice of terminating their employment or is under notice of dismissal.

(b) Section 3.16(b) of the Sellers Disclosure Schedule sets forth a complete and correct list, as of the date hereof, of each individual independent contractor engaged directly by any member of the Seller Group (each, a "**Business Contractor**") and, to the extent permitted by applicable Law, with respect to each such individual: (i) name, (ii) entity with which such

individual is engaged, (iii) department engaged by, (iv) principal location of service, and (v) if there is a written agreement for such services (the "**Business Contractor Census**").

(c) No member of the Seller Group is a party to, nor bound by, any agreement with respect to employees with any labor union or any other employee organization, group or association organized for purposes of collective bargaining. To the Knowledge of any Seller, there are and have been, no labor union organizing activities with respect to any employees of any member of the Seller Group. There is no, and has not been any pending or, to the Knowledge of any Seller, threatened labor strike, slowdown, lockout or work stoppage involving any member of the Seller Group or any of its employees.

(d) Each member of the Seller Group is, and since January 1, 2021, has been, in compliance in all material respects with all applicable Laws relating to employment and labor, and there is no material employment or labor-related Action pending against any member of the Seller Group. To the Knowledge of Sellers, no current or former Business Employee or Business Contractor is in violation of any term of any employment agreement, non-disclosure agreement, noncompetition agreement, or other restrictive covenant agreement (A) owed to Sellers or (B) owed to any third party with respect to such person's right to be employed or engaged by any Seller.

(e) To the Knowledge of Sellers, for the past three (3) years, each member of the Seller Group has reasonably investigated and responded to all allegations of sexual harassment, discrimination or retaliation in accordance with its policies. To the Knowledge of Sellers, there have been no allegations of sexual harassment or sexual misconduct relating to any Business Employees or Business Contractors.

(f) Each member of the Seller Group is, and during the preceding one hundred eighty (180) days, has been, in compliance with the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state, local or foreign Law relating to plant closings or mass layoffs.

Section 3.17 Environmental Matters. Each member of the Seller Group is, and has been since January 1, 2021, in compliance in all material respects with all applicable Environmental Laws imposing obligations on or otherwise related to the Business, the Products, the Assumed Liabilities and the Acquired Assets. The Seller Group possesses all material Permits and approvals issued pursuant to applicable Environmental Laws that are required to conduct the Business or Exploit any Product, and is, and has been since January 1, 2021, in compliance in all material respects with all such Permits and approvals. No releases of Hazardous Substances have occurred at, on, from or under any real property currently or, to the Knowledge of Sellers, formerly owned or operated by any member of the Seller Group in a manner that would reasonably be expected to result in a material Liability for any member of the Seller Group under any Environmental Laws. No member of the Seller Group has received any written claim or notice from any Governmental Entity or other Person alleging that any member of the Seller Group is or may be in violation of or liable, in each case in any material respect, under, any Environmental Law. No member of the Seller Group has entered into or agreed to any consent decree or order, or is subject to any judgment, decree or judicial order relating to compliance with Environmental Laws or the

investigation, sampling, monitoring, treatment, remediation, removal or clean-up of Hazardous Substances.

Section 3.18 Regulatory Matters.

(a) Except as set forth on Section 3.18(a) of the Sellers Disclosure Schedule, Sellers have made available to Purchaser true, accurate, and complete copies of all material Regulatory Materials and Regulatory Authorizations from or with the FDA, the EMA and all other applicable Regulatory Authorities filed, submitted, exchanged, or held by any member of the Seller Group relating to the Products (or the Exploitation thereof) or necessary for the ownership, operation or use of the Acquired Assets or the conduct of the Business, including all Regulatory Authorizations required for the Exploitation of the Products. All such Regulatory Authorizations held by the Seller Group are (i) in full force and effect, (ii) validly registered and on file with applicable Regulatory Authorities, (iii) in compliance with all material filing and maintenance requirements, and (iv) to the Knowledge of Sellers, in good standing, valid and enforceable. Except as set forth on Section 3.18(a) of the Sellers Disclosure Schedule, each member of the Seller Group has fulfilled and performed all of their material obligations with respect to such Regulatory Authorizations and, to the Knowledge of Sellers, no event has occurred with respect to the Products or is reasonably expected to occur with respect to the Products which allows, or after notice or lapse of time would allow, the lapse, revocation, or termination of any Regulatory Authorizations. Each member of the Seller Group has submitted, filed, maintained or furnished on a timely basis with the applicable Regulatory Authorities all required filings, declarations, listings, registrations, fees, submissions, amendments, modifications, notices and responses to notices, applications and supplemental applications, reports (including all adverse event/experience reports) and other information (collectively, the "**Health Care Submissions**") with the FDA, the EMA and all other applicable Regulatory Authorities and all such Health Care Submissions were believed in good faith to be complete and accurate in all material respects and in compliance with applicable Health Laws when filed (or were corrected or completed in a subsequent filing).

(b) To the Knowledge of Sellers (i) each member of the Seller Group is, and has been in compliance in all material respects with all applicable Health Laws, (ii) no member of the Seller Group has been party to or received any written notice or other written communication from any Regulatory Authority (A) withdrawing or placing any application or authorization applicable to any Product on "clinical hold" or requiring the termination or suspension or investigation of any studies or trials, clinical or otherwise, of any Product or (B) alleging any violation of any Health Law, and (iii) there are no civil, criminal, or administrative investigations, suits, claims, actions, inquiries or proceedings pending or, to the Knowledge of Sellers, threatened against any member of the Seller Group with respect to any Product or alleging any violation by any member of the Seller Group or any third party engaged by any member of the Seller Group with respect to any Product of any such Health Law.

(c) To the Knowledge of Sellers, all studies and trials, clinical or otherwise, conducted or being conducted with respect to the Products by or at the direction of any member of the Seller Group have been and are being conducted in compliance in all respects with the required experimental protocols, procedures and controls and in all material respects with applicable Good Laboratory Practice and Good Clinical Practice standards, human subject protection and animal welfare standards, environmental impact standards, and all applicable Health Laws and

Information Privacy and Security Laws. With respect to the Products, Sellers have made available to Purchaser complete and accurate copies of all material clinical and preclinical data in their possession and all material written correspondence between any member of the Seller Group and the applicable Regulatory Authorities (including letters, memoranda and emails). To the Knowledge of Sellers, the descriptions of, protocols for, and data and other results of, the studies, tests, development and trials conducted by or on behalf of any member of the Seller Group with respect to the Products that have been made available to Purchaser are accurate and complete in all material respects. None of the results of the studies, tests, development or trials, and no information regarding the conduct of the studies or the qualifications or financial interests of the individuals conducting the studies, reasonably calls into question the reliability or results of the studies, tests, development and trials conducted by or on behalf of any member of the Seller Group with respect to the Products, and, no member of the Seller Group has received any written notices or other written correspondence from any Regulatory Authority or other Governmental Entity or any institutional review board or comparable authority requiring the termination, suspension or modification of any studies, tests, preclinical development or clinical trials conducted by or on behalf of any member of the Seller Group. No clinical trial related to the Current Products conducted by or, on behalf of, any member of the Seller Group has been terminated or suspended by any Regulatory Authority and no member of the Seller Group has received any written notification or other written communication from any institutional review board, ethics committee or safety monitoring committee raising any issues that may result in a clinical hold or otherwise delay, materially restrict or otherwise limit or impair the use of any clinical studies proposed or currently conducted by, or on behalf of, any member of the Seller Group, or in which any member of the Seller Group has participated, and, to the Knowledge of Sellers, no such action has been threatened.

(d) All manufacture of the Products sold or held in inventory, by or on behalf of any member of the Seller Group has been conducted in compliance in all material respects with the applicable test methods, specifications and other requirements of current Good Manufacturing Practice and, to the extent applicable, the Quality System (QS) regulation with respect to any and all device components or constituents that are part of the Products or that are intended specifically for use with the Products, and applicable Health Laws. Since January 1, 2021, no member of the Seller Group, or, to the Knowledge of Seller, any Person acting on behalf of any member of the Seller Group or any manufacturer of any Product or any part thereof has, with respect to the Products, (i) been subject to a Regulatory Authority shutdown or import or export prohibition or (ii) received any FDA Form 483, or other written Regulatory Authority notice of inspectional observations, "warning letters," "untitled letters" or written demand or written request to make any change to any Product or any processes or procedures, or any similar correspondence from any Regulatory Authority alleging or asserting non-compliance with any applicable Health Law or Regulatory Authorization, and, to the Knowledge of Sellers, no Regulatory Authority is considering such action.

(e) Since January 1, 2021, to the Knowledge of Sellers, each member of the Seller Group has advertised and promoted the Products in compliance with all applicable Laws, including the FDCA and state consumer protection and unfair competition laws and any similar foreign Laws. No member of the Seller Group has either (i) received any notice, demand, claim, complaint, warning letter or untitled letter, or (ii) been subject to any hearing, civil, criminal or administrative

action, suit, or investigation by the FDA or any other Governmental Entity alleging noncompliance with applicable Laws related to the advertising or promotion of the Products.

(f) Since January 1, 2021, each Product is, and has been, fit for the ordinary purposes for which it is intended to be used and conforms in all material respects to any promises or affirmations of fact made in Regulatory Materials pertaining thereto and made on the container or label for such Product or in connection with its sale. To the Knowledge of Sellers, there is no design or manufacturing defect with respect to any Product. No member of the Seller Group has received any written notice that such Seller has, and to the Knowledge of Sellers, there is no reasonable basis for any proceedings against any member of the Seller Group for any Liability arising out of any injury to any Person or property as a result of a Product or component thereof manufactured, sold or shipped by any member of the Seller Group. Since January 1, 2021, there have been no actual or, to the Knowledge of Sellers, threatened, product liability, warranty or other similar claims alleging that any Product is defective or fails to meet any product warranties.

(g) Neither any member of the Seller Group, nor to the Knowledge of Sellers, any of their Representatives or any clinical investigator or contractor acting by or on behalf of any member of the Seller Group has (i) made an untrue statement of a material fact or fraudulent statement to any Regulatory Authority or any other Governmental Entity, (ii) failed to disclose a material fact required to be disclosed to any Regulatory Authority or any other Governmental Entity, or (iii) committed an act, made a statement, or failed to make a statement, including with respect to any scientific data or information, that, at the time such disclosure was made or failure to disclose occurred, would reasonably be expected to provide a basis for the FDA or any other Governmental Entity to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Reg. 46191 (September 10, 1991), and any amendments thereto, or any similar policy or any other statute or regulation regarding the communication or submission of false information to any applicable Regulatory Authority or Governmental Entity.

(h) No member of the Seller Group has committed or, to the Knowledge of Sellers, engaged in any fraud, falsification or forgery of any research or development data, report, studies or publications or any document or statement voluntarily submitted or required to be submitted to any Regulatory Authority or any other Governmental Entity, including the Centers for Medicare and Medicaid Services, the U.S. Department of Health and Human Services, EMA, or Office of Inspector General.

(i) No member of the Seller Group is party to any corporate integrity agreement, monitoring agreement, consent decree, settlement order, or similar agreement with or imposed by any Regulatory Authority or Governmental Entity in connection with the conduct of the Business. As of the date of this Agreement, no member of the Seller Group is subject to any investigation that is pending or, to the Knowledge of Sellers, that has been threatened, in each case by the FDA, the Department of Health and Human Services Office of Inspector General or the Department of Justice pursuant to the Federal Healthcare Program Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), the Federal False Claims Act (31 U.S.C. §3729), or any other Regulatory Authority or Governmental Entity with respect to the Business.

(j) Neither any member of the Seller Group nor, to the Knowledge of Sellers, any of their Representatives or any clinical investigator or contractor acting by or on behalf of any member of the Seller Group in connection with the Business, is or ever has been under investigation for debarment or debarred, excluded, or suspended under any applicable Health Laws, or is or has been convicted of any crime or engaged in any conduct that has resulted in, or would reasonably be expected to result in, debarment from participation in any program related to pharmaceutical products pursuant to 21 U.S.C. Section 335a (a) or (b) or exclusion from participation in any federal health care program pursuant to 42 U.S.C. Section 1320a-7 or any similar local, state or foreign Health Law.

(k) To the Knowledge of Sellers, there are no outstanding material compliance complaints or reports, internal compliance investigations, or compliance corrective actions relating to the Business or any Product.

(l) No Product that is or has been manufactured, tested, distributed, held or marketed by or on behalf of any member of the Seller Group has been recalled, withdrawn or suspended (whether voluntarily or otherwise) or has been the subject of a product recall or market withdrawal request by the FDA or any other Regulatory Authority or, to the Knowledge of Sellers, has been adulterated or misbranded. No Actions (whether complete or pending) seeking the recall, withdrawal, suspension or seizure of any such Product or pre-market approvals or authorizations or marketing authorizations are pending, nor have any such Actions been pending at any time. There exists no fact or circumstance that, to the Knowledge of Sellers, would reasonably be expected to impose on any member of the Seller Group a duty to recall or withdraw any Product or warn any consumer of a product defect in respect of any Product. Sellers have made available to Purchaser all material information about adverse drug events or experiences obtained or otherwise received by any member of the Seller Group from any source, in the United States or outside of the United States as of the date hereof, including information derived from clinical investigations, surveillance studies or registries, reports in the scientific literature relating to any Product that is or has been manufactured, tested, distributed, held or marketed by or on behalf of any member of the Seller Group or any of its licensors or licensees in the possession of the Seller Group. All annual and periodic reports, amendments and safety reports required for any Product, other than Fampyra, and to the Knowledge of Sellers, for Fampyra, including all investigational versions of the Products, required to be made by the applicable member of the Seller Group to any Regulatory Authority.

(m) Section 3.18(m) of the Sellers Disclosure Schedule sets forth a complete and accurate list and summary of any material written information received by, or in the possession of, any member of the Seller Group from, or submitted by any member of the Seller Group to, any Regulatory Authority or other Governmental Entity which could reasonably be expected to (i) lead to the denial of any application for a Regulatory Authorization currently pending before or proposed to be submitted to any Regulatory Authority or other Governmental Entity relating to the Products or the Business, (ii) result in a penalty under or the material limitation, material adverse modification, revocation, cancellation or suspension of any Regulatory Authorization for the Products or (iii) to the Knowledge of Sellers, give rise to any Action to determine whether any of the foregoing is appropriate. Sellers have made available to Purchaser complete and correct copies of all such material written information.

Section 3.19 Taxes.

(a) (i) All income and other material Tax Returns required to be filed with respect to the Business, the Acquired Assets and Assumed Liabilities have been timely filed with the appropriate Taxing Authority in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns are true, complete and correct in all material respects; and (ii) all income and other material amounts of Taxes payable with respect to the Business, the Acquired Assets and Assumed Liabilities, whether or not shown on any Tax Return, have been timely paid.

(b) There is no audit or other proceeding currently in progress or proposed with respect to any Taxes or Tax Returns with respect to the Business, the Acquired Assets or Assumed Liabilities.

(c) Sellers have not received written notice, or, to the Knowledge of Sellers, any other notice, of any income or other material Tax deficiency outstanding, proposed or assessed, nor have Sellers executed any waiver of any statute of limitations in respect of income or other material Taxes nor agreed to any extension of time with respect to a Tax assessment, collection or deficiency, in each case, with respect to the Business, the Acquired Assets or Assumed Liabilities.

(d) There are no liens for Taxes other than Permitted Pre-Closing Encumbrances upon any of the Acquired Assets.

(e) Other than the Shares, none of the Acquired Assets constitutes an equity interest in any Person for U.S. federal income Tax purposes.

(f) Sellers have complied in all material respects with all applicable Laws relating to the withholding, collection and payment of Taxes and have timely withheld, collected and paid over to the appropriate taxing Authority all such amounts under all applicable Laws.

(g) No Seller has been informed in writing by any Taxing Authority (i) that such Seller is or was required to file any Tax Return that was not filed with respect to Acquired Assets, or (ii) that such Seller is or may be subject to Tax in a jurisdiction in which it does not file Tax Returns with respect to the Acquired Assets.

(h) No Acquired Asset is a "United States real property interest" within the meaning of Section 897(c) of the Code.

(i) No Seller has participated in any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2) or any analogous provision of applicable Law.

(j) *Acorda Ireland*.

(i) All returns, computations, notices and items of information which are, or have been, required to be made or given by Acorda Ireland for any Tax purpose have been made or given within the requisite periods and on a proper basis and are materially up-to-date and correct, and none of them is the subject of any dispute with the Irish Revenue Commissioners or any other Taxing Authority.

(ii) Acorda Ireland has, within applicable time limits, kept and maintained in all material respects complete and accurate records, invoices and other information in relation to Tax as it is required by Law.

(iii) All Tax amounts owing, assessed and due, including amounts required by statute to be deducted by Acorda Ireland in respect of payments made by it, which Acorda Ireland is liable to pay prior to the Closing Date has been or will be so paid prior to the Closing Date;

(iv) To the Knowledge of Sellers, Acorda Ireland has not, within the relevant statutory time limits, paid, or become liable to pay, any fine, penalty or interest charged by virtue of the Taxes Consolidation Act 1997, as amended, (the "**TCA**") the Value-Added Tax Consolidation Act 2010, as amended, or any other statutory provision relating to Tax, and Acorda Ireland has not committed any act or made any omission which might constitute an offence under Section 1078 of the TCA.

(v) Within the two (2) years prior to and including the Closing Date, Acorda Ireland has not made any claim for relief or exemption under Section 79 or Section 80 of the Stamp Duties Consolidation Act 1999, as amended, and no such claim will be made prior to Closing Date.

(vi) Acorda Ireland has not been party to a transaction to which the provisions of Section 617 of the TCA apply in the ten (10) years preceding and including the Closing Date.

(vii) Acorda Ireland has not at any stage since its incorporation, been resident for Tax purposes in a country other than Ireland, nor has it carried on any business in any jurisdiction other than Ireland (whether through a branch, agency, permanent establishment or otherwise).

Section 3.20 Customers and Suppliers. Section 3.20 of the Sellers Disclosure Schedule sets forth with respect to the Business (a) a list of the top 10 suppliers and vendors of the Seller Group by spending for the period that includes the fiscal year ended December 31, 2023 and the two (2) months ended February 29, 2024 (each, a "**Material Supplier**"), and (b) a list of the customers of the Seller Group from whom the Seller Group, taken together, has received at least $200,000 during the fiscal year ended December 31, 2023 and for the two (2) months ended February 29, 2024 (each, a "**Material Customer**"). No Material Supplier and no Material Customer has cancelled, terminated or adversely modified, or, to the Knowledge of Sellers, threatened to cancel, terminate or adversely modify, its relationship with any member of the Seller Group.

Section 3.21 Inventory.

(a) The finished Inventory is in all material respects (i) merchantable, (ii) fit for the purposes for which it was procured or manufactured, (iii) usable or saleable in the Business and free of defects and damage, (iv) conforms in all material respects to the specifications established therefor and to the Regulatory Authorizations, and (v) to the Knowledge of Sellers, has been

manufactured in all material respects in accordance with the Regulatory Authorizations and all applicable Laws.

(b) None of the Inventory is held on a consignment basis. Each item included in the Inventory is owned by a Seller, free and clear of any Encumbrances other than Permitted Post-Closing Encumbrances and has not been pledged as collateral.

Section 3.22 Supply Interruption. (a) There is no ongoing, and except for events arising from COVID-19 and since resolved, since January 1, 2021 there has not been any, Supply Interruption Event relating to the manufacture or supply of any Product, and (b) to the Knowledge of Sellers, there exists no event or circumstance that is likely to result, in the twelve (12) month period following the date of this Agreement, in a Supply Interruption Event relating to the manufacture or supply of any Product.

Section 3.23 Insurance. Section 3.23 of the Sellers Disclosure Schedule sets forth with respect to the Business a complete and accurate list of the material insurance policies of each member of the Seller Group as of the date hereof. Except as would not reasonably be expected to be materially adverse to the Business, taken as a whole, (a) all insurance policies and insurance Contracts set forth on Section 3.23 of the Sellers Disclosure Schedule are in full force and effect and are valid and enforceable and cover against the risks as are customary for companies of similar size in the same lines of business, and (b) all premiums due thereunder have been paid. There are no material claims under any of the insurance policies or insurance Contracts set forth on Section 3.23 of the Sellers Disclosure Schedule for which coverage has been denied or disputed by the applicable insurance carrier (other than a customary reservation of rights notice). No member of the Seller Group has received notice of cancellation or termination with respect to any third-party insurance policies or insurance Contracts set forth on Section 3.23 of the Sellers Disclosure Schedule (other than in connection with normal renewals of any such insurance policies).

Section 3.24 CFIUS. Sellers do not engage in the design, fabrication, development, testing, production or manufacture of one or more "critical technologies" for which a "U.S. regulatory authorization" would be required for the export, reexport, transfer (in-country), or retransfer of such "critical technologies" to Germany, within the meaning of the Defense Production Act of 1950, as amended, including all implementing regulations thereof.

Section 3.25 Seller SEC Documents. As of their respective filing dates (or, to the extent amended or supplemented prior to the date of this Agreement, as of the date of such amendment or supplement), none of the Seller SEC Documents contained any untrue statement of a material fact, or omitted to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they were made, not misleading; provided, however, that no representation is made as to the accuracy or reasonableness of any forward-looking statements contained therein.

Section 3.26 No Other Representations or Warranties. Sellers hereby acknowledge and agree that, except as provided in Article IV or in the certificate delivered by Purchaser pursuant to Section 6.2(e), Purchaser makes no representations or warranties whatsoever, express or implied, with respect to Purchaser, its Affiliates, this Agreement, the Transactions or the manner in which Purchaser intends to operate the Business or Exploit the Products following the Closing, and

Purchaser hereby disclaims any such other representation or warranty, whether by Purchaser or any of its Representatives or any other Person. Except for the representations and warranties set forth in Article IV or in the certificate delivered by Purchaser pursuant to Section 6.2(e), Sellers have not relied on any other representations or warranties by or on behalf of Purchaser in connection with the Transactions. Notwithstanding anything herein to the contrary, the foregoing limitations shall not apply to, and nothing herein shall limit, Sellers' remedies in the event of fraud by Purchaser or Purchaser Parent or Sellers' rights and remedies under any Ancillary Document.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser, and with respect to Section 4.3 only, Purchaser Parent and Purchaser, jointly and severally, hereby represents and warrants to Sellers, as of the date hereof and as of the Closing, as follows:

Section 4.1 Qualification; Organization. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of North Carolina and has all requisite limited liability company or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, except where the failure to be in good standing would not and would not reasonably be expected to, individually or in the aggregate, prevent, prohibit, materially impair or materially delay Purchaser's ability to perform its obligations under this Agreement prior to the Outside Date. Purchaser is qualified to do business and is in good standing (with respect to jurisdictions that recognize such concept) as a foreign corporation or other entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or, where relevant, in good standing, would not and would not reasonably be expected to, individually or in the aggregate, prevent, prohibit, materially impair or materially delay Purchaser's ability to perform its obligations under this Agreement prior to the Outside Date.

Section 4.2 Authority of Purchaser. Purchaser has all requisite limited liability company power and authority to execute and deliver and perform its obligations under this Agreement and each of the Ancillary Documents to which it is a party (subject to entry of the Bidding Procedures Order and Sale Order). The execution, delivery and performance of this Agreement and such Ancillary Documents by Purchaser and the consummation of the Transactions have been duly and validly authorized and approved by all requisite corporate action of Purchaser, as applicable, and no other corporate proceedings (pursuant to any of Purchaser's organizational documents or otherwise) on the part of Purchaser are necessary to authorize the consummation of, and to consummate the Transactions. This Agreement and each such Ancillary Document have been, or at or prior to Closing (as the case may be) will be, duly and validly executed and delivered by Purchaser to the extent a party thereto, and, assuming the due authorization, execution and delivery of this Agreement and each such Ancillary Document by each Seller party thereto, constitute a valid and binding agreement of Purchaser, as applicable, enforceable against Purchaser in accordance with its terms, except as enforcement may be limited by the Enforceability Exceptions.

Section 4.3 Purchaser Parent.

(a) Purchaser Parent is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and organization. Purchaser has all requisite corporate or similar power and authority to execute and deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by Purchaser Parent have been duly and validly authorized and approved by all requisite corporate or similar action of Purchaser Parent, and no other corporate or similar proceedings (pursuant to any of Purchaser Parent's organizational documents or otherwise) on the part of Purchaser Parent are necessary to authorize Purchaser Parent's performance under this Agreement. This Agreement has been duly and validly executed and delivered by Purchaser Parent to the extent a party hereto, and, assuming the due authorization, execution and delivery of this Agreement by each Seller party thereto, constitutes a valid and binding agreement of Purchaser Parent, enforceable against Purchaser Parent in accordance with its terms, except as enforcement may be limited by the Enforceability Exceptions.

(b) Purchaser Parent has (through cash on hand and available credit), as of the date hereof, and will have at the Closing and following any termination of this Agreement, sufficient cash on hand to enable it to perform its obligations under Section 8.19 and will continue to have such funds available to Purchaser or its assignees for so long as Purchaser or its assignees shall remain liable for any Purchaser Obligations in accordance with the terms of this Agreement.

Section 4.4 Consents and Approval. Except for obtaining any Required Regulatory Approvals and submission of FDA Transfer Letters, no consent, approval, Permit or authorization of, or declaration, filing or registration with, any Governmental Entity is necessary or required to be made or obtained by Purchaser or its Affiliates in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the Transactions, except for such consents, approvals, Permits, authorizations, declarations, filings or registrations the failure to obtain of which would not and would not reasonably be expected to, individually or in the aggregate, prevent, prohibit, materially impair or materially delay Purchaser's ability to perform its obligations under this Agreement prior to the Outside Date.

Section 4.5 No Violations. Except as described in Section 3.3 and Section 4.4, none of the execution, delivery or performance of this Agreement and the Ancillary Documents by Purchaser to the extent a party thereto nor the consummation by Purchaser of the Transactions will (a) conflict with or result in any violation or breach of any provisions of the certificate of incorporation, bylaws or other organizational documents of Purchaser, (b) with or without notice or lapse of time or both, conflict with or result in any breach or violation of or constitute a default or change of control under, or give rise to a right of, or result in, termination, modification, cancellation, first offer, first refusal or acceleration of any obligation or to the loss of a benefit under any Contract to which Purchaser is a party or by or to which any of its properties, rights or assets are bound or subject or (c) conflict with or violate any Order or Law applicable to Purchaser or its properties, rights or assets, except in the case of the preceding clauses (b) and (c), for breaches, violations, defaults or terminations that would not and would not reasonably be expected to, individually or in the aggregate, prevent, prohibit, materially impair or materially delay Purchaser's ability to perform its obligations under this Agreement prior to the Outside Date.

Section 4.6 Brokers or Finders. Except for Morgan Stanley & Co. International plc, Purchaser has not employed any investment banker, broker or finder in connection with the

Transactions who might be entitled to any fee or any commission from Sellers in connection with this Agreement or upon consummation of the Acquisition or any of the other Transactions based upon arrangements made by Purchaser.

Section 4.7 Financing. Purchaser has, or will at the Closing have, sufficient funds available to deliver the Purchase Price and Closing Consideration to Sellers, and all fees, expenses of, and other amounts and obligations required to be paid by, Purchaser in connection with the transactions contemplated hereby.

Section 4.8 Adequate Assurances Regarding Assigned Contracts. Purchaser is capable as of the date hereof, and will be capable as of the Closing, of satisfying the adequate assurance of future performance conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

Section 4.9 Purchaser CFIUS Matters. The principal place of business (for entities) or nationality (for individuals) of all persons described by 31 C.F.R. § 800.401(c)(1) is, in each case, a jurisdiction that does not require a "U.S. regulatory authorization" (as defined by 31 C.F.R. § 800.254) under Chemical & Biological Weapons (CB) Column 2 on the Commerce Country Chart of the U.S. Export Administration Regulations (Supplement No. 1 to 15 C.F.R. Part 738).

Section 4.10 No Other Representations and Warranties. Purchaser hereby acknowledges and agrees that, except as provided in Article III or in the certificate delivered by Sellers pursuant to Section 6.3(e), Sellers make no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Acquired Assets, Business, Product and Assumed Liabilities with respect to the Acquired Assets, Business, Product and Assumed Liabilities and Sellers hereby disclaim any such other representation or warranty, whether by Sellers or any of their respective Representatives or any other Person. Purchaser further acknowledges that Purchaser has conducted an independent inspection and investigation of the physical condition of the Acquired Assets and all such other matters relating to or affecting the Acquired Assets as Purchaser deemed necessary or appropriate and that in proceeding with the Transactions, except for the representations and warranties set forth in Article III or in the certificate delivered by Sellers pursuant to Section 6.3(e), Purchaser has not relied on any other representations or warranties by or on behalf of any Seller in connection with the Transactions and neither Sellers nor any other Person shall have or be subject to any liability resulting from Purchaser's use of any documentation or other information (including any information, documents, projections, forecasts, business plans or other materials made available to Purchaser in certain "data rooms," or management presentations in connection with the negotiation, execution or delivery of this Agreement or the Transactions). Purchaser agrees and acknowledges that, except as expressly warranted in Article III, it is purchasing the Assumed Assets "as-is, where-is," and "if-is." Notwithstanding anything herein to the contrary, the foregoing limitations shall not apply to, and nothing herein shall limit, Purchaser's remedies in the event of fraud by Sellers or Purchaser's rights and remedies under any Ancillary Document.

ARTICLE V

COVENANTS

Section 5.1 Conduct of Business Pending the Closing.

(a) Sellers agree that between the date hereof and the earlier of the Closing or the date, if any, on which this Agreement is validly terminated pursuant to Article VII, except (i) as set forth in Schedule 5.1(a), (ii) as expressly provided in this Agreement, (iii) as consented to in writing and in advance by Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), or (iv) in compliance with legal requirements in connection with the Chapter 11 Cases (including conducting the Auction), as required by applicable Law or by order of the Bankruptcy Court, Sellers shall use commercially reasonable efforts to conduct the Business in the Ordinary Course of Business, and use commercially reasonable efforts to maintain and preserve in all material respects (in each case as otherwise taking into account the facts and circumstances that customarily and reasonably result from the events leading up to the commencement of the Chapter 11 Cases or thereafter that are the direct consequence of the Chapter 11 Cases (including the non-payment of any General Unsecured Claims); provided, however, that for the avoidance of doubt, nothing contained in any debtor-in-possession credit agreement including, without limitation, any affirmative covenants or negative covenants, any cash collateral budget or order of the Bankruptcy Court approving or authorizing either of the foregoing shall otherwise impact the obligations of the Sellers to conduct the Business in the Ordinary Course of Business as otherwise provided in this Agreement) (1) its present business organization and the Business, (2) its present relationships with material customers, suppliers, vendors, service providers, licensors, licensees, Governmental Entities, and other Persons with whom they have material business relations and (3) the services of its present officers and Business Employees (other than where such employee voluntarily resigns or where termination of such services is for cause), in each case, in connection with the operation of the Business.

(b) Sellers agree that between the date hereof and the earlier of the Closing or the date, if any, on which this Agreement is validly terminated pursuant to Article VII, except (u) as set forth in Schedule 5.1(b), (v) as expressly provided in this Agreement, (w) as consented to in writing and in advance by Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), (x) in compliance with legal requirements in connection with the Chapter 11 Cases (including conducting the Auction) or (y) as required by applicable Law or by order of the Bankruptcy Court, Sellers shall not, with respect to the Business, the Products, the Acquired Assets or the Assumed Liabilities, and shall cause each other member of the Seller Group not to:

(i) acquire (including by merger, consolidation or acquisition of stock or assets or any other means) or authorize or announce an intention to so acquire, or enter into any agreements providing for any acquisitions of, any equity interests in or assets of any Person or any business or division thereof, or otherwise engage in any mergers, consolidations or business combinations, except for the acquisition of supplies, inventory or equipment in the Ordinary Course of Business;

(ii) make any loans, advances or capital contributions to, or investments in, any other Person that would be an Assumed Liability in an amount in excess of $200,000 in the aggregate;

(iii) other than sales of Inventory in the Ordinary Course of Business, sell, lease, divest, distribute, license, assign, abandon, lease or sublease, permit to lapse, transfer, exchange, swap or otherwise dispose of, or subject to any Encumbrance (other than Permitted Pre-Closing Encumbrances), in a single transaction or series of transactions, any of the Acquired Assets;

(iv) take any action or make any omission that would reasonably be expected to restrict or limit the validity or scope of any Acquired Regulatory Authorization;

(v) enter into or become bound by, terminate or materially amend or modify any Contract relating to the acquisition or disposition or granting of any license with respect to any Seller Intellectual Property, or otherwise transfer, license, dispose of or subject to an Encumbrance (other than Permitted Pre-Closing Encumbrances) any Seller Intellectual Property (including by the granting of any covenant-not-to-sue or covenant-not-to-assert), other than immaterial license grants in the Ordinary Course of Business;

(vi) abandon, dedicate to the public, fail to prosecute, fail to maintain, or allow to lapse (collectively "**Abandonment**") any Seller Intellectual Property other than those Patents indicated as being allowed to lapse in the status column of Section 3.10(a)(i) of Sellers Disclosure Schedule; provided, that, in the event that Sellers propose Abandonment of any Seller Intellectual Property not disclosed on Section 3.10(a)(i), (ii) or (iii) of Sellers Disclosure Schedule and Purchaser withholds consent to such Abandonment, Purchaser shall reimburse Sellers for the reasonable documented out-of-pocket costs incurred by Sellers necessary to avoid such Abandonment up to a maximum amount of $200,000 USD per incident;

(vii) (A) enter into any Contract that would, if entered into prior to the date hereof, be a Material Contract, (B) modify, amend, extend, permit the lapse of, cancel or terminate (other than by expiration in accordance with its terms) any Material Contract or waive, release or assign any rights, obligations, or claims thereunder, or (C) assume, reject or assign any Assigned Contract other than through the assignment and assumption of Assigned Contracts as contemplated by this Agreement, to Purchaser;

(viii) make any material capital expenditure or capital investment, enter into agreements or arrangements providing for a material capital expenditure or capital investment or otherwise commit to do so in an amount in excess of $200,000 in the aggregate per calendar quarter;

(ix) commence, waive, release, assign, compromise or settle any Action (for the avoidance of doubt, including with respect to matters in which any member of the Seller Group is a plaintiff, or in which any of their officers or directors in their capacities as such are parties) affecting the Business, any Product, the Acquired Assets or the Assumed Liabilities, other than the compromise or settlement of any claim, litigation or Action not

brought by a Governmental Entity and that: (A) is for an amount not to exceed, for any such compromise or settlement individually or in the aggregate, $200,000, (B) does not impose any injunctive or nonmonetary relief on any member of the Seller Group and does not involve the admission of wrongdoing by any member of the Seller Group or any of the officers or directors thereof and (C) does not provide for the license of any Seller Intellectual Property or the termination, modification or amendment of any license of Seller Intellectual Property; provided, however, that this Section 5.1(b)(ix) shall not apply to the Alkermes Dispute, unless any such compromise or settlement would materially and adversely restrict the use of the Acquired Assets after the Closing or would materially restrict the conduct of the Business after Closing;

(x) make any change in the present financial accounting policies, practices, principles or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as required by GAAP or applicable Law;

(xi) with respect to all Taxes of Acorda Ireland and to all non-income Taxes of the Seller Group other than Acorda Ireland, (A) make, change or revoke any Tax election, (B) adopt or change any method of Tax accounting, (C) file any amended Tax Return, (D) settle or compromise any proceeding related to Taxes or enter into any "closing agreement" within the meaning of Section 7121 of the Code (or any similar provision of state, local or non-U.S. Law), or (E) waive or extend any statute of limitations with respect to Taxes (other than as a result of routine requests by a Taxing Authority in connection with an audit or similar proceeding);

(xii) redeem, repurchase, prepay, defease, incur, assume, endorse, guarantee or otherwise become liable for or modify in any material respects the terms of any Indebtedness or any derivative financial instruments or arrangements (including swaps, caps, floors, futures, forward contracts and option agreements), or issue or sell any debt securities or calls, options, warrants or other rights to acquire any debt securities (directly, contingently or otherwise);

(xiii) cancel, or fail to use commercially reasonable efforts to maintain in the Ordinary Course of Business, any insurance policies included in, or covering any, Acquired Assets or to renew or replace existing insurance policies included in, or covering any, Acquired Assets following their termination;

(xiv) terminate, cancel, permit the lapse of or modify, or waive in any material respect, any right under any Acquired Permit or otherwise fail to use best efforts to maintain all Acquired Permits;

(xv) file a motion, fail to timely contest a pleading seeking, or otherwise consent to (A) a conversion of the Chapter 11 Cases into liquidation proceedings under Chapter 7 of the Bankruptcy Code, (B) the dismissal of the Chapter 11 Cases, (C) the appointment of a Chapter 11 trustee or examiner in any of the Chapter 11 Cases or (D) the termination or reduction of the exclusivity period described in 11 U.S.C. § 1121(b) in any of the Chapter 11 Cases;

(xvi) participate in any scheduled meetings or teleconferences with, or engage in material solicited communications or correspondence with the FDA or any Regulatory Authority without providing Purchaser with prior written notice and, to the extent practicable, a reasonable opportunity to consult with Sellers with respect to such meetings or correspondence or communications, in each case to the extent permitted by applicable Law; provided that this Section 5.1(b)(xvi) shall not apply in connection with any meetings, teleconference, communications or correspondence that involve matters of safety or urgency and shall not in any event obligate any Seller or any of its Representatives to take or not take any action arising from such consultation;

(xvii) publish any manuscripts, abstracts, "posters" or other reports or publications regarding any Product or any material data or other Know-How, underlying or related to any Product, including Data, without providing Purchaser with prior written notice and a reasonable opportunity to comment on drafts thereof sufficiently in advance of publication, in each case to the extent permitted by applicable Law;

(xviii) (A) make any material change in billing, inventory management or cash management practices (including with respect to the timing and frequency of paying of payables) or in working capital practices, or (B) engage in the practice of, or encourage any distributor, wholesaler or customer directly or indirectly to engage in the practice of, "channel stuffing" or any similar program, activity or other action (including any Rebate, discount, chargeback or refund policy or practice), that would reasonably be expected to result, directly or indirectly, in purchases of any Products that are materially in excess of normal customer purchasing patterns;

(xix) (A) introduce any material change with respect to any Product, including any change in the product specifications, composition or quality thereof, or (B) implement or otherwise make any material and discretionary changes in the manufacture of any Product;

(xx) (A) grant or amend any severance, change in control, transaction or retention bonus or similar compensation to any Business Employee or Business Contractor, or (B) terminate or otherwise reduce or materially alter the job duties or compensation of any Business Employee or Business Contractor whose employment or engagement, as applicable, is reasonably necessary to the operation of the Business (including, for the avoidance of doubt, the six Offer Service Providers that have been identified in writing as of the date hereof); provided, that such Offer Service Providers can be terminated for cause at any time at Sellers' sole discretion in which case, Sellers shall provide prompt written notice of any such termination for cause to Purchaser;

(xxi) enter into any collective bargaining agreement or other labor union contract;

(xxii) (A) issue, sell, repurchase, redeem, transfer, assign or otherwise acquire or transfer any shares or other equity interests in Acorda Ireland, including the Shares, or any options, warrants, convertible securities, or other rights of any kind to acquire any such shares or other equity interests or (B) permit any split, combination, redemption,

reclassification or any share or equity interest in Acorda Ireland, including the Shares, or make any other changes to the capital structure of Acorda Ireland; or

(xxiii) agree to take, or authorize the taking of, in writing or otherwise, any of the foregoing actions.

Without in any way limiting any party's rights or obligations under this Agreement, the parties understand and agree that (x) nothing contained in this Agreement shall give Purchaser, directly or indirectly, the right to control or direct the operations of any Seller, or the Business prior to the Closing and (y) prior to the Closing, Sellers shall exercise, consistent with, and subject to, the terms and conditions of this Agreement, control and supervision over the Business and their operations. No action taken or not taken in compliance with Section 5.1(b) shall in any event be deemed a breach of Section 5.1(a).

Section 5.2 Access and Information.

(a) From the date hereof and through the Closing Date or the date on which this Agreement is validly terminated pursuant to Article VII, Sellers shall afford Purchaser and its Affiliates and their respective Representatives reasonable access during normal business hours, and upon reasonable advance notice, to all of the Seller Group's properties, offices, Assigned Contracts, employees and Books and Records, in each case, to the extent related to the Business, any Product, the Acquired Assets or the Assumed Liabilities, in each case solely for reasonable business purposes, including integration and post-Closing planning. For the avoidance of doubt, information obtained pursuant to this Section 5.2(a) shall be subject to the Confidential Disclosure Agreement and any access to such information by Purchaser shall be subject to applicable Law; provided, however, that (i) all requests for access shall be directed to such other person(s) as Seller Parent may designate in writing from time to time, (ii) such activities do not unreasonably interfere with the ongoing business or operations of the Seller Group, (iii) Sellers shall have the right to have one or more of its representatives present at all times during any visits, examinations, discussions or contacts contemplated by this Section 5.2, (iv) no personal information shall be disclosed or used other than in compliance with applicable privacy law and (v) nothing herein shall require any member of the Seller Group or their Representatives to furnish to Purchaser or provide Purchaser with access to information that (A) legal counsel for the Seller Group reasonably concludes may give rise to antitrust or competition law issues or violate a protective order or otherwise may not be disclosed pursuant to applicable Law or (B) would cause significant competitive harm to the Seller Group if the Transactions are not consummated; provided, further that, Seller Parent shall notify Purchaser if it is withholding access to any information as a result of this clause (v) and shall use commercially reasonable efforts to provide access to such information in a manner (including via a customary "clean team" arrangement or via outside counsel) that would not so jeopardize any applicable privilege, violate any applicable Law or cause competitive harm to the Seller Group. For purposes of this Section 5.2(a), Purchaser shall, and shall use its commercially reasonable efforts to cause its Representatives to, cooperate reasonably with Sellers and their respective Representatives, and shall use its commercially reasonable efforts to minimize any disruption to the Business.

(b) From and after the Closing for a period of three (3) years following the Closing Date (or, if later, the confirmation of the Chapter 11 plan) (the "**Preservation Period**"), Purchaser

will provide Sellers and their advisors with reasonable access, during normal business hours upon reasonable advance notice, to the books and records included in the Acquired Assets or the Assumed Liabilities with respect to periods or occurrences prior to the Closing and reasonable access, during normal business hours and upon reasonable advance notice, to employees, officers, advisors and accountants of Purchaser (solely for the purpose of better understanding such books and records), in each case, solely for purposes relating to the Chapter 11 Cases, the wind-down of the operations of each Seller and its estate, Actions to which any Seller is a party (other than in connection with any Action or dispute with Purchaser), the Alkermes Dispute, insurance claims, Tax payments, returns or audits, or the functions of any trusts established under a Chapter 11 plan of Sellers or any successors of Sellers. In the event Purchaser wishes to destroy such books and records during the Preservation Period, Purchaser shall first provide ten (10) Business Days' prior written notice to Seller Parent, on behalf of Sellers, and Seller Parent shall have the right, at its option and expense, to take possession of such records within ten (10) Business Days after notice thereof.

Section 5.3 Communication with Key Relationships. From the date hereof and through the Closing Date, Purchaser shall, and shall cause its Affiliates and their respective Representatives to, refrain from communicating with (a) suppliers, contract manufacturing organizations, customers or wholesalers of the Business or Seller Parent and its Affiliates and (b) subject to Section 5.11, Business Employees or Business Contractors, regarding the Business, this Agreement, the Transactions, the Chapter 11 Cases or post-Closing plans or operations of Purchaser or its Affiliates with respect to the Business, without the prior written consent of Seller Parent (not to be unreasonably conditioned, delayed or withheld). For clarity, the foregoing shall not restrict Purchaser or its Affiliates and Representatives from (i) communicating with such Persons in the ordinary course of business and consistent with the past practice of Purchaser and without discussion or reference to the Business, this Agreement, the Transactions, the Chapter 11 Cases or post-Closing plans or operations of Purchaser or its Affiliates with respect to the Business or (ii) subject to applicable Law, including any Antitrust Laws, and execution of any confidentiality agreements as may be reasonably required by Seller Parent or such Persons, from communicating with such Persons to the extent an authorized Representative of Seller Parent participates in any such communication and Purchaser in no event obtains, directly or indirectly, any binding commitment from any such Person to support Purchaser becoming the Successful Bidder or that might otherwise be reasonably be expected to adversely impact the Auction, the Closing, the Business or any material business relationship of any member of the Seller Group. Upon reasonable request from Purchaser, Seller Parent agrees to use commercially reasonable efforts to facilitate the communications described in clause (ii) of the immediately preceding sentence, including by causing a Representative to participate in such communications upon reasonable advance notice. Purchaser acknowledges and agrees (i) not to criticize, call into disrepute or otherwise disparage or denigrate to any potential or actual bidder in the Auction any member of the Seller Group prior to, during or following the Auction, (ii) that any offers of employment provided pursuant to Section 5.11 shall not prohibit Offer Service Providers from considering or contingently accepting employment with any alternative bidder subject to completion of the Auction and (iii) that in all cases, such Offer Service Providers shall not commence employment with Purchaser or its Affiliates until the Transactions have closed.

Section 5.4 Approvals and Consents; Cooperation; Notification.

(a) Subject to the terms and conditions of this Agreement (including Section 5.14), each party shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Law to consummate the Transactions as soon as practicable after the date hereof, including (i) preparing and filing or otherwise providing, in consultation with the other party and as promptly as practicable and advisable after the date hereof, all documentation to effect all necessary applications, notices, petitions, filings, and other documents and to obtain as promptly as practicable all waiting period expirations or terminations, consents, clearances, waivers, licenses, orders, registrations, approvals, Permits, and authorizations necessary or advisable to be obtained from any third party or any Governmental Entity in order to consummate the Transactions, and (ii) using reasonable best efforts to take all steps as may be necessary, to obtain all such waiting period expirations or terminations, consents, clearances, waivers, licenses, registrations, Permits, authorizations, orders and approvals from any third party or any Governmental Entity, including not extending any waiting period or similar period under applicable Law or enter into any agreement with a Governmental Entity not to consummate the Transactions absent the prior consent of the other party, which shall not be unreasonably withheld. In furtherance and not in limitation of the foregoing, each party agrees to make all necessary filings, if any, as promptly as practicable after the date hereof (and in any event within 10 calendar days after the date of this Agreement for any filings that may be required pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (the "**HSR Act**")), and to supply as promptly as practicable and advisable any additional information and documentary materials that may be requested under any Antitrust Laws.

(b) Purchaser and the Sellers shall coordinate, cooperate and consult with each other with respect to strategy, arguments, communications or positions to be taken in connection with obtaining any necessary clearances under Antitrust Laws and directing all matters with any Governmental Entity relating to Antitrust Laws consistent with their obligations hereunder. In furtherance and not in limitation of the foregoing, each of the parties shall, in connection with and without limiting the efforts referenced in Section 5.4(a), (i) cooperate in all respects and consult with the other party in connection with any filing or submission and in connection with any investigation or other inquiry, including any proceeding initiated by a private party, including by allowing the other party to have a reasonable opportunity to review in advance and comment on drafts of filings and submissions and reasonably considering in good faith comments of the other party and providing the other party with copies of filings and submissions, (ii) promptly inform the other party of any communication received by such party from, or given by such party to, the Antitrust Division of the Department of Justice (the "**DOJ**"), the Federal Trade Commission (the "**FTC**") or any other Governmental Entity, by promptly providing copies to the other party of any such written communications, and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the Transactions, (iii) permit the other party to review in advance any communication that it gives to, and consult with each other in advance of any meeting, substantive telephone call or conference with, the DOJ, the FTC or any other Governmental Entity, or, in connection with any proceeding by a private party, with any other Person, and (iv) to the extent permitted by the DOJ, the FTC or other applicable Governmental Entity or other Person, give the other party the opportunity to attend and participate in any in-person meetings, substantive telephone calls or conferences with the DOJ, the FTC or other Governmental Entity or other Person.

(c) In connection with and without limiting the foregoing, Sellers shall give any notices to third parties required under the Assigned Contracts, and Sellers shall use reasonable best efforts to obtain third-party consents to any Assigned Contracts that are set forth on the Assigned Contracts Schedule or are otherwise required in connection with the Acquisition, which consents shall not, in any event, include any consent the need for which is obviated by the Sale Order or otherwise by the provisions of the Bankruptcy Code, in each case as determined by the Bankruptcy Court; provided that Sellers shall not under any circumstance be required to pay or commit to pay any amount to any Persons in order to obtain any such third-party consents.

(d) Each party shall give prompt notice to the other party (i) of any notice or other communication from any Governmental Entity in connection with this Agreement or the Transactions, or from any Person alleging that the consent of such Person is or may be required in connection with the Acquisition and (ii) of any Action commenced or, to the knowledge of such party, threatened against it or any of its Affiliates or otherwise relating to, involving or affecting such party or any of its Affiliates, in each case in connection with, arising from or otherwise relating to the Transactions.

(e) Notwithstanding the foregoing, the obligations of the parties to obtain any consent, approval or waiver from the Bankruptcy Court shall be governed exclusively by Section 5.6, Section 5.7, and Section 5.9.

Section 5.5 Further Assurances; Wrong Pockets.

(a) In addition to the provisions of this Agreement, from time to time after the Closing, Sellers and Purchaser shall use reasonable best efforts to execute and deliver and to cause their Affiliates and successors to execute and deliver such other instruments of conveyance, transfer or assumption, as the case may be, and take such other actions as may be reasonably requested to implement more effectively the conveyance and transfer of the Acquired Assets to Purchaser and the assumption of the Assumed Liabilities by Purchaser and otherwise to effect the purposes of this Agreement and the Transactions.

(b) In furtherance and not in limitation of the foregoing and to the extent Sellers are still in existence and have the resources and personnel to do so, if, following the Closing, any Seller (i) receives or becomes aware that any member of the Seller Group holds any asset, property or right which constitutes an Acquired Asset, then Sellers shall transfer, or cause to be transferred, such asset, property or right to Purchaser or, as applicable, one or more designees of Purchaser, as promptly as practicable after the Closing and for no additional consideration, and pending such conveyance the parties shall reasonably cooperate with each other to provide Purchaser with all of the benefits of use of such asset, property or right or (ii) receives any payment or other funds due to Purchaser or any designees of Purchaser pursuant to the terms of this Agreement or otherwise in connection with the Acquired Assets, Sellers shall hold such payment in trust and promptly (and in any event within five (5) Business Days) pay the amount thereof to Purchaser. If, following the Closing, Purchaser (i) receives or becomes aware that it holds any asset, property or right which constitutes an Excluded Asset, then Purchaser shall transfer such asset, property or right to Sellers as promptly as practicable for no additional consideration, and pending such conveyance the parties shall reasonably cooperate with each other to provide Sellers with all of the benefits of use of such asset, property or right or (ii) receives any payment or other funds due to Sellers or any

designees of Sellers pursuant to the terms of this Agreement or otherwise in connection with the Excluded Assets, Purchaser shall hold such payment in trust and promptly (and in any event within five (5) Business Days) pay the amount thereof to Sellers.

Section 5.6 The Bidding Procedures and the Sale Order. Sellers shall (a) within four (4) Business Days following the execution of this Agreement, or as otherwise agreed to by the parties, file a motion with the Bankruptcy Court seeking entry of the Bidding Procedures Order, in form and substance acceptable to Purchaser in its sole discretion; and (b) within one (1) Business Day following the designation of Purchaser as the Successful Bidder, or as otherwise agreed to by the parties, file the Notice of Successful Bidder (as defined in the Bidding Procedures) and take any other appropriate actions to seek entry of the Sale Order. Each Seller shall use its reasonable best efforts to cause the Bankruptcy Court to enter the Bidding Procedures Order substantially in the form of Exhibit C and the Sale Order substantially in the form of Exhibit D (provided Purchaser is the Successful Bidder) and any modifications to the forms provided in Exhibit C and Exhibit D hereto shall not be materially adverse to Purchaser.

Section 5.7 Cooperation with Respect to Bankruptcy Court Approvals.

(a) Purchaser shall take such actions as are reasonably requested by Sellers to assist in obtaining entry by the Bankruptcy Court of the Bidding Procedures Order and the Sale Order.

(b) Purchaser acknowledges that it must provide adequate assurance of future performance under the Assigned Contracts and agrees that it shall, and shall cause its Affiliates to, cooperate with Seller Parent in connection with furnishing information or documents to Seller Parent to satisfy the requirements of section 365(f)(2)(B) of the Bankruptcy Code. In furtherance of the foregoing, Purchaser shall promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Contracts, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Purchaser's Representatives available to testify before the Bankruptcy Court.

Section 5.8 Non-Solicitation of Stalking Horse Bidders. Sellers shall not, and shall cause their Affiliates and their respective Representatives not to solicit, negotiate or discuss with any Person (and Sellers shall, and shall cause their Affiliates and their respective Representatives, to cease immediately any such ongoing activity), or enter into any agreement or understanding with respect to, or approve or recommend, or knowingly facilitate, any sale, transfer or disposition, directly or indirectly, whether by means of an asset sale or otherwise, of any of the Acquired Assets as a replacement or alternative stalking horse bidder to Purchaser (an "**Alternative Stalking Horse Transaction**"); provided, however, for the avoidance of doubt, that on and after the Petition Date Sellers may solicit any Person, or take any other of the foregoing actions with respect to such Person, to be a Qualified Bidder (as defined in the Bidding Procedures).

Section 5.9 Bankruptcy Court Filings. Sellers shall present the Bidding Procedures Order and the Sale Order to the Bankruptcy Court in the forms attached as Exhibit C and Exhibit D. Sellers shall consult with Purchaser with respect to any other pleadings or proposed Orders to be presented to the Bankruptcy Court relating to the Transactions, and the bankruptcy proceedings

in connection therewith, and provide Purchaser with copies of applications, pleadings, notices, proposed Orders and other documents to be filed by Sellers in the Chapter 11 Cases that relate in any way to this Agreement, the Transactions, the Bidding Procedures, the Bidding Procedures Order or the Sale Order prior to the making of any such filing with or submission to the Bankruptcy Court.

Section 5.10 Not a Back Up Bidder. The Bidding Procedures shall exclude Purchaser from any obligation to act as a Backup Bidder following the Auction (if any) in the event that Purchaser is not selected as the Successful Bidder. Notwithstanding the foregoing, Purchaser has the unilateral right to elect to serve as the Backup Bidder in its sole discretion.

Section 5.11 Employee Matters.

(a) Neither Purchaser nor any Affiliate of Purchaser is obligated to hire any Business Employee or any other employee or other service provider of any member of the Seller Group, but shall have the right to offer employment or consulting or independent contractor engagement to any Business Employee or Business Contractor consistent with this Section 5.11. To the extent permitted by applicable Law, Sellers shall use commercially reasonable efforts to provide Purchaser with such information regarding the Business Employees and Business Contractors as Purchaser may reasonably request prior to the Closing Date, including an updated Business Employee Census and Business Contractor Census on a monthly basis with such final documents delivered at least fifteen (15) calendar days prior to Closing. Purchaser and its Affiliates may, in their sole discretion, provide an offer of employment or engagement as a consultant or independent contractor to any of the Business Employees or Business Contractors, and identify such employees and contractors to Sellers, (the "**Offer Service Providers**") following the date of this Agreement; provided, however, that (i) such offers shall not prohibit Offer Service Providers from considering or contingently accepting employment with any alternative bidder subject to completion of the Auction and (ii) Purchaser or its Affiliates shall not otherwise intentionally interfere with the Auction. Each offer of employment or engagement shall provide that employment or engagement with Purchaser or its Affiliates shall commence effective as of the Closing, subject to (i) the Offer Service Provider's continued employment or service with Sellers through the Closing, (ii) the Offer Service Provider's resignation of employment or service with Sellers as of the Closing, and (iii) such other terms and conditions as determined by Purchaser or its applicable Affiliate. Sellers shall consider the employment or service of each Transferred Service Provider with the Seller Group to have been terminated, effective as of Closing, due to the resignation of such Transferred Service Provider. Each Offer Service Provider who accepts the offer of employment or engagement delivered pursuant to this Section 5.11 and actually commences employment or engagement with Purchaser or one of its Affiliates shall be deemed a "**Transferred Service Provider**" as of the Closing.

(b) Sellers and Purchaser shall reasonably cooperate during the period prior to the Closing to ensure continuity of the workforce of the Business. Sellers shall reasonably cooperate with (including taking all actions reasonably requested by) Purchaser and its Affiliates with respect to the offer process described in this Section 5.11 within the time periods reasonably requested by Purchaser, including facilitating Purchaser's interaction and offer of employment or engagement with Offer Service Providers from and after the date hereof. Sellers agree not to (and to cause each other member of the Seller Group not to) intentionally interfere with Purchaser's or its

Affiliates' offers of employment or engagement to Offer Service Providers pursuant to this Section 5.11 and agree not to engage in any intentional conduct, designed to discourage any Offer Service Provider from considering or accepting such offer of employment or engagement by Purchaser or any of its Affiliates; provided that this sentence shall in no event be deemed to limit the conduct of the Auction in any respect. Purchaser and Sellers will reasonably cooperate in good faith with respect to any communications to the Offer Service Providers regarding this Agreement and the Transactions. Immediately as of the Closing, the Transferred Service Providers shall cease to actively participate in or accrue further benefits under any Seller Benefit Plan. Other than with respect to any notices required by applicable Law, Sellers will provide Purchaser with a reasonable opportunity to review and comment on any written or prepared oral communications intended for any of the Offer Service Providers to facilitate Purchaser's interaction and offer of employment or engagement with Offer Service Providers from and after the date hereof pursuant to this Section 5.11 prior to the Closing, but excluding, for the avoidance of doubt, any general communications intended for all Business Employees or all Business Contractors that do not include post-closing employment, compensation or benefits terms offered by Purchaser. Purchaser will provide Sellers with a reasonable opportunity to review and comment on any written or prepared oral communications intended for any of the Offer Service Providers in connection with this Section 5.11 prior to the Closing.

(c) Sellers shall be solely responsible for any severance payments and benefits payable, and for complying with the Worker Adjustment and Retraining Notification Act of 1988 and any similar Laws, in each case in connection with the termination of service of any Business Employee or Business Contractor on or prior to the Closing Date, including any such terminations resulting from this Agreement and the Transactions. Notwithstanding anything herein, on or about the Petition Date, Sellers shall provide notices under the WARN Act to the applicable Business Employees.

(d) This Section 5.11 is included for the sole benefit of the parties to this Agreement and their respective permitted transferees and assigns (if any) and shall not create any right in any Person, including any current or former employee or other service provider of any Seller or any Affiliate thereof, who is not a party to this Agreement. Without limiting the generality of the foregoing or of Section 8.13, nothing contained in this Agreement (express or implied) is intended to confer upon any individual any right to employment for any period of time, or any right to a particular term or condition of employment.

Section 5.12 Seller Confidentiality Agreements; Post-Closing Confidentiality.

(a) Sellers and Purchaser hereby agree that the Confidential Disclosure Agreement shall terminate, and no party shall have any further obligations thereunder, effective concurrently with the Closing, other than Purchaser's obligations with respect to the confidentiality and non-use of confidential information to the extent related to the Excluded Assets and the Excluded Liabilities.

(b) As promptly as practicable following the date hereof, Sellers, to the extent Sellers are still in existence and have the resources and personnel to do so, shall provide to Purchaser copies of each of the Seller Confidentiality Agreements. Effective at the Closing, Sellers hereby assign to Purchaser the assignable rights under all Seller Confidentiality Agreements to enforce

the non-use, non-disclosure and return or destruction of confidential information (as such term or similar term is defined in the Seller Confidentiality Agreements) to the extent related to the Business, any Product, the Acquired Assets or the Assumed Liabilities and the non-solicitation provisions with respect to the Transferred Service Providers. To the extent that such rights are not assignable, Sellers shall enforce on Purchaser's behalf and at Purchaser's direction and sole expense, all such rights.

(c) From and after the Closing, Sellers shall not, and shall cause their Affiliates and their respective Representatives not to, disclose to any Person other than Purchaser, its Affiliates, and their respective Representatives, or use or otherwise exploit for their benefit, any Confidential Information, except (i) pursuant to any Order, as required in any Action or as otherwise required by applicable Law, (ii) to enforce Sellers' rights and remedies under this Agreement or (iii) as reasonably required in compliance with legal requirements in connection with the Chapter 11 Cases; provided, however, that in the event disclosure is required by applicable Law or in connection with the Chapter 11 Cases, Sellers shall, to the extent reasonably possible, provide Purchaser with prompt notice of such requirement prior to making any disclosure so that Purchaser may seek at its own cost and expense an appropriate protective order. "**Confidential Information**" shall mean any and all current and future product information, technical, financial, employment-related, regulatory or legally sensitive information, customer names, addresses and related data, contracts, practices, procedures, software, hardware, files and other business information, including pricing, rebates, products, products in development, specifications, compounds, ingredients, formulae, recipes, samples, reports, methods, strategies, plans, documents, drawings, machines, tools, models, inventions, patent disclosures and other materials Primarily Related to the Business, the Products, the Acquired Assets, the Assumed Liabilities or Purchaser or any of its Affiliates, excluding (i) any information that the party seeking to exclude can demonstrate (x) is (as of the Closing Date) or becomes generally available to the public other than as a result of a breach of this Section 5.12(c) or (y) becomes available to any such party, its Affiliates or its directors and officers after the Closing Date on a non-confidential basis from a source other than the other party or its Affiliates, provided that such source is not bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the other party or its Affiliates or any other Person with respect to such information or (ii) any information to the extent an Excluded Asset or Excluded Liability.

Section 5.13 Use of Names and Marks.

(a) Purchaser and its Affiliates acknowledge and agree that, notwithstanding the transfer of the Seller Intellectual Property included in the Acquired Assets, from and after the Closing, Sellers shall be entitled to refer to names and marks included in the Acquired Assets solely to the extent required in filings with Governmental Entities and for factual or historical reference.

(b) Notwithstanding the provisions of Section 5.13(a), for a period of eighteen (18) months after the Closing Date, Purchaser and its Affiliates may utilize and authorize any third party to utilize any Acquired Promotional Materials containing the trademarks, tradenames, logos or any contraction, abbreviation or simulation of Sellers or their Affiliates that are not included in the Acquired Assets (the "**Retained Marks**"). Sellers hereby grant a non-exclusive and royalty-free and limited license to Purchaser and its Affiliates to use and grant third parties the right to use

the Retained Marks (i) in connection with its continued use of the Acquired Promotional Materials during such period or (ii) to the extent printed on the packaging or labelling of any Acquired Inventory existing as of the Closing Date, provided that each such use complies in all material respects with all brand guidelines provided by Sellers prior to the date hereof in relation to any Retained Mark. The limited license granted in this Section 5.13(b) shall be non-transferable, except that in the event of an assignment in accordance with Section 8.7, Purchaser may transfer such license to a Designated Purchaser, provided such Designated Purchaser agrees to be bound by the terms of this Section 5.13(b). Purchaser acknowledges that (i) Sellers are and shall remain the exclusive owners of the Retained Marks and all derivatives thereof, including the goodwill and reputation symbolized thereby, (ii) its use of the Retained Marks and all associated goodwill inures to the sole benefit of Sellers, (iii) nothing contained herein shall constitute an assignment of ownership of the Retained Marks, (iv) Sellers grant to Purchaser only those license rights specifically granted under this Section 5.13(b), and (v) any rights not expressly granted by this license shall not be implied. Immediately upon conclusion of the eighteen (18) months of the limited license granted in this Section 5.13(b), except as provided above with respect to packaging or labelling, Purchaser agrees that Purchaser shall cease and discontinue all uses of Retained Marks, including removing Retained Marks from any website, mobile applications, product literature, signage, or anywhere else displayed and Purchaser will have no right to use any Retained Marks. Purchaser agrees that Purchaser will not contest Sellers' ownership and exclusive rights in the Retained Marks. Purchaser agrees not to register, or cause to have registered in any country whatsoever, the Retained Marks or other marks or specific designations of Sellers or any of their Affiliates, nor shall Purchaser acquire such names, trademarks or designations of Sellers or any of their Affiliates in any other manner. The same prohibition shall apply to marks and mark-resembling designations which include or resemble a mark or designation, or the like, of Sellers or any of their Affiliates or the Retained Marks or which are confusingly similar thereto.

Section 5.14 Permits. As promptly as practicable after the Closing, Sellers, to the extent Sellers are still in existence and have the resources and personnel to do so, and Purchaser shall and shall cause their respective Affiliates to file with each applicable Governmental Entity the notices and information required pursuant to any applicable Law to transfer, or caused to be transferred, the Acquired Permits from the applicable member of the Seller Group to Purchaser or its designee(s). The parties also agree to use all commercially reasonable efforts to take any and all other actions required by any Governmental Entity to effect the transfer of the Acquired Permits.

Section 5.15 Financial Reporting.

(a) Subject to Section 5.2, Seller Parent, on behalf of Sellers, shall deliver to Purchaser with respect to the Business and the Sellers (i) on a weekly basis (within the time period as such information is generated in the Ordinary Course of Business following the end of a given week) gross sales by brand and country for such week, as well as weekly prescription data (including Ex-Factory Units, Ex-Factory Gross Dollars, SRFs/PRFs and TRx/Demand Units), (ii) on a monthly basis (within the time period as such information is generated in the Ordinary Course of Business following the end of a given month, and no later than upon submission to the Bankruptcy Court) estimated net sales for such month by brand and country, including calculation of gross-to-net sales, unaudited statements of profit (loss), unaudited balance sheet and unaudited cash flows for the applicable month, and trending DSO/DSI levels for the trailing twelve-month period ended as of the end of the applicable month, (iii) as far in advance before filing as reasonably practicable,

financial information required to be filed by Sellers with the Bankruptcy Court pursuant to the Bankruptcy Code and (iv) upon the reasonable request of Purchaser, any such other financial information that is generated by Sellers in the Ordinary Course of Business.

(b) From the date hereof and through the Closing Date, Seller Parent, on behalf of Sellers, shall deliver to Purchaser working draft estimates of Working Capital Schedules, each setting forth the information required therein as of each month end occurring between the date hereof and the Closing Date, within the time period as such underlying information is generated in the Ordinary Course of Business following the end of the applicable month.

Section 5.16 Regulatory Authority Notices and Correspondence. From and after the date hereof, subject to applicable Law, Sellers shall give prompt notice and copies to Purchaser of any material written correspondence by a Seller to, or from the FDA or any other Regulatory Authority to a Seller, with respect any Product, including (a) the receipt of any FDA 483 observations or substantially equivalent notices involving any facility of Sellers or any third party engaged by Sellers in the manufacture of the Products, (b) the recall, correction, removal, market withdrawal or replacement of any Product, (c) a change in the marketing classification or a safety labeling change as required in Section 505(o)(4) of the FDCA (21 U.S.C. 355(o)(4))of any Product, (d) a non-substantial equivalence determination or denial of market approval by any Regulatory Authority of any Product, (e) the mandatory or voluntary termination, enjoinment or suspension of the testing, manufacturing, marketing, export, import, or distribution of any Product or (f) a non-coverage determination by the Centers for Medicare and Medicaid Services.

Section 5.17 Notices of Certain Events. Prior to the Closing, Sellers and Purchaser shall give prompt notice to the other (a) of any inaccuracy or breach of any representation or warranty contained in this Agreement at any time during the term hereof that would reasonably be expected to cause the condition set forth in Section 6.2(a) or Section 6.3(a), as applicable, not to be satisfied, (b) of any failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied hereunder that would reasonably be expected to cause the conditions set forth in Section 6.2(b) or Section 6.3(b), as applicable, not to be satisfied, and (c) upon becoming aware of the occurrence or impending occurrence of any event or circumstance that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or which would reasonably be expected to prevent or materially delay or impede the consummation of the Acquisition; provided, however, that (i) the delivery of any notice pursuant to this Section 5.17 shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to the date hereof, cure any breach of any covenant, condition or agreement or otherwise limit or affect the remedies available hereunder to any party and (ii) the failure to deliver any such notice pursuant to this Section 5.17 shall not affect whether any of the conditions set forth in Article VI are satisfied or be factored into the determination of whether any right to terminate under Article VII exists if such failure was due to a party's failure to recognize that the underlying event required notice hereunder and such party acted promptly to cure such failure upon awareness of such failure.

Section 5.18 Additional Bankruptcy Court Actions. Neither Sellers nor Purchaser will file any pleading or take any other action in the Bankruptcy Court with respect to this Agreement or the consummation of the Transactions that is inconsistent with performing and carrying out the provisions of this Agreement in accordance with the terms and subject to the conditions herein; provided, however, that nothing contained in the foregoing will be construed to limit in any way

Purchaser's or Seller's rights under this Agreement, or to limit Purchaser's or Sellers' rights to advocate for the approval of this Agreement and against any Alternative Stalking Horse Transaction. Notwithstanding the foregoing, Purchaser hereby agrees and acknowledges that this Agreement and the Transactions are subject to Sellers' right and ability to solicit, negotiate, discuss, and consider higher or otherwise better competing bids with respect to the Business, in each case in accordance with the Bidding Procedures on or after the Petition Date, including initiating contact with, soliciting or encouraging submission of any inquiries, proposals or offers by, responding to any unsolicited inquiries, proposals or offers submitted by, and entering into any discussions or negotiations regarding any of the foregoing with, any Person (in addition to Purchaser and its Affiliates, agents and Representatives).

Section 5.19 Restrictive Covenants.

(a) From and after the Closing through the last day of the Non-Competition Period, Sellers shall not, and shall cause their respective Affiliates not to, either alone or in conjunction with others, directly or indirectly, (i) engage in or assist other Persons in engaging in any Competing Business anywhere in the world, (ii) have an interest in any Person that engages directly or indirectly in any Competing Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant or (iii) make any negative, derogatory or disparaging statements or communications regarding Purchaser, the Business, any Product, or the Affiliates or Representatives of Purchaser. For purposes of this Section 5.19(a), (A) "**Competing Business**" means the development, manufacture, sale, distribution, promotion, marketing or other commercialization of any compound, product candidate or product that treats or is intended to neutralize, abrogate or reverse off episodes related to Parkinson's disease or motor activities resulting from multiple sclerosis or otherwise competes, directly or indirectly, with the any Product or the grant to any third party of any license or right to do any of the foregoing and (B) "**Non-Competition Period**" means the period commencing as of the Closing and ending on the date that is the two (2) year anniversary of the Closing Date. Notwithstanding anything in this Section 5.19(a) to the contrary, the restrictive covenants in this Section 5.19(a) shall not prevent Sellers from acquiring up to one percent (1%) of the outstanding equity securities of any company listed on a national securities exchange engaged in a Competing Business solely as a passive investment.

(b) During the period commencing on the Closing Date and ending on the two (2) year anniversary of the Closing Date (the "**Non-Solicitation Period**"), Sellers shall not, and shall cause their respective Affiliates to not, directly or indirectly, either individually or acting in concert with another Person or Persons:

(i) request, induce or attempt to influence any distributor, supplier, vendor, licensor, licensee, sales representative or customer of any Product or other goods or services of the Business to curtail, cancel or refrain from maintaining or increasing the amount or type of business such Person is currently transacting, or may be transacting during the Non-Solicitation Period, with the Business or modify its pricing or other terms with the Business, or otherwise make any negative, derogatory or disparaging statements or communications regarding Purchaser, the Business, any Product or the Affiliates or Representatives of Purchaser;

(ii) solicit or induce any individual who is or was a Transferred Service Provider to terminate his or her employment or engagement with Purchaser or any of its Affiliates or offer employment to or hire or otherwise engage any such individual, whether as an independent contractor, consultant or otherwise; provided that this Section 5.19(b)(ii) shall not restrict Sellers from soliciting, hiring or otherwise recruiting any Business Employee who at the time of such solicitation, hiring or recruitment (A) is not an employee or consultant of Purchaser or its Affiliates and (B) either voluntarily terminated his or her employment or engagement with Purchaser or its Affiliates or was terminated involuntarily by Purchaser or its Affiliates at least six (6) months prior to such solicitation, hiring and recruitment; or

(iii) subject to the preceding clause (ii), influence or attempt to influence any person who is an employee or consultant of Purchaser or any of its Affiliates during the Non-Solicitation Period to terminate his or her employment or engagement with Purchaser.

(c) If any provision contained in this Section 5.19 shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Section 5.19, but this Section 5.19 shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. It is the intention of the parties that if any of the restrictions or covenants contained herein is held to cover a geographic area or to be for a length of time which is not permitted by applicable Law, or in any way construed to be too broad or to any extent invalid, such provision shall not be construed to be null, void and of no effect, but to the extent such provision would be valid or enforceable under applicable Law, a court of competent jurisdiction shall construe and interpret or reform this Section 5.19 to provide for a covenant having the maximum enforceable geographic area, time period and other provisions (not greater than those contained herein) as shall be valid and enforceable under such applicable Law. Each of the Sellers acknowledges that Purchaser would be irreparably harmed by any breach of this Section 5.19 and that there would be no adequate remedy at law or in damages to compensate Purchaser for any such breach. Each of the Sellers agrees that Purchaser be entitled to injunctive relief requiring specific performance by such Seller of this Section 5.19, without posting bond or other security and without a showing of the inadequacy of monetary damages as a remedy, and such Seller consents to the entry thereof.

(d) The Non-Competition Period and the Non-Solicitation Period shall automatically be extended for any period of time during which any Seller is not in compliance with the covenants and agreements set forth in this Section 5.19.

Section 5.20 Transfer of Certain Acquired Assets. Sellers and Purchaser shall negotiate in good faith and use reasonable best efforts to, as promptly as practicable following the date hereof and prior to the Closing Date, agree on, establish and document a transfer plan in connection with the sale, assignment, transfer, conveyance and delivery of the Acquired Assets hereunder (the "**Transfer Plan**"). The parties agree to transfer or cause to be transferred the Acquired Assets in accordance with such Transfer Plan.

Section 5.21 Plan Support Agreement. By the Petition Date, Sellers shall enter into a restructuring or plan support agreement (the "**Plan Support Agreement**"), with the Note Holders who are holders (the "**Requisite Noteholders**") of more than fifty percent (50%) in number and

at least sixty-six and two-thirds percent (66.67%) in amount of the Senior Secured Notes. The Plan Support Agreement shall provide for agreement that (a) Requisite Noteholders shall not submit any credit bid against the APA, (b) the Bidding Procedures Order shall provide, among other things, that any and all amounts payable made on account of the Breakup Fee and the Expense Reimbursement Amount shall constitute Superpriority Claims, and (c) to the extent the Plan Support Agreement provides any timeline with respect to the sale process for the Acquired Assets, such timeline shall be consistent with the Bankruptcy Sale Process Timeline.

Section 5.22 Press Releases or Other Public Statements. Each party agrees not to issue any press release or other public statement, whether oral or written, disclosing the terms of this Agreement or the Transactions or otherwise regarding this Agreement or the Transactions, without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned, or delayed). Either party may issue additional press releases or public statements without the consent of the other party where such press release or public statement only discloses the same information that has previously been the subject of a press release or public statement that has been consented to by the other party.

Section 5.23 SEC Filings and Other Legally Required Disclosures. Notwithstanding Section 5.22, either party may disclose the terms of this Agreement and make any other public disclosure regarding this Agreement or the Transactions, to the extent required to comply with applicable Laws or in connection with any Action, including in connection with the Chapter 11 Cases or the rules and regulations promulgated by the SEC, court process and the rules and regulations of any national securities exchange or national securities quotation system. Prior to making any disclosure pursuant to this Section 5.23, the parties shall consult with each other to the extent practicable prior to such disclosure, and the disclosing party shall in good faith consider the other party's reasonable comments with respect to the timing, form, and content of such disclosure; provided that such disclosure shall nonetheless be at the discretion of the disclosing party in consultation with its legal counsel; provided further that Purchaser acknowledges and agrees that this Agreement shall be filed as an exhibit to Seller Parent's Form 10-K for its fiscal year ending on December 31, 2023.

Section 5.24 Biogen Transition. Sellers shall use commercially reasonable efforts to effectuate the Biogen Transition. Sellers shall keep Purchaser reasonably apprised of the status of the Biogen Transition and shall in good faith consult with Purchaser from time to time with respect thereto. Notwithstanding anything to the contrary in the foregoing, in no event shall (a) "commercially reasonable efforts" pursuant to this Section 5.24 include any obligation of Sellers (i) to acquire (A) any Inventory from Biogen or any of its Affiliates or (B) any Inventory not otherwise required in the Ordinary Course of Business or (ii) to enter into any Contract with Biogen with respect to the Biogen Transition, and (b) the effecting of the Biogen Transition be in any respect a condition to the Closing.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1 Conditions Precedent to Obligation of Sellers and Purchaser. The respective obligations of each party to effect the Transactions shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) *Approvals.* Any waiting period (and extensions thereof) applicable to the Transactions under any Antitrust Law set forth on Schedule 6.1 shall have expired or been terminated and any other required approvals, consents or clearances under any Antitrust Laws set forth on Schedule 6.1 (such waiting period expirations, terminations and required approvals, consents or clearance, the "**Required Regulatory Approvals**") shall have been obtained; and

(b) *No Legal Prohibition.* No Governmental Entity shall have enacted, issued, promulgated, enforced or entered into any Law or Order (whether temporary, preliminary or permanent), that shall be in effect on the Closing Date and that has the effect of making the Transactions illegal or otherwise prohibiting the Closing.

Section 6.2 Conditions Precedent to Obligation of Sellers. The obligations of Sellers to effect the Transactions shall be subject to the satisfaction (or, to the extent permitted by applicable Law, waiver by Sellers) at or prior to the Closing of the following conditions:

(a) *Representations and Warranties.* The representations and warranties of Purchaser and Purchaser Parent contained in this Agreement shall be true and correct in all respects (disregarding any exception or qualification in such representations and warranties relating to "material" or "materiality") as of the date hereof and as of the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such specific date), except where the failure of such representations and warranties to be so true and correct would not and would not reasonably be expected to, individually or in the aggregate, prevent, prohibit, materially impair or materially delay Purchaser's ability to perform its obligations under this Agreement prior to the Outside Date;

(b) *Covenants.* The covenants and obligations of Purchaser to be performed or complied with at or prior to the Closing pursuant to this Agreement shall have been duly performed and complied with in all material respects;

(c) *Bidding Procedures Order.* The Bankruptcy Court shall have entered the Bidding Procedures Order, and such Order (i) shall not have been stayed, stayed pending appeal, reversed or vacated and (ii) shall not have been amended, supplemented or otherwise modified in any manner materially adverse to Sellers;

(d) *Sale Order.* The Bankruptcy Court shall have entered the Sale Order, and such Order (i) shall not have been stayed as of the Closing Date, stayed pending appeal, reversed or vacated and (ii) shall not have been amended, supplemented or otherwise modified in any manner materially adverse to Sellers; and

(e) *Officer's Certificates.* Purchaser shall have delivered to Sellers a certificate duly executed by an authorized officer of Purchaser certifying to the effect that the conditions set forth in Section 6.2(a) and Section 6.2(b) have been satisfied.

The foregoing conditions are for the benefit of Sellers only and accordingly Sellers will be entitled to waive compliance with any such conditions if they see fit to do so, without prejudice to rights and remedies at Law and in equity and also without prejudice to any rights of termination or otherwise in the event of the failure to fulfill any other conditions in whole or in part.

Section 6.3 Conditions Precedent to Obligation of Purchaser. The obligations of Purchaser to effect the Transactions shall be subject to the satisfaction (or, to the extent permitted by applicable Law, waiver by Purchaser) at or prior to the Closing of the following conditions:

(a) *Representations and Warranties.* (i) The representations and warranties of Sellers contained in the first and second sentences of Section 3.1 (*Qualification, Organization, Subsidiaries*), Section 3.2 (*Authority of Sellers*) and Section 3.6(a) (*Title to Property*) shall be true and correct in all material respects as of the date hereof and as of the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct in all material respects as of such specific date) and (ii) all other representations and warranties of Sellers contained in this Agreement shall be true and correct in all respects (disregarding any exception or qualification in such representations and warranties relating to "material", "materiality" or "Material Adverse Effect") as of the date hereof and as of the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such specific date), except where the failure of such representations and warranties to be so true and correct would not and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) *Covenants.* The covenants and obligations of Sellers to be performed or complied with at or prior to the Closing pursuant to this Agreement shall have been duly performed and complied with in all material respects;

(c) *Bidding Procedures Order.* The Bankruptcy Court shall have entered the Bidding Procedures Order, and such Order (i) shall not have been stayed, stayed pending appeal, reversed or vacated and (ii) shall not have been amended, supplemented or otherwise modified in any manner materially adverse to Purchaser;

(d) *Sale Order.* The Bankruptcy Court shall have entered the Sale Order, and such Order (i) shall not have been stayed as of the Closing Date, stayed pending appeal, reversed or vacated and (ii) shall not have been amended, supplemented or otherwise modified in any manner adverse to Purchaser;

(e) *Officer's Certificates.* Sellers shall have delivered to Purchaser a certificate duly executed by an executive officer of each Seller certifying to the effect that the conditions set forth in Section 6.3(a), Section 6.3(b), and Section 6.3(f) have been satisfied; and

(f) *Material Adverse Effect.* From the date of this Agreement, there shall not have occurred any Material Adverse Effect.

The foregoing conditions are for the benefit of Purchaser only and accordingly Purchaser will be entitled to waive compliance with any such conditions if it sees fit to do so, without prejudice to any rights and remedies at Law and in equity and also without prejudice to any of rights of termination or otherwise in the event of the failure to fulfill any other conditions in whole or in part.

ARTICLE VII

TERMINATION

Section 7.1 Termination.

(a) This Agreement may be terminated by either Purchaser or Seller Parent in the event that the Closing has not occurred on or before December 31, 2024, (such later date as may be mutually agreed in writing by the parties, subject to Section 8.14, the "**Outside Date**"); *provided*, *however*, that the right to terminate this Agreement pursuant to this Section 7.1(a) shall not be available to any party whose failure to perform, or material breach of, any of its representations, warranties, covenants and obligations under this Agreement required to be performed by it at or prior to the Closing or true and correct as of the Closing Date, either individually or in the aggregate, results in, or has been the primary cause of, the failure of the Closing to occur prior to such date.

(b) This Agreement may also be terminated prior to the Closing:

(i) at any time by the mutual written agreement of Purchaser and Seller Parent;

(ii) by Purchaser, if (A) there shall have been a breach of any of the covenants or agreements or any of the representations or warranties set forth in this Agreement on the part of Sellers which breach, either individually or in the aggregate with other breaches by any Seller, would result in, if occurring or continuing on the Closing Date, the failure of the conditions set forth in Section 6.3(a) or Section 6.3(b), as the case may be, or (B) there has been a material breach by any Seller of the Bidding Procedures Order or the Sale Order, in each case of the preceding (A) or (B), which breach is not cured within ten (10) Business Days following written notice to Sellers thereof (and in any event prior to the Outside Date) or which by its nature cannot be cured within such time period, *provided*, that Purchaser is not then in material breach of any of the covenants, agreements, representations or warranties set forth in this Agreement on the part of Purchaser;

(iii) by Seller Parent, if (A) there shall have been a breach of any of the covenants or agreements or any of the representations or warranties set forth in this Agreement on the part of Purchaser which breach would result in, if occurring or continuing on the Closing Date, the failure of the conditions set forth in Section 6.2(a) or Section 6.2(b), as the case may be, or (B) there has been any material breach by Purchaser of the Bidding Procedures Order or the Sale Order, in each case of the preceding (A) or (B), which breach is not cured within ten (10) Business Days following written notice to Purchaser thereof (and in any event prior to the Outside Date) or which by its nature cannot be cured within such time period, *provided*, that no Seller is then in material breach of any

of the covenants, agreements, representations or warranties set forth in this Agreement on the part of any Seller;

(iv) by Purchaser, if Sellers shall fail to file (A) a motion with the Bankruptcy Court seeking entry of the Bidding Procedures Order within four (4) Business Days following the execution of this Agreement unless otherwise agreed to by the parties; or (B) the Notice of Successful Bidder with the Bankruptcy Court within two (2) Business Days following the designation of Purchaser as the Successful Bidder;

(v) by Purchaser, if the Bankruptcy Court has not entered the Bidding Procedures Order by April 29, 2024; provided that Purchaser is not then in material breach of any of the covenants, agreements, representations or warranties set forth in this Agreement on the part of Purchaser;

(vi) by Purchaser, if Sellers shall fail to comply with the Bankruptcy Sale Process Timeline within five (5) Business Days of such prescribed deadline in the Bankruptcy Sale Process Timeline (as defined in the Bidding Procedures) set forth in the Bidding Procedures; provided that Purchaser is not then in material breach of any of the covenants, agreements, representations or warranties set forth in this Agreement on the part of Purchaser or of the Bidding Procedures Order or the Sale Order;

(vii) by Purchaser, if Sellers file a motion requesting, consent to, fail to timely contest a pleading seeking, or the Bankruptcy Court, *sua sponte*, orders, which order is not timely contested by Sellers, (A) a conversion of any of the Chapter 11 Cases of any Seller into a liquidation proceeding under Chapter 7 of the Bankruptcy Code, (B) the dismissal of any of the Chapter 11 Cases of any Seller, (C) the appointment of a Chapter 11 trustee or examiner with expanded powers in any of the Chapter 11 Cases of any Seller, or (D) the termination or reduction of the exclusivity periods described in 11 U.S.C. § 1121(b);

(viii) by Purchaser, if the Bankruptcy Court enters any Order materially inconsistent with the Bidding Procedures Order, the Sale Order, this Agreement or the Transactions, each as determined by the Bankruptcy Court (each party agrees, and shall not object, to a request by any other party to the Bankruptcy Court for an expedited hearing to make such determination);

(ix) by either Seller Parent or Purchaser, if a Governmental Entity issues a final, non-appealable ruling or Order permanently prohibiting the Transactions;

(x) by Purchaser, if (A) any creditor of any Seller obtains a final and unstayed Order of the Bankruptcy Court granting relief from the stay described in 11 U.S.C. § 362(a)(2) to foreclose on any portion of the Acquired Assets or (B) any Seller enters into any definitive agreement in respect of one or more Competing Transactions with one or more Persons and the Bankruptcy Court approves any such Competing Transaction; and

(xi) by Purchaser, if the Auction has occurred and Purchaser is not designated as the Successful Bidder.

For the avoidance of doubt, the parties acknowledge and agree, that in the event that Sellers determine that the last Overbid submitted by Purchaser is higher or otherwise better than all other Qualified Bids as such Qualified Bids may be amended by an Overbid submitted at the Auction, then within two (2) Business Days following the conclusion of the Auction, Sellers and Purchaser shall enter into an amendment to this Agreement to reflect Purchaser's last Overbid.

Section 7.2 Effect of Termination.

(a) *Survival*. In the event of termination of this Agreement by either party in accordance with Section 7.1, all rights and obligations of the parties under this Agreement shall terminate without any Liability of any party to the other party, except for Liability for fraud or intentional breach of this Agreement prior to such termination; provided, that (i) the provisions of Section 1.6(b)(ii), Section 1.6(b)(iii), this Section 7.2 and Article VIII (other than Section 8.1 and Section 8.3) and the Confidentiality Agreement shall expressly survive the termination of this Agreement.

(b) *Breakup Fee*. In consideration of Purchaser and its Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, and to compensate Purchaser as a stalking-horse bidder, and regardless of whether or not Purchaser makes any matching or competing bids at the Auction if the Auction occurs, upon the occurrence of a Fee Event (as defined below), Purchaser shall be entitled to payment by Sellers of a breakup fee in an amount equal to $6,475,000 (the "**Breakup Fee**"), which such amount Seller Parent shall pay (or cause to be paid) to Purchaser within two (2) Business Days of the occurrence of a Fee Event. The Breakup Fee shall be treated as a Superpriority Claim. Sellers acknowledge and agree that (i) the approval of the Breakup Fee is an integral part of the Transactions; (ii) in the absence of Sellers' obligation to pay the Breakup Fee, Purchaser would not have entered into this Agreement; (iii) the entry of Purchaser into this Agreement is beneficial to Sellers because, in Sellers' business judgment, it will enhance Sellers' ability to maximize the value of its assets for the benefit of its creditors and other stakeholders; (iv) the receipt by Purchaser of the Breakup Fee (together with the Expense Reimbursement Amount and Deposit Fund when otherwise due to Purchaser pursuant to this Agreement), following actual receipt thereof, shall be the sole and exclusive remedy available to Purchaser or Purchaser Parent against Sellers, their respective Affiliates or any of their respective former, current or future equity holders, directors, officers, Affiliates, agents or Representatives (collectively, "**Seller Related Parties**") with respect to this Agreement and the Transactions; (v) upon receipt by Purchaser of the Breakup Fee (together with the Expense Reimbursement Amount and Deposit Fund when otherwise due to Purchaser pursuant to this Agreement), no Seller Related Party shall have any further Liability or obligation relating to or arising out of this Agreement or the Transactions; (vi) the Breakup Fee is reasonable in relation to Purchaser's costs and efforts and to the magnitude of the Transactions and Purchaser's lost opportunities resulting from the time spent pursuing the Transactions; and (vii) time is of the essence with respect to the entry of the Bidding Procedures Order by the Bankruptcy Court, approving, among other things, the process by which bids may be solicited, including the Bidding Procedures. For the avoidance of doubt, the Breakup Fee, if payable pursuant to this Section 7.2(b), shall be in addition to the return of the Deposit Funds and payment of the Expense Reimbursement Amount, in each case, to the extent payable to Purchaser pursuant to Section 1.6(b)(iii) and Section 7.2(c), respectively. For the purposes of this Agreement, a "**Fee Event**" shall mean (i) a

termination of this Agreement pursuant to Section 7.1(a) (unless, at the time of any such termination, either (I) the condition set forth in Section 6.1(a) has not been satisfied or (II) the condition set forth in Section 6.1(b) has not been satisfied and any Law or Order giving rise to the non-satisfaction of such condition is or is under or in respect of an Antitrust Law), or (ii) the consummation of an Alternative Transaction.

(c) *Expense Reimbursement*. In consideration of Purchaser and its Affiliates having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Acquired Assets, and to compensate Purchaser as a stalking-horse bidder, and regardless of whether or not Purchaser makes any matching or competing bids at the Auction if the Auction occurs, upon the occurrence of a Fee Event, Purchaser shall be entitled to payment by Sellers of the Expense Reimbursement Amount, which such amount Seller Parent shall pay (or cause to be paid) to Purchaser within two (2) Business Days of the occurrence of a Fee Event. Sellers acknowledge and agree that (i) the payment of the Expense Reimbursement Amount is an integral part of the Transactions; (ii) in the absence of Sellers' obligation to make this payment, Purchaser would not have entered into this Agreement; (iii) the damages resulting from termination of this Agreement under circumstances where Purchaser is entitled to the Expense Reimbursement Amount are uncertain and incapable of accurate calculation and that the delivery of the Expense Reimbursement Amount to Purchaser is not a penalty, but rather shall constitute a reasonable amount that will compensate Purchaser in the circumstances where Purchaser is entitled to the reimbursable expenses for the efforts and resources expended and opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummating of the Transactions, and that, without these agreements, Purchaser would not enter into this Agreement; (iv) the receipt by Purchaser of the Expense Reimbursement Amount (together with the Breakup Fee and Deposit Fund when otherwise due to Purchaser pursuant to this Agreement), following actual receipt thereof, shall be the sole and exclusive remedy available to Purchaser or Purchaser Parent against any Seller Related Parties with respect to this Agreement and the Transactions; (v) upon receipt by Purchaser of the Expense Reimbursement Amount (together with the Breakup Fee and Deposit Fund when otherwise due to Purchaser pursuant to this Agreement), no Seller Related Party shall have any further Liability or obligation relating to or arising out of this Agreement or the Transactions; (vi) time is of the essence with respect to the payment of the Expense Reimbursement Amount and (vii) the Expense Reimbursement Amount shall be treated as a Superpriority Claim. For the avoidance of doubt, the Expense Reimbursement Amount, if payable pursuant to this Section 7.2(c), shall be in addition to the return of the Deposit Funds and payment of the Breakup Fee, in each case, to the extent payable to Purchaser pursuant to Section 1.6(b)(iii) and Section 7.2(b), respectively.

(d) *Deposit Funds*. If this Agreement is terminated by Sellers as contemplated by Section 1.6(b)(ii), (i) Purchaser shall forfeit the Deposit Funds and any interest thereon; (ii) other than in connection with fraud on the part of, or an intentional breach of this Agreement by, Purchaser or Purchaser Parent, the receipt of the Deposit Funds shall be the sole and exclusive remedy available to Sellers against Purchaser, Purchaser Parent its Affiliates or any of their respective former, current or future equity holders, directors, officers, Affiliates, agents or Representatives with respect to this Agreement and the Transactions; and (iii) upon receipt by Sellers of the Deposit Funds, neither Purchaser, its Affiliates nor any of their respective former,

current or future equity holders, directors, officers, Affiliates, agents or Representatives shall have any further Liability or obligation relating to or arising out of this Agreement or the Transactions.

(e) *Liquidated Damages.* The parties acknowledge that the agreements contained in this Section 7.2 are an integral part of the Transactions, that the damages resulting from termination of this Agreement under circumstances (i) where Sellers are entitled to the Deposit Funds are uncertain and incapable of accurate calculation and that the delivery of the Deposit Funds is not a penalty but rather shall constitute liquidated damages in a reasonable amount that will compensate Sellers in the circumstances where Sellers are entitled to the Deposit Funds for the efforts and resources expended and opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, and that, without these agreements, Sellers would not enter into this Agreement or (ii) where Purchaser is entitled to the Breakup Fee, the Expense Reimbursement Amount and the Deposit Funds are uncertain and incapable of accurate calculation and that the delivery of the Breakup Fee, the Expense Reimbursement Amount and the Deposit Funds is not a penalty but rather shall constitute liquidated damages in a reasonable amount that will compensate Purchaser in the circumstances where Purchaser is entitled to the Breakup Fee, the Expense Reimbursement Amount and the Deposit Funds for the efforts and resources expended and opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, and that, without these agreements, Purchaser would not enter into this Agreement.

(f) *Litigation Expenses*

(i) If Sellers fail to take any action necessary to cause the delivery of the Breakup Fee, the Expense Reimbursement Amount or Deposit Funds under circumstances where Purchaser is entitled to the Breakup Fee, the Expense Reimbursement Amount or the Deposit Funds and, in order to obtain such Breakup Fee, Expense Reimbursement Amount or Deposit Funds, Purchaser commences a suit which results in a judgment in favor of Purchaser, Sellers shall pay to Purchaser, in addition to the Breakup Fee, the Expense Reimbursement Amount and Deposit Funds, an amount in cash equal to the costs and expenses (including reasonable attorney's fees) incurred by Purchaser in connection with such suit, which such amounts shall constitute Superpriority Claims.

(ii) If Purchaser fails to take any action necessary to cause the delivery of the Deposit Funds under circumstances where Sellers are entitled to the Deposit Funds and, in order to obtain the Deposit Funds, any Seller commences a suit which results in a judgment in favor of any Seller, Purchaser shall pay to Sellers, in addition to the Deposit Funds, an amount in cash equal to the costs and expenses (including reasonable attorney's fees) incurred by any Seller in connection with such suit.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1 Non-Survival. The parties agree that the representations and warranties contained in this Agreement, and any certificate or other instrument delivered at Closing by or on

behalf of any party in connection with this Agreement, will terminate at, and will not survive, the Closing, and none of the parties will have any Liability to each other after the Closing for any breach thereof. The parties agree that the covenants and obligations contained in this Agreement to be performed prior to or at the Closing will terminate at, and will not survive, the Closing and those covenants and obligations contained in this Agreement to be performed after the Closing will survive the Closing in accordance with their respective terms and each party will be liable to the other after the Closing for any breach thereof.

Section 8.2 Tax Matters.

(a) All sales, use, excise, transfer, documentary, stamp, value added, recordation, license, conveyance and other similar Taxes ("**Transfer Taxes**"), if any, imposed on or with respect to the Acquisition shall be borne by Purchaser and shall be paid to the appropriate Taxing Authority promptly when due by the Person having the obligation to pay such Transfer Tax under applicable Law. The party responsible under applicable Law for filing a Tax Return with respect to any such Transfer Taxes shall prepare and timely file such Tax Return and provide a copy of such Tax Return to the other party within fifteen (15) days. Purchaser and Sellers shall use reasonable efforts and cooperate in good faith to reduce or eliminate any Transfer Taxes to the extent permitted by applicable Law, including the transfer by remote electronic transmission of all Acquired Assets capable of being so transmitted (and the delivery of certificates evidencing such electronic transmission) and in the filing of any Tax Returns required with respect to any applicable Transfer Taxes. Without limiting the generality of the foregoing, Sellers and Purchaser and their respective Affiliates shall use commercially reasonable efforts to obtain available exemptions from Transfer Taxes and will cooperate with each other in providing any information and documentation that may be necessary to obtain any such exemptions, including any applicable resale or exemption certificate.

(b) For purposes of this Agreement, with respect to any Acquired Asset, Sellers and Purchaser shall apportion the Liability for personal property Taxes, ad valorem Taxes, and similar Taxes ("**Periodic Taxes**") for Straddle Periods applicable to such Acquired Asset in accordance with this Section 8.2(b). The Periodic Taxes described in this Section 8.2(b) shall be apportioned between Sellers and Purchaser as of the Closing Date, with Purchaser liable for that portion of the Periodic Taxes for a Straddle Period (which portion of such Taxes shall for purposes of this Agreement be deemed attributable to the Post-Closing Tax Period) equal to the Periodic Taxes for such Straddle Period *multiplied by* a fraction, the numerator of which is the number of days remaining in such Straddle Period after the Closing Date, and the denominator of which is the total number of days in such entire Straddle Period. Sellers shall be liable for that portion of the Periodic Taxes for a Straddle Period for which Purchaser is not liable under the preceding sentence (which portion of such Taxes shall for purposes of this Agreement be deemed attributable to the Pre-Closing Tax Period). The party responsible under applicable Law for paying a Tax described in this Section 8.2(b) shall be responsible for administering the payment of such Tax. All apportionments hereunder shall be final as of the Closing Date, and except where the apportionment is inaccurate as a result of the gross negligence of a party, there will be no re-apportionments of any Periodic Taxes regardless of whether information becomes available after the Closing Date that alters the amount of Taxes that would have been due with respect to the Straddle Period. To the extent the Liability for Periodic Taxes for a certain Straddle Period is not determinable at the time of Closing or such Periodic Taxes are charged in arrears, such Periodic

Taxes shall be prorated for such Straddle Period, based on the most recent ascertainable full Tax year without adjustment. For purposes of this Section 8.2(b), the Straddle Period for ad valorem Taxes and personal property Taxes shall be the fiscal period for which such Taxes were assessed by the applicable Tax jurisdiction.

(c) Sellers, on the one hand, or Purchaser, on the other hand, as the case may be (the "**Reimbursing Party**"), shall provide reimbursement for any Tax paid by the other (the "**Paying Party**"), all or a portion of which is the responsibility of the Reimbursing Party in accordance with the terms of this Agreement (including this Section 8.2). Within a reasonable time prior to the payment of any such Tax, the Paying Party shall give notice to the Reimbursing Party of the Tax payable and the Paying Party's and Reimbursing Party's respective Liability therefor, although failure to do so shall not relieve the Reimbursing Party from its Liability hereunder except to the extent the Reimbursing Party is actually prejudiced thereby.

(d) The parties shall provide each other with such assistance as reasonably may be requested by any of them in connection with (i) the preparation of any Tax Return, (ii) the determination of any Liability in respect of Taxes or the right to any refund, credit or prepayment in respect of Taxes (including pursuant to this Agreement) or (iii) any audit or other examination by any Taxing Authority, or any judicial or administrative proceeding with respect to any Taxes.

Section 8.3 Bulk Sales. Purchaser and Sellers hereby waive compliance with the requirements and provisions of any "bulk-transfer" or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale, conveyance, assignment or transfer of any or all of the Acquired Assets to Purchaser or its designee(s). In furtherance and not in limitation of the foregoing, Sellers shall use commercially reasonable efforts to confirm that the Sale Order shall provide either that (a) Sellers have complied with any applicable bulk sale or bulk transfer Laws of any jurisdiction in connection with the Transactions or (b) compliance with such Laws described in Clause (a) is not necessary or appropriate under the circumstances.

Section 8.4 Notices. Any notice pursuant to this Agreement must be in writing and will be deemed effectively given by the applicable party on the earliest of the date (a) on which such notice is sent by email, receipt confirmed or no automated "bounceback" or similar message is received in reply, (b) one (1) Business Day after such notice is deposited with an overnight courier service for next day delivery, or (c) on which such notice is delivered by hand; in each case to the appropriate address set forth below (or by such other address as the party may designate by notice to the other party, with such change of address effective five (5) Business Days following delivery of such notice of change):

to Sellers:

Acorda Therapeutics, Inc.
2 Blue Hill Plaza, 3rd Floor
Pearl River, New York 10965
Attention: General Counsel
Email:

with courtesy copies (which shall not constitute notice) to:

Baker & McKenzie LLP
452 Fifth Avenue
New York, New York 10018
Attention:
Email:

to Purchaser:

Merz Pharmaceuticals, LLC
c/o Merz Therapeutics GmbH
Eckenheimer Landstraße 100
D-60318 Frankfurt am Main
Germany
Attention: General Counsel
Email:

with courtesy copies (which shall not constitute notice) to:

Freshfields Bruckhaus Deringer US LLP
3 World Trade Center
175 Greenwich Street
New York, New York 10007
Attention:
Email:

Section 8.5 Descriptive Headings; Interpretative Provisions. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The words "hereof," "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation," whether or not they are in fact followed by those words or words of like import. Except where the context otherwise requires, the word "or" is used in the inclusive sense (and/or). Whenever the last day for the exercise of any right or the discharge of any duty under this Agreement falls on other than a Business Day, the party having such right or duty shall have until the next Business Day to exercise such right or discharge such duty. Unless otherwise indicated, the word "day" shall be interpreted as a calendar day. References to "dollars" or "$" mean United States dollars, unless otherwise clearly indicated to the contrary. The word "notice" shall mean notice in writing (whether or not

specifically stated) and shall include notices, consents, approvals, requests and other written communications contemplated under this Agreement. The phrases "made available to Purchaser," "delivered to Purchaser" or "provided to Purchaser" and similar phrases as used herein with respect to any documents or information means that such information or documents were contained and accessible in the virtual data room hosted by Seller Parent in connection with the Transactions as of two (2) Business Days prior to the date of this Agreement, except with respect to the Seller 10-K or the Sample NWC Calculation, which has been made available to Purchaser's counsel via e-mail. No summary of this Agreement prepared by or on behalf of any party shall affect the meaning or interpretation of this Agreement. Time periods based on a number of days within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and, if applicable, by extending the period to the next Business Day following if the last day of the period is not a Business Day. For purposes of this Agreement, references to "Sellers" shall be construed, where applicable, to include any liquidating trust, plan administrator, or comparable Person or body bearing responsibility for the administration and wind-down of Sellers' operations, estates and the Chapter 11 Cases.

Section 8.6 No Strict Construction. Sellers, on the one hand, and Purchaser, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Sellers and Purchaser, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsperson shall be applied against any Person with respect to this Agreement.

Section 8.7 Entire Agreement; Assignment. This Agreement, the Ancillary Documents and the Confidential Disclosure Agreement constitute the entire agreement and supersede all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and thereof. No party to this Agreement may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party; provided, however, that Purchaser may assign its rights or delegate its obligations, in whole or in part, without such consent to (a) any Person that succeeds to all or substantially all of its assets or business related to this Agreement (whether by sale, merger, operation of law or otherwise) following the Closing or (b) an Affiliate of Purchaser (each such assignee, a "**Designated Purchaser**"). Upon any assignment by Purchaser to a Designated Purchaser, each Designated Purchaser shall be deemed a "Purchaser" for purposes of this Agreement in connection with the Transactions (and any reference to "Purchaser" herein in connection therewith shall automatically be deemed to be a reference to such Designated Purchaser) and such Designated Purchaser shall automatically be assigned the rights of Purchaser under this Agreement necessary in case of such designation. No assignment of this Agreement shall relieve Purchaser of any liability or its obligations under or in connection with this Agreement. Any purported assignment in violation of this Section 8.7 shall be null and void.

Section 8.8 Governing Law; Submission of Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware. Any and all claims, controversies and causes of action arising out of or relating to this Agreement, whether sounding in contract, tort or statute, shall be governed by the Laws of the

State of Delaware, including its statutes of limitations, without giving effect to any conflict-of-laws or other rule that would result in the application of the Laws of a different jurisdiction. The parties agree that the exclusive jurisdiction and venue for any litigation arising out of this Agreement shall be in the Bankruptcy Court; provided, however, that if at the time of commencement of any such litigation, the Chapter 11 Cases are no longer pending or the Bankruptcy Court does not have jurisdiction or declines to exercise jurisdiction, the exclusive jurisdiction and venue for any litigation arising out of or relating to this Agreement, provided jurisdiction may be obtained under applicable Law, shall be in the state or federal courts in the State of Delaware, and each party hereby waives any objections they may have with respect thereto (including any objections based upon *forum non conveniens*). Each party hereby consents to entry of final order or judgment by the Bankruptcy Court in any litigation arising out of this Agreement before the Bankruptcy Court. Each party hereby consents to service of process in the manner and at the address set forth in Section 8.4. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.9 Expenses. Except (a) as otherwise provided herein or (b) with respect to any filing fees pursuant to any Antitrust Laws, which shall be borne by Purchaser, whether or not the Transactions are consummated, all other costs and expenses incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such expenses.

Section 8.10 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each party.

Section 8.11 Waiver. At any time prior to the Closing, the parties may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.12 Counterparts; Effectiveness. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Section 8.13 Severability; Validity; Parties in Interest. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other Persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable. Except as expressly provided in this Agreement, nothing in this Agreement, express or implied, is intended to confer upon any Person not a party to this Agreement any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 8.14 Specific Performance. The parties agree that irreparable injury will occur in the event that any of the provisions of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Each party shall be entitled (a) to an injunction or injunctions to prevent or remedy any breaches or threatened breaches of this Agreement by any other party, (b) to a decree or order of specific performance specifically enforcing the terms and provisions of this Agreement and (c) to any further equitable relief. The election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any party from seeking to collect or collecting damages. The parties agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by any party and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of any party under this Agreement. If, prior to the Outside Date (or, if the Closing Date could have occurred on or within three (3) Business Days prior to the Outside Date, within five (5) Business Days after the Outside Date), any party brings any Action to enforce specifically the performance of the terms and provisions this Agreement by any other party, the Outside Date will automatically be extended (y) for the period during which such Action is pending, plus ten (10) Business Days, or (z) by such other time period established by the court presiding over such Action, as the case may be. In no event will this Section 8.14 be used, alone or together with any other provision of this Agreement, to require Sellers to remedy any breach of any representation or warranty of Sellers made herein. Purchaser shall not be entitled to both obtain specific performance pursuant to this Section 8.14 to cause the Closing to occur and also receive the Breakup Fee and Expense Reimbursement Amount.

Section 8.15 Time of the Essence. Time shall be of the essence for purposes of performance by the parties of their respective obligations under this Agreement.

Section 8.16 Joint and Several Obligations. Each obligation imposed on any Seller by this Agreement shall be deemed to be a joint and several obligation of each Seller as if such obligation were imposed individually upon each of them.

Section 8.17 Remedies Cumulative. Except as herein expressly set forth, no remedy conferred upon a party by this Agreement is intended to be exclusive of any other remedy herein or by Law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at Law, in equity or by statute.

Section 8.18 Conflicts; Deal Communications.

(a) It is acknowledged by each of the parties that Sellers have retained Baker & McKenzie LLP ("**Baker McKenzie**") to act as their counsel in connection with the negotiation, documentation and consummation of this Agreement and the Transactions (the "**Current Representation**"). Purchaser hereby agrees that after the Closing, Baker McKenzie may represent Sellers or any of their Affiliates or any of their respective Representatives (any such Person, a "**Permitted Seller Person**") in any matter involving or arising from the Current Representation, including any interpretation or application of this Agreement or any Ancillary Document, and including for the avoidance of doubt any proceeding between or among Purchaser or any of its Affiliates, and any Permitted Seller Person, even though the interests of such Permitted Seller Person may be directly adverse to Purchaser or any of its Affiliates, and even though Baker

McKenzie may be representing Purchaser in unrelated ongoing matters. Purchaser hereby waives and agrees not to assert (i) any claim that Baker McKenzie has a conflict of interest in any representation described in this Section 8.18(a) or (ii) any confidentiality obligation with respect to any communication between Baker McKenzie and any Permitted Seller Person occurring in the course of the Current Representation.

(b) Purchaser hereby agrees that all communications (whether before, at or after the Closing) between Baker McKenzie, any Permitted Seller Person, or any current or former director, officer or employee of any Seller to the extent related to the Current Representation or any dispute arising under this Agreement (the "**Deal Communications**"), whether or not attorney-client privileged, and all rights to any other evidentiary privilege to the extent related thereto, and the protections afforded to information relating to representation of a client under applicable rules of professional conduct that may apply to such Deal Communications, shall be retained, owned, and controlled collectively by the Permitted Seller Persons and shall not pass to or be claimed by Purchaser or any of its Affiliates or their respective Representatives. To the extent that files or other materials maintained by Baker McKenzie constitute Deal Communications, only the Permitted Seller Persons shall hold property rights in such communications and Baker McKenzie shall have no duty to reveal or disclose any such files or other materials or any Deal Communications by reason of any attorney-client relationship between Baker McKenzie and any Permitted Seller Persons.

(c) Notwithstanding the foregoing, in the event that a dispute arises between Purchaser, on the one hand, and a third party other than any Seller, on the other hand, Purchaser may assert the attorney-client privilege to prevent the disclosure of the Deal Communications to such third party; provided, however, that Purchaser may not waive such privilege without the prior written consent of Sellers (which such consent shall not be unreasonably withheld, conditioned or delayed). In the event that Purchaser or any of its respective directors, officers, employees or other representatives is legally required by an Order or otherwise to access or obtain a copy of all or a portion of the Deal Communications, Purchaser shall, to the extent legally permissible, (i) reasonably promptly notify Sellers in writing, (ii) agree that Sellers may seek a protective order and (iii) use, at Sellers' sole cost and expense, commercially reasonable efforts to assist therewith.

Section 8.19 Purchaser Parent Guarantee. Purchaser Parent hereby fully, irrevocably and unconditionally guarantees the complete and timely payment by Purchaser of any amounts payable by Purchaser pursuant to Section 1.5, Section 1.6 and Section 2.2(b)(i), and Section 8.2(b) as and when such amounts are due and payable hereunder ("**Purchaser Obligations**"). This guarantee shall be a guarantee of payment and not of collection. Purchaser Parent hereby agrees that its obligations hereunder shall not be discharged or otherwise affected by (i) any change herein or amendment hereto, (ii) any failure by any member of the Seller Group to give notice of default to Purchaser Parent or any other notice to Purchaser Parent, (iii) the occurrence or continuance of any event of bankruptcy, reorganization or insolvency with respect to Purchaser, or the dissolution, liquidation or winding up of Purchaser Parent or Purchaser, or (iv) any other circumstances which may otherwise constitute a legal or equitable discharge or defense of a guarantor. Purchaser Parent covenants that this guarantee made under this Section 8.19 will not be discharged except upon the earlier of (a) the complete performance of all Purchaser Obligations and (b) the termination of this Agreement. Any Seller may obtain recourse against Purchaser Parent for the payment and performance of any Purchaser Obligations prior to, concurrently with or after any Action to enforce

such Purchaser Obligations. In no event shall any Seller be deemed to have elected any remedy that precludes or impairs its ability to proceed against Purchaser Parent. Purchaser Parent hereby waives (i) protest, presentment, demand for payment and notice of default or nonpayment and (ii) any right to require any Seller to proceed first against Purchaser. Notwithstanding anything else in this Agreement to the contrary, Purchaser Parent may not assign or transfer its obligations hereunder to any other Person without the prior written consent of a Seller, which consent may not be unreasonably withheld, conditioned or delayed.

ARTICLE IX

DEFINITIONS

As used herein, the terms below shall have the following meanings:

"**Accounting Principles**" means GAAP, as applied consistently with the Financial Statements.

"**Accounts Receivable**" means (a) all trade accounts receivable, and other similar rights to payment, of any member of the Seller Group and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered by or on behalf of any member of the Seller Group, (b) all other accounts or notes receivable by any member of the Seller Group and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing.

"**Accounts Receivable Schedule**" means, as of a given point in time, a schedule setting forth a detailed list of all Qualifying Accounts Receivable outstanding and the value thereof as of such time, determined in accordance with the Accounting Principles, including, with respect to each individual payor, the payor name, invoice number, invoice date, amount due in respect of each such invoice and the age of each such receivable, each as of such time.

"**Acorda Ireland**" is defined in Section 1.1(s).

"**Acorda Ireland Tax Amount**" means any unpaid Taxes of Acorda Ireland relating or attributable to any Pre-Closing Tax Period (such amount not to be less than zero and regardless of whether a Tax Return is required to be filed or such Taxes to be paid before the Closing Date) and, in the case of any Straddle Period, determined in accordance with Section 8.2(b) and, in each case, taking into account estimated Tax payments and overpaid Tax payments carried forward, in each case to the extent available in such taxable period to offset such Taxes.

"**Acquired Assets**" is defined in Section 1.1.

"**Acquired Books and Records**" is defined in Section 1.1(h).

"**Acquired Inventory**" is defined in Section 1.1(e).

"**Acquired Permits**" is defined in Section 1.1(l).

"**Acquired Promotional Materials**" is defined in Section 1.1(k).

"**Acquired Regulatory Authorizations**" is defined in Section 1.1(j).

"**Acquisition**" is defined in the Recitals.

"**Action**" means any claim, hearing, charge, action, decision, order, suit, arbitration, litigation, mediation, grievance, audit, examination, inquiry, proceeding or investigation by or before any Governmental Entity or arbitrator.

"**Additional Assigned Contracts**" is defined in Section 1.5(h).

"**Affiliate**" of a specified Person means any other Person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. For the purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

"**Agreement**" has the meaning set forth in the Preamble and shall include the Exhibits and Schedules annexed hereto or referred to herein.

"**Alkermes Dispute**" means any past, current, or future dispute or Action between Alkermes PLC and Seller Parent or any other Seller Group member arising under or primarily relating to the Amended and Restated License Agreement by and between Elan Corporation, PLC and Acorda Therapeutics, Inc. dated September 26, 2003, the Supply Agreement by and between Elan Corporation, PLC and Acorda Therapeutics, Inc. dated September 26, 2003, or U.S. Patent No. 5,540,938, including the arbitration before the American Arbitration Association's International Centre for Dispute Resolution, ICDR Arbitration No. 01-20-0010-8421, and any litigation in court relating to that arbitration, including the case captioned *Acorda Therapeutics, Inc. v. Alkermes PLC*, No. 23 CIV. 223 (NRB) (S.D.N.Y. filed Jan. 10, 2023), and any appeals or proceedings arising from that case, including Acorda Therapeutics, Inc. v. Alkermes plc, No. 23-2374 (Fed. Cir. filed Sept. 11, 2023).

"**Allocation**" is defined in Section 1.8.

"**Alkermes Royalty Payable**" means the amount accrued as of the Calculation Time by Seller Parent in respect of any royalty or similar payment payable by a member of the Seller Group pursuant to the Asset Purchase and License Agreement dated December 27, 2010 by and between Civitas Therapeutics, Inc. and Alkermes, Inc., as amended by Amendment No. 1, dated December 9, 2011 and Amendment No. 2, dated December 19, 2014, as determined in accordance with the Accounting Principles.

"**Alternative Transaction**" means (a) a Restructuring Transaction or (b) any sale, assignment, lease, transfer, license, relinquishment of rights to or other disposition of or settlement of claims with respect to all or any material portion of the Acquired Assets to or with any Person (or group of Persons), whether in one transaction or a series of transactions, in each case other than to Purchaser or an Affiliate of Purchaser.

"**Alternative Stalking Horse Transaction**" means any agreement or understanding with respect to any sale, transfer or disposition whether by means of an asset sale or otherwise, of any of the Acquired Assets with a replacement or alternative stalking horse bidder to Purchaser.

"**Ancillary Documents**" means the Bill of Sale & Assignment and Assumption Agreement, Intellectual Property Assignment Agreements, Escrow Agreement, Stock Transfer Form and each other agreement, document or instrument (other than this Agreement) executed and delivered by the parties in connection with the consummation of the Transactions.

"**ANDA**" is defined in Section 3.10(b).

"**Anti-Corruption Law**" means any Law related to combating bribery and corruption, including the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, the UN Convention Against Corruption and any implementing legislation promulgated pursuant to such Conventions, the Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010.

"**Antitrust Laws**" means any applicable supranational, national, federal, state, county, local or foreign antitrust, competition or trade regulation Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition through merger or acquisition, including the HSR Act, the Sherman Act, the Clayton Act and the Federal Trade Commission Act, in each case, as amended, and other similar antitrust, competition or trade regulation Laws of any jurisdiction other than the United States.

"**ARCUS Platform**" means Sellers' dry-powder pulmonary delivery system designed to deliver medications for both pulmonary and systemic indications, including Inbrija®, through inhalation, including all Seller Intellectual Property related thereto.

"**Assigned Contracts**" is defined in Section 1.1(d).

"**Assigned Contracts Schedule**" is defined in Section 1.1(d)

"**Assumed Liabilities**" is defined in Section 1.3.

"**Auction**" is defined in the Bidding Procedures.

"**Backup Bidder**" is defined in the Bidding Procedures.

"**Baker McKenzie**" is defined in Section 8.18(a).

"**Bankruptcy Code**" is defined in the Recitals.

"**Bankruptcy Court**" is defined in the Recitals.

"**Bidding Procedures**" means the bidding procedures substantially in the form attached to the Bidding Procedures Order in Exhibit C, with such changes as are reasonably acceptable to

Purchaser and Sellers, to be approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

"**Bidding Procedures Order**" means the Order of the Bankruptcy Court, pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, that has not been stayed, vacated or stayed pending appeal: (a) designating Purchaser as the "stalking horse bidder" for the Acquired Assets pursuant to the terms of this Agreement; (b) authorizing and scheduling the Auction; (c) approving procedures for the submission of Qualified Bids; (d) in the case of Qualified Bids, approving the Minimum Overbid Amount of at least the sum of (i) the Breakup Fee, (ii) the Expense Reimbursement Amount and (iii) $2,500,000; (e) in the case of any subsequent Qualified Bids, approving the incremental Overbid amounts consisting of the Minimum Overbid Amount, and made in increments of at least $1,000,000; (f) approving the Breakup Fee and the Expense Reimbursement Amount; (g) approving Purchaser's ability to credit bid the Breakup Fee and Expense Reimbursement Amount; (h) prohibiting the holders of notes from submitting a credit bid; (i) scheduling a hearing to consider approval of such sale; and (i) approving the form and manner of notice of the Auction procedures and Sale Hearing, which Order shall be substantially in the form attached hereto as Exhibit C, with such changes as are reasonably acceptable to Purchaser and Sellers.

"**Bill of Sale & Assignment and Assumption Agreement**" is defined in Section 2.2(a)(i).

"**BIS**" means the Directorate of Defense Trade Controls, Bureau of Industry and Security of the U.S. Department of Commerce.

"**Biogen Agreement**" means the Collaboration and License Agreement, by and between Seller Parent and Biogen Idec International GmbH ("**Biogen**"), dated June 30, 2009, as amended and modified by (a) Addendum #1, dated May 21, 2010 (as amended by Amendment #1, dated May 24, 2011), (b) Addendum #2, dated March 29, 2012, (c) Addendum #3, dated February 14, 2013, and (d) Addendum #4, dated October 28, 2012.

"**Biogen Royalty Receivable**" means the amount accrued as of the Calculation Time by Seller Parent in respect of any royalty or similar payment that might be payable to a member of the Seller Group pursuant to the Biogen Agreement, as determined in accordance with the Accounting Principles.

"**Biogen Transition**" means the transition of the title, rights, assets, including the regulatory authorizations, and rights obligations under the Biogen Agreement from Biogen to Sellers or its Affiliates, successors or assigns in accordance with the Biogen Agreement.

"**Books and Records**" means all documents of, or otherwise in the possession, custody or control or used by, the Seller Group to the extent related to the Business, the Products, the other Acquired Assets or the Assumed Liabilities, including all files, instruments, books, microfilms, videos, photographs, letters, budgets, forecasts, ledgers, title policies, lists of past, present or prospective customers, supplier lists, consulting deliverables, technical documentation, documentation containing Know-How, user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), data, reports (including environmental reports and assessments), plans, mailing lists, price lists, marketing information and procedures,

sales, advertising materials, equipment records, warranty information, drawings, plans and specifications, records of operations, standard forms of documents, copies of Tax Returns and copies of related books, records and workpapers related to Taxes, manuals of operations or business procedures and other similar procedures (including all discs, tapes and other media-storage data containing such information), in each case whether or not in electronic form, and other related literature, publications and materials, including consumer, customer and end-user information.

"**Breakup Fee**" is defined in Section 7.2(b).

"**Business**" means (a) the Exploitation of Products by or on behalf of the Seller Group anywhere in the world and (b) the use or practice of the ARCUS Platform in the Exploitation of Products incorporating, delivered by or otherwise utilizing the ARCUS Platform.

"**Business Contractor**" is defined in Section 3.16(b).

"**Business Contractor Census**" is defined in Section 3.16(b).

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banks in New York City, New York, or Frankfurt, Germany, are authorized or obligated by Law to close.

"**Business Employee**" is defined in Section 3.16(a).

"**Business Employee Census"** is defined in Section 3.16(a).

"**Calculation Time**" means 12:01 a.m. (Eastern time) on the Closing Date.

"**Cash**" means all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and marketable securities, and any bank accounts and lockbox arrangements of any member of the Seller Group as of the Closing.

"**Chapter 11 Cases**" is defined in the Recitals.

"**Civitas APLA**" means that certain Asset Purchase and License Agreement, dated as of December 27, 2010, by and between Civitas Therapeutics, Inc. (formerly known as Corregidor Therapeutics, Inc.) and Alkermes, Inc., as amended by Amendment No. 1, dated December 9, 2011 and Amendment No. 2, dated December 19, 2014.

"**Closing**" is defined in Section 2.1.

"**Closing Consideration**" is defined in Section 1.6(a).

"**Closing Date**" is defined in Section 2.1.

"**CMO Payables**" means all accounts payable, and other similar obligations to pay, of any member of the Seller Group accrued as of the Calculation Time in respect of the purchase by any member of the Seller Group of Inventory, determined in each case in accordance with the Accounting Principles, but excluding any such accounts payable that are then overdue.

"**CMO Payables Schedule**" means, as of a given point in time, a schedule setting forth a reasonably detailed list of the CMO Payables as of such time.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Competing Bid**" means any bid contemplating a Competing Transaction.

"**Competing Transaction**" means the sale, transfer or other disposition, directly or indirectly, including through an asset sale, share sale, merger, amalgamation, or other similar transaction, including a plan of reorganization approved by the Bankruptcy Court, or resulting from the Auction, of a material portion of the Acquired Assets.

"**Competing Business**" is defined in Section 5.19(a).

"**Compound**" means each of levodopa and dalfampridine/fampridine (also known as 4-aminopyridine).

"**Confidential Disclosure Agreement**" means the Confidential Disclosure Agreement, between Acorda Therapeutics, Inc. and Merz Therapeutics GmbH, a *Gesellschaft mit beschränkter Haftung* organized under the laws of the Federal Republic of Germany and an Affiliate of Purchaser, dated June 22, 2023.

"**Confidential Information**" is defined in Section 5.12(c).

"**Contract**" means any agreement, contract, subcontract, lease, sublease, instrument, permit, concession, franchise, arrangement, understanding, note, option, bond, mortgage, indenture, trust document, loan or credit agreement, license, sublicense, insurance policy or other legally binding commitment or instrument.

"**Copyrights**" means all rights associated with works of authorship, including protectable subject matter under U.S. copyright Law (or foreign equivalent), copyrights and any other rights in works of authorship (including Software) and, exclusive exploitation rights, moral rights, any related rights of authors and any other rights in copyrightable works (including Software), copyright registrations, or any application therefor and all extensions, restorations, reversions and renewals of any of the foregoing.

"**Cure Costs**" is defined in Section 1.5(a).

"**Current Products**" means the pharmaceutical products marketed as of the date hereof under the brand names Inbrija (including inhalers), Ampyra, and Fampyra ("**Fampyra**").

"**Current Representation**" is defined in Section 8.18(a).

"**Data**" means all technical or scientific Know-How, trade secrets, methods, processes, formulae, designs, specifications and data, including biological, chemical, pharmacological, toxicological, pre-clinical, clinical, safety, manufacturing and quality control data and assays and all information supporting or otherwise included in inventions, including datasets, notes, lab notebooks, and all other information, documents and files; in each case, whether or not

confidential, proprietary, patented or patentable, in any form, (a) generated or developed by or on behalf of any member of the Seller Group or any collaborator, co-developer or other Person to which such member or such collaborator or co-developer has delegated responsibility or has otherwise engaged to perform trials or studies (whether clinical or otherwise) or CMC related activities (including supply of the Products for use in clinical trials) or related services, including any clinical trial databases and other data and reports arising out of the conduct of clinical trials or other clinical activities, any clinical trial agreements, vendor agreements or contract research organization agreements related to the conduct of the clinical trials or clinical activities, including any and all research result and (b) either owned or controlled by any such Seller as of the date hereof, or upon passage of time, or occurrence of a particular event, would become owned or controlled by any such Seller, in each case Primarily Related to the Business or Product.

"**Deal Communications**" is defined in Section 8.18(b).

"**Deposit Funds**" is defined in Section 1.6(b).

"**Designated Agreement**" is defined in Section 1.5(f).

"**Designated Purchaser**" is defined in Section 8.7.

"**Designation Deadline**" is defined in Section 1.5(h).

"**DOJ**" is defined in Section 5.4(b).

"**Effect**" means any change, effect, development, event or occurrence.

"**EMA**" means the European Medicines Agency.

"**Encumbrance**" means any lien, pledge, hypothecation, mortgage, deed of trust, security interest, encumbrance, covenant, charge, claim, option, right of first refusal, easement, right of way, encroachment, occupancy right, preemptive right, community property interest or restriction of any nature, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases, and whether voluntarily incurred or arising by operation of Law.

"**Enforceability Exceptions**" is defined in Section 3.2.

"**Environmental Laws**" means any and all applicable Laws which (a) regulate or relate to the protection or clean-up of the environment, the use, treatment, storage, transportation, handling, disposal or release of Hazardous Substances, the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources, or the health and safety of Persons or property, including protection of the health and safety of employees or (b) impose Liability or responsibility with respect to any of the foregoing, including the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), or any other Law of similar effect.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated and rulings issued thereunder.

"**ERISA Affiliate**" means, with respect to any entity, trade or business, any other entity, trade or business that is a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes the first entity, trade or business, or that is a member of the same "controlled group" as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

"**Escrow Agent**" means Ankura Trust Company, LLC.

"**Escrow Agreement**" means the escrow agreement dated March 28, 2024 among Purchaser, the Sellers and Ankura Trust Company, LLC.

"**Estimated Accounts Receivable Value**" is defined in Section 1.6(c).

"**Estimated Closing Consideration**" is defined in Section 1.6(c).

"**Estimated Inventory Value**" is defined in Section 1.6(c).

"**Excluded Assets**" is defined in Section 1.2.

"**Excluded Liabilities**" is defined in Section 1.4.

"**Excluded Taxes**" means any (a) Taxes imposed on or with respect to Sellers or any of their Affiliates for any taxable period; (b) Taxes imposed on or with respect to the Acquired Assets, the Assumed Liabilities or the Business for any Pre-Closing Tax Period; (c) Taxes imposed on or payable by Acorda Ireland for any Pre-Closing Tax Period; (d) Taxes imposed on or with respect to the Excluded Assets or the Excluded Liabilities for any taxable period; (e) Liability of Purchaser or any of its Affiliates for any Taxes described in clauses (a) through (d) of this definition of Excluded Taxes as a transferee or successor to Sellers or their Affiliates; and (f) Periodic Taxes for which any Seller is responsible pursuant to Section 8.2(b). For purposes of this Agreement, in the case of any Straddle Period, (i) Periodic Taxes shall be allocated between the Pre-Closing Tax Period and the Post-Closing Tax Period in the manner set forth in Section 8.2(b) and (ii) Taxes (other than Periodic Taxes) relating to the Acquired Assets, the Assumed Liabilities or the Business for the Pre-Closing Tax Period shall be computed as if such taxable period ended as of the closing of business on the Closing Date.

"**Expense Reimbursement Amount**" means the dollar amount equal to the lesser of (a) $2,775,000 and (b) the aggregate amount of all reasonable and documented out-of-pocket costs, expenses and fees incurred by Purchaser and its Affiliates and owed to third parties unaffiliated with Purchaser or its Affiliates, in connection with evaluating, negotiating, documenting, performing (including, for the avoidance of doubt, making any filings or submissions in furtherance of) the Transactions and the Ancillary Documents, including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by Purchaser or its Affiliates in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the Transactions, including the Chapter 11 Cases and other judicial and regulatory proceedings related to such transactions, which amount shall constitute a Superpriority Claim and shall be payable as set forth in Section 7.2(c).

"**Exploit**" and "**Exploitation**" means to make, manufacture, import, export, use, sell, offer for sale, research, develop, conduct regulatory activities, commercialize, register, hold or keep (whether for disposal or otherwise), transport, distribute, promote, market, or otherwise dispose of, or have done any or all of the foregoing.

"**Export Controls**" means all applicable export and reexport control Laws and regulations, including the Export Administration Regulations maintained by BIS and the International Traffic in Arms Regulations maintained by the U.S. Department of State and any applicable anti-boycott compliance regulations.

"**FDA**" means the United States Food and Drug Administration.

"**FDA Transfer Letters**" means the Purchaser FDA Transfer Letters and the Seller FDA Transfer Letters.

"**FDCA**" means the U.S. Food, Drug, and Cosmetic Act of 1938, as amended.

"**Fee Event**" is defined in Section 7.2(b).

"**Financial Statements**" is defined in Section 3.5(a).

"**FTC**" is defined in Section 5.4(b).

"**GAAP**" means United States generally accepted accounting principles, consistently applied.

"**General Unsecured Claim**" means any claim (as defined in the Bankruptcy Code) against a Seller as of the Petition Date that is neither secured by collateral nor entitled to priority under the Bankruptcy Code.

"**Good Clinical Practice**" means standards, practices and procedures for the clinical development and research of, and clinical trials for pharmaceuticals (including all applicable Laws and requirements relating to protection of human subjects and the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical trials), as set forth in the FDCA and applicable regulations promulgated thereunder (including, for example, 21 C.F.R. Parts 50, 54, and 56), as amended from time to time, and such standards of good clinical practice (including all applicable requirements relating to protection of human subjects) as are promulgated, enforced, endorsed or otherwise required by other organizations or Governmental Entities in any other countries, including the European Union's Commission Directive 2005/28/EC, the corresponding national law of the European Union's Member States and applicable regulations or guidelines from the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use, in which Products are sold or intended to be sold, to the extent such standards are not less stringent than in the United States.

"**Good Laboratory Practice**" means standards, practices and procedures for good laboratory practices by pharmaceutical laboratories, as set forth in the FDCA and applicable regulations promulgated thereunder, as amended from time to time, and such standards of good laboratory practice as are promulgated, enforced, endorsed or otherwise required by other

organizations or Governmental Entities in any other countries, including the European Union's Directive 2004/10/EC, the corresponding national law of the European Union's Member States and applicable regulations or guidelines from the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use in which the Products are sold or intended to be sold, to the extent such standards are not less stringent than in the United States.

"**Good Manufacturing Practice**" means standards, practices and procedures for the manufacture, processing, packaging, testing, transportation, handling and holding of drug products, as set forth in the FDCA and applicable regulations promulgated thereunder, as amended from time to time, and such standards of good manufacturing practice as are promulgated, enforced, endorsed or otherwise required by other organizations or Governmental Entities in any other countries, including the European Union's Commission Directive 2003/94/EC, the corresponding national law of the European Union's Member States applicable regulations or guidelines from the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use in which the Products are sold or intended to be sold, to the extent such standards are not less stringent than in the United States.

"**Governmental Entity**" means (a) any supranational, national, federal, state, county, municipal, local, or foreign government or any entity exercising executive, legislative, judicial, regulatory, taxing, or administrative functions of or pertaining to government, (b) any public international governmental organization or (c) any agency, division, bureau, department, commission, board, arbitral or other tribunal, court, branch or other political subdivision of any government, entity or organization described in the foregoing Clauses (a) or (b) of this definition (including patent and trademark offices and self-regulatory organizations).

"**GTN Liabilities**" means all Liabilities of the Seller Group accrued or payable as of the Calculation Time for Rebates, price reductions (including prompt pay discounts) and other chargebacks and product returns from customers, patient savings program costs including co-pay mitigation costs and fees, price reductions (including prompt pay discounts) and other chargebacks and product returns from customers, patient savings program costs including co-pay mitigation costs and fees, and outstanding fees for services owed or owing to customers, including specialty pharmacies, distributors, pharmacy benefit managers, co-pay mitigation service providers and managed services operations, in respect of the sale of any Product and related fees, determined in accordance with the Accounting Principles.

"**GTN Liabilities Schedule**" means, as of a given point in time, a schedule setting forth a reasonably detailed list of the GTN Liabilities as of such time, determined in accordance with the Accounting Principles.

"**Hazardous Substance**" means any pollutant, chemical, substance and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, chemical compound, hazardous substance, material or waste, whether solid, liquid or gas, that is subject to regulation, control or remediation under any Environmental Laws, including any quantity of petroleum product or byproduct, solvent, flammable or explosive material, radioactive material, asbestos, lead paint, polychlorinated biphenyls (or PCBs), dioxins, dibenzofurans, heavy metals and radon gas.

"**Health Care Submissions**" is defined in Section 3.18(a).

"**Health Laws**" means any healthcare Law of any Governmental Entity (including multi-country organizations) applicable to Sellers and the Business, including those relating to the safety, efficacy and quality of medicines, drug products, biological products or pharmaceuticals by regulating the research, development, manufacturing and distribution of such products, including Laws relating to Good Laboratory Practice, Good Clinical Practice, investigational use, product marketing authorization, manufacturing facilities compliance, registration and approval, Good Manufacturing Practice, manufacturer, sponsor or applicant marketing authorization, registration or licensing, labeling, advertising, promotional practices, safety surveillance, record keeping and filing of required reports and their respective counterparts promulgated by the FDA or Regulatory Authorities in countries outside the United States and shall also include (a) the FDCA and the regulations promulgated and guidance issued thereunder, (b) the Public Health Service Act, and the regulations promulgated and guidance issued thereunder, (c) all federal and state fraud and abuse Laws, including the Federal Anti-Kickback Statute, the civil False Claims Act, the administrative False Claims Law, the Anti-Inducement Law, the exclusion Laws, and the regulations promulgated pursuant to such statutes, (d) the Health Insurance Portability and Accountability Act of 1996, the regulations promulgated thereunder and comparable state Laws, (e) the Controlled Substances Act, (f) Titles XVIII and XIX of the Social Security Act and the regulations promulgated thereunder, (g) the Clinical Laboratories Improvement Amendments and (h) all applicable Laws, rules and regulations, ordinances, judgments, decrees, orders, writs and injunctions administered by Regulatory Authorities, each of Clauses (a) through (h) as may be amended from time to time.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented by the Health Information Technology for Clinical Health Act of the American Recovery and Reinvestment Act of 2009.

"**HSR Act**" is defined in Section 5.4(a).

"**Import Restrictions**" means all applicable U.S. and foreign import Laws, including Title 19 of the U.S. Code and Title 19 of the Code of Federal Regulations.

"**IND**" means an Investigational New Drug Application submitted to the FDA pursuant to 21 C.F.R. Part 312 (as amended from time to time) with respect to the Products, or the equivalent application or filing submitted to any equivalent agency or Governmental Entity outside the United States of America, and all supplements, amendments, variations, extensions and renewals thereof that may be submitted with respect to the foregoing.

"**Indebtedness**" means, with respect to any Person, (a) all obligations for borrowed money, (b) all obligations evidenced by bonds, debentures, notes or similar instruments, (c) all Indebtedness of others secured by any Encumbrance on owned or acquired property of the reference Person, whether or not the Indebtedness secured thereby has been assumed, (d) all guarantees (or any other arrangement having the economic effect of a guarantee) of Indebtedness of others, (e) all capital lease obligations and all synthetic lease obligations, (f) all obligations, contingent or otherwise, of such Person as an account party in respect of financial guaranties, letters of credit, letters of guaranty, surety bonds and other similar instruments, (g) all

securitization transactions, (h) all obligations representing the deferred and unpaid purchase price of property (other than trade payables incurred in the Ordinary Course of Business), (i) all obligations, contingent or otherwise, in respect of bankers' acceptances and (j) net cash payment obligations of such Person under swaps, options, derivatives and other hedging agreements or arrangements that will be payable upon termination thereof (assuming they were terminated on the date of determination).

"**Independent Accountant**" means a national or international accounting firm, independent of Purchaser or Sellers, selected by Purchaser and reasonably acceptable to Sellers.

"**Information Privacy and Security Laws**" means any applicable Laws issued by any Governmental Entity and all guidance issued by any Governmental Entity thereunder, relating to: (a) the privacy, protection, or security of Protected Information, including as relevant to the collection, storage, processing, transfer, sharing and destruction of Protected Information or (b) requirements for websites and mobile applications, online behavioral advertising, call or electronic monitoring or recording, or any outbound communications, including outbound calling and text messaging, telemarketing and email marketing. Without limiting the foregoing, "Information Privacy and Security Laws" includes the Federal Trade Commission Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, the Children's Online Privacy Protection Act, the Computer Fraud and Abuse Act, the Electronic Communications Privacy Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Reporting Act, HIPAA, the Gramm-Leach-Bliley Act, state data security Laws, state social security number protection Laws, state data breach notification Laws, the California Consumer Privacy Act as amended and other state consumer protection Laws, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 as amended (and any European Union member states' Laws and regulations implementing them), the European General Data Protection Regulation, the Canadian Personal Information Protection and Electronic Documents Act, India's Information Technology Act, Japan's Act on the Protection of Personal Information, Hong Kong's Personal Data (Privacy) Ordinance, and Australia's Privacy Amendment (Private Sector) Act 2000 as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012, and other applicable data protection Laws of the jurisdictions in which Business is operated.

"**Intellectual Property**" means all: (a) Patents; (b) Trademarks; (c) inventions and designs; (d) Know-How; (e) Copyrights; (f) all industrial designs and any registrations and applications therefor; (g) Internet Properties; (h) all other similar or equivalent intellectual property or proprietary rights anywhere in the world; and (i) rights in or relating to applications for, registrations of, rights of priority in, and divisions, continuations, continuations-in-part, reissuances, renewals, extensions, restorations and reversions of the any of the foregoing (as applicable) in Clauses (a) through (h) above.

"**Intellectual Property Assignment Agreements**" is defined in Section 2.2(a)(i).

"**Internet Properties**" means any and all IP, internet or global computing network addresses, sites and locations, including domain names, top-level domains and country code top-level domains, sub-domains, uniform resource locators and other similar names and locators and

telephone numbers, and all goodwill associated with, and all rights related to or otherwise associated with the foregoing.

"**Inventory**" means all inventories, including all raw materials, active pharmaceutical ingredients, excipients, work-in-process, semi-finished and finished goods, inhalers, samples (including samples held by sales representatives), components, packaging materials, drug substances and drug products, of any Product.

"**Inventory Schedule**" means, as of a given point in time, a schedule setting forth a detailed list of all Qualifying Inventory and the value thereof as of such time, determined in accordance with the Accounting Principles, including the quantity, batch, expiry dating, book value, location, original shelf-life and remaining shelf-life, as of such time.

"**IP Contracts**" is defined in Section 3.10(h).

"**Know-How**" means any non-public, proprietary or other information, whether tangible or intangible and regardless of the form or medium, including trade secrets, knowledge, experience, know-how, technology, information, and data, including formulas and formulations, processes, practices, techniques, inventions, discoveries, ideas, developments, test procedures, results, concepts, methods, methodologies, protocols, designs, improvements, models, specifications, materials, compositions of matter of any type of kind, assays, screens, Software, algorithms, databases, database rights, chemistry, manufacturing and control (CMC) information and data, lab notebooks, stability, technology and test data and results (including pharmacological, biological, chemical, biochemical, toxicological, pre-clinical and clinical), analytical and quality control information, data, results and descriptions, studies and procedures, development, manufacturing and commercialization costs, information contained in submissions to and information from Regulatory Authorities and other reports, together with all documents and files embodying the foregoing.

"**Knowledge of Sellers**" means the actual knowledge of Ron Cohen, Michael Gesser and Kerry Clem (or any successor to such Person's role and responsibilities, if such Person is no longer serving in his or her current role on behalf of the Seller Group at the relevant time), in each case, after the reasonable due inquiry of such employee with the primary responsibility for the matter in question.

"**Law**" means any law (including common law), statute, constitution, requirement, code, rule, regulation, order, ordinance, treaty, judgment or decree or other pronouncement of any Governmental Entity.

"**Leased Real Property**" is defined in Section 3.12(b).

"**Leases**" is defined in Section 3.12(b).

"**Liability**" means any liability, debt, guarantee, claim, demand, commitment or obligation (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, known or unknown, fixed or contingent, asserted or unasserted, or due or to become due) of every kind and description, and of any nature, and whether based in common law or statute or arising under written Contract or otherwise, including all costs and expenses related thereto.

"**MAA**" means an application for the authorization to market a compound or product in any country or group of countries, as defined in the applicable Law and filed with the Regulatory Authority of such given country or group of countries, including an NDA, and all additions, amendments, supplements, extensions and modifications thereto.

"**Material Adverse Effect**" means any Effect that, individually or in the aggregate with other Effects, has had or would reasonably be expected to have, a material adverse effect on the assets, condition (financial or otherwise) or results of operations of the Business, the Acquired Assets and the Assumed Liabilities, taken as a whole; *provided*, *however*, that the fact that the Chapter 11 Cases have been filed or that, accordingly, Sellers have been conducting the Business in the Ordinary Course of Business as the same is being conducted in the Chapter 11 Cases, shall not, together with the Effects resulting or arising therefrom, in and of themselves, be deemed to constitute a Material Adverse Effect or be taken into account in determining whether Material Adverse Effect exists or has occurred; *provided*, *further*, that no Effects resulting or arising from the following shall, individually or in the aggregate, be deemed to constitute a Material Adverse Effect or shall be taken into account when determining whether a Material Adverse Effect exists or has occurred: (a) changes in general economic, financial or securities markets or geopolitical conditions; (b) general changes or developments in regulatory or macroeconomic conditions or the industries and markets in which the Business operates or the Acquired Assets are operated; (c) the announcement or pendency of this Agreement, the Chapter 11 Cases or the Transactions (including in any case under this clause (c), (i) any communication by Purchaser or Purchaser Parent regarding their plan or intentions with respect to the conduct of the Business or relating to the Transactions or (ii) the threatened or actual impact on relationships of any member of the Seller Group or of the Business with customers, vendors, suppliers, distributors, manufacturers, payors, creditors, licensors, licensees, landlords, or employees (including the termination, suspension, modification, or reduction of such relationships) to the extent resulting therefrom); (d) the announcement of the identity of Purchaser or Purchaser Parent; (e) changes in any applicable Laws or applicable accounting regulations or principles or the enforcement or interpretation thereof; (f) any action which is expressly requested in writing by Purchaser or its Affiliates with respect to the Transactions or with respect to the Business; (g) any action taken, or failed to be taken, by Sellers at the request of Purchaser or otherwise as required by the terms of this Agreement; (h) any outbreak or escalation of hostilities or war or any act of terrorism or natural disaster or act of God, including any changes in climate, pandemic, epidemic, social unrest, earthquakes, hurricanes, tornadoes, fires, or cybersecurity incident; (i) the failure of the Product or Business to achieve any financial projections, predictions, forecasts, operating statistics or estimates of revenues for any period (provided, that the underlying causes of such failure shall not be excluded unless otherwise excluded pursuant to this definition); (j) any objections made in the Bankruptcy Court to this Agreement, the Transactions, the Sale Order or the reorganization, any orders of the Bankruptcy Court and any actions or omissions of any Seller in compliance with any order of the Bankruptcy Court and the assumption or rejection of any Assigned Contract; and (k) any action required or prohibited by the commencement of the Chapter 11 Cases; *provided*, *further*, that the exceptions set forth in clauses (a), (b), (e) and (h) above shall only apply to the extent that such Effect is not materially and disproportionately adverse to the Business, taken as a whole, as compared to other businesses of similar size that operate in the industries and markets in which the Seller Group operates.

"**Material Contracts**" is defined in Section 3.13(a).

"**Material Customer**" is defined in Section 3.20.

"**Material Supplier**" is defined in Section 3.20.

"**Minimum Overbid Amount**" is defined in the Bidding Procedures Order.

"**Note Holder**" means any holder of the Senior Secured Notes.

"**NDA**" means a New Drug Application submitted to the FDA pursuant to 21 C.F.R. Part 314 (as amended from time to time), or equivalent application or filing submitted to any equivalent agency or Governmental Entity outside the United States (including any supranational agency such as the EMA), and all amendments, supplements, variations and extensions which may be submitted thereto, including all documents, data and other information concerning the applicable drugs which are necessary for FDA approval to market such product in the United States or approval by such Governmental Entity in such country or jurisdiction outside of the United States.

"**Net Working Capital**" means an amount equal to the value of (a) any Qualifying Inventory, *plus* (b) any Qualifying Accounts Receivable, *plus* (c) Specified Pre-Paid Expenses, *plus* (d) the Biogen Royalty Receivable, *minus* (e) any CMO Payables, *minus* (f) the Alkermes Royalty Payable, *minus* (g) the Acorda Ireland Tax Amount, *minus* (h) any GTN Liabilities, with each of the preceding (a) through (h) calculated in accordance with the Accounting Principles and as of the Calculation Time. An example calculation of the Net Working Capital is attached hereto as Schedule 1.6(d)(i), which together with the Working Capital Schedules that have been made available to Purchaser via email, has been provided solely for illustrative purposes (the foregoing example calculation, together with the foregoing example Working Capital Schedules "**Sample NWC Calculation**").

"**Net Working Capital Adjustment**" means (x) in the event that the Net Working Capital differs from the Target Net Working Capital by more than $500,000 ("**NWC Collar Amount**"), an amount (which may be expressed as a negative number) equal to the Net Working Capital *minus* the Target Net Working Capital and (y) otherwise, $0.

"**Non-Assignable Assets**" is defined in Section 1.5(d).

"**Non-Competition Period**" is defined in Section 5.19(a).

"**Non-Solicitation Period**" is defined in Section 5.19(b).

"**OFAC**" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"**Order**" means any order, injunction, judgment, decree, ruling, writ, assessment or award of a Governmental Entity.

"**Ordinary Course Licenses**" means shrink wrap or click through licenses to generally available third-party technology or Software on standard terms that have not been customized for Sellers for annual consideration of less than $200,000.

"**Ordinary Course of Business**" means the ordinary course of day-to-day operations of the Business, as conducted by Sellers consistent with past custom and practice, except for compliance with legal requirements in connection with the Chapter 11 Cases (including conduct of the Auction) and otherwise taking into account the facts and circumstances that customarily and reasonably result from the events leading up to the commencement of the Chapter 11 Cases or thereafter that are the direct consequence of the Chapter 11 Cases (including non-payment of any General Unsecured Claim).

"**Outside Date**" is defined in Section 7.1.

"**Overbid**" is defined in the Bidding Procedures.

"**party**" and "**parties**" are defined in the Preamble.

"**Patents**" means patents and patent applications, including divisionals, continuations, continuations-in-part, conversions, substitutions, additions, registrations, renewals, extensions, restorations, supplementary protection certificates, confirmation, reissues, re-examinations, and revalidations thereof and invention disclosures therefor, and including any equivalents of the foregoing in any jurisdiction.

"**Paying Party**" is defined in Section 8.2(c).

"**Pearl River Facility**" means the approximately 20,944 square foot office premises located at Two Blue Hill Plaza, Pearl River, NY.

"**Periodic Taxes**" is defined in Section 8.2(b).

"**Permits**" means all consents, approvals, authorizations, certificates, filings, notices, permits, concessions, registrations, franchises, licenses or rights of, or issued by, any Regulatory Authority or other Governmental Entity, but in any event excluding Regulatory Authorizations.

"**Permitted Post-Closing Encumbrances**" means any Permitted Pre-Closing Encumbrance that is not extinguished by the Sale Order under applicable Law, it being understood that the Sale Order shall extinguish Encumbrances to the maximum extent permissible under applicable Law.

"**Permitted Pre-Closing Encumbrances**" means (a) liens for Taxes not yet due and payable or being contested in good faith by appropriate proceedings and for which adequate reserves have been made in accordance with GAAP, (b) statutory liens and rights of setoff of carriers, shippers, warehousemen, mechanics, repairmen, workmen, suppliers and materialmen, in each case, incurred in the Ordinary Course of Business for amounts not yet overdue, (c) restrictions or requirements set forth in any Permits relating to the Business the terms and condition of which have not been violated by the applicable Seller, (d) any zoning, building code, land use, planning, entitlement or similar Law or regulations imposed on real property by any Governmental Entity that is not violated by the current use and operation of the Leased Real Property and do not, individually or in the aggregate, materially detract from the value of the affected property or interfere with the ordinary conduct of the Business, (e) any Encumbrances listed on Schedule 3.6(a), (f) any Encumbrances that will be discharged or released either prior to, or substantially

simultaneous with Closing, (g) any Encumbrances created by Purchaser, (h) any other material Encumbrances, imperfections of title and other similar matters that do not, individually or in the aggregate, detract from the value of, or impair the current or proposed use and enjoyment of the properties or assets they affect, and (i) non-exclusive licenses granted to customers, vendors or suppliers in Ordinary Course of Business, and (j) right, title or interest of a licensor or licensee under a license.

"**Permitted Seller Person**" is defined in Section 8.18(a).

"**Person**" means a natural person, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity or other entity or organization.

"**Personal Data**" means any and all information that can reasonably be associated with an individual natural person, including information that identifies an individual natural person, including name, physical address, telephone number, email address, financial account number, passwords or PINs, device identifier or unique identification number, government-issued identifier (including Social Security number and driver's license number), medical, health or insurance information, gender, date of birth, educational or employment information, religious or political views or affiliations and marital or other status (to the extent any of these data elements can reasonably be associated with an individual natural person). Personal Data also includes any information not listed above if such information is defined as "personal data," "personally identifiable information," "individually identifiable health information," "protected health information" or "personal information" under any applicable Law and is regulated by such Law.

"**Petition Date**" means the date that Sellers file their voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

"**Plan Support Agreement**" is defined in Section 5.21.

"**Post-Closing Tax Period**" means any taxable period or portion thereof beginning after the Closing Date and, in the case of any Straddle Period, the portion of such Straddle Period beginning immediately after the Closing Date.

"**Pre-Closing Tax Period**" means any taxable period ending on or before the Closing Date and, in the case of any Straddle Period, the portion of such Straddle Period ending on the Closing Date.

"**Preservation Period**" is defined in Section 5.2(b).

"**Primarily Related**" or "**Primarily**" means, with respect to any asset, property or right, any or all of the following: (a) primarily related to, (b) necessary or useful with respect to or in connection with the Exploitation of or (c) actually, or proposed to be, used with respect to or in connection with the Exploitation of.

"**Privacy Statements**" means, collectively, all of Sellers' publicly posted privacy policies (including if posted on Sellers' products and services) in effect at any time regarding the collection,

use, disclosure, transfer, storage, maintenance, retention, deletion, disposal, modification or processing of Protected Information.

"**Products**" means (a) the Compounds, (b) any product or product candidate that is comprised of or contains a Compound, including the Current Products, and (c) any precursors, intermediates, improvements, modifications, derivatives or formulations of or delivery
systems for any of the foregoing.

"**Protected Information**" means (a) Personal Data or (b) any information that is governed or regulated by one or more Information Privacy and Security Laws that any Seller receives, creates, transmits or maintains in electronic form through any of Sellers' systems networks or other information technology systems.

"**Purchase Price**" is defined in Section 1.6(a)(i).

"**Purchaser**" is defined in the Preamble.

"**Purchaser Cure Costs**" is defined in Section 1.5(b).

"**Purchaser FDA Transfer Letters**" means letters to the FDA acknowledging the transfer of each NDA and IND for the Products to Purchaser substantially in the form attached hereto as Exhibit F.

"**Purchaser Parent**" is defined in the Preamble.

"**Purchaser Obligations**" is defined in Section 8.19.

"**Qualified Bids**" is defined in the Bidding Procedures.

"**Qualifying Accounts Receivable**" shall mean all Accounts Receivable accrued as of the Calculation Time that are valid, current and collectible in the Ordinary Course of Business, net of applicable reserves for bad debt. For the avoidance of doubt, the Biogen Royalty Receivable shall not be included in the Qualifying Accounts Receivable.

"**Qualifying Inventory**" means all amounts accrued as of the Calculation Time for Inventory, which (a) is of a quality and quantity that is merchantable, fit for the purposes for which it was procured or manufactured, usable or saleable in the Ordinary Course of Business, (b) is free of defects and damage, (c) conforms in all material respects to the specifications established therefor and to the Regulatory Authorizations, (d) has been manufactured in all material respects in accordance with the Regulatory Authorizations and all applicable Laws, as applicable, and (e) has a shelf life of (i) in the case of finished Product, eighteen (18) months, and (ii) in the case of active pharmaceutical ingredient, twelve (12) months.

"**Rebate**" means, with respect to any Product, commercial rebates and government rebates (including those related to Medicare and Medicaid), and any other rebates or similar rights related to programs, and fees for service providers related to Rebates, in place prior to the Closing Date granted to any Person.

"**Registered Intellectual Property**" means all applications, registrations and filings for Intellectual Property that have been registered, filed, or applied for with or by any Governmental Entity or other public or quasi-public legal authority anywhere in the world, including the United States Patent and Trademark Office or United States Copyright Office, including issued Patents and Patent applications, registered Trademarks and Trademark applications, registered Copyrights and Copyright applications, and Internet Properties registrations and applications.

"**Regulatory Authority**" means any local, regional, national or supranational Governmental Entity, including the FDA or the EMA, with responsibility for granting any license, registrations or approvals with respect to pharmaceutical products.

"**Regulatory Authorizations**" means all approvals, clearances, authorizations, registrations, certifications, licenses and permits granted by any Regulatory Authority to Sellers, including any INDs, NDAs and marketing authorizations together with (a) all applications, submissions, registrations, or notifications submitted, or generated in preparation for, or anticipation of, submission, to a Regulatory Authority for the purpose of the filing, obtaining, updating or maintaining of any such approval, clearance, authorization, registration, certification, license and permit, in each case to the extent relating to any Product; and (b) all Data, Know-How and scientific information underlying any actual or contemplated Regulatory Authorizations, including pre-clinical, clinical and other reports and publications related to characterizing the safety and efficacy of pharmaceutical products.

"**Regulatory Materials**" means all (a) correspondence with or to Regulatory Authorities (including Regulatory Authorization letters, submissions, inspection reports, minutes and official contact reports relating to any communications with any Regulatory Authorities) with respect to the Business or the Products, (b) records contained in all pharmacovigilance and study databases, all adverse drug event, experience or reaction reports and associated documents, investigations of adverse drug event, experience or reaction reports, and any other information relevant to the assessment of safety or benefit-risk ratios, including, for the avoidance of doubt, all legacy data, in each case to the extent relating to any Product, and (c) non-clinical, clinical and other files, plans, writings, drafts, notes, studies, reports, modules and other documents, in each case, that were received, acquired, developed, compiled, collected or generated by any Seller or by any third party on behalf of any Seller, to the extent used or related to the Products or the Business, but in all cases excluding Regulatory Authorizations.

"**Reimbursing Party**" is defined in Section 8.2(c).

"**Representatives**" means, when used with respect to any Person, the directors, officers, employees, consultants, financial advisors, accountants, legal counsel, investment bankers and other agents, advisors and representatives of such Person.

"**Requisite Noteholders**" is defined in Section 5.21.

"**Restructuring Transaction**" means (a) any recapitalization transaction, plan of reorganization, liquidation, restructuring or sale, including any such transaction by way of any credit bid by or settlement with any creditor or other contractual counterparty of Sellers, involving (directly or indirectly) all or any material portion of the Acquired Assets, or (b) any merger,

consolidation, share exchange, business combination or similar transaction (directly or indirectly) involving all or any material portion of the Acquired Assets, in each case whether in one transaction or a series of transactions.

"**Retained Books and Records**" means (a) the company seal, minute books, stock certificates, stock or equity record books, Tax Returns and other books, records and work papers related to Taxes paid or payable by any Seller or their Affiliates, work papers and such other books and records as pertain to the organization, qualification to do business, existence or capitalization of any Seller or any Affiliate thereof (other than Acorda Ireland), (b) all personnel, employment and immigration records, (c) books and records that relate exclusively to an Excluded Asset or Excluded Liability and (d) all of Sellers' communications, documents, or materials exclusively related to the Excluded Assets and the Excluded Liabilities that Sellers may retain pursuant to any attorney-client privilege, work product doctrine, common interest, or joint defense privilege, and electronic and tangible documents reflecting such communications and materials.

"**Retained Marks**" is defined in Section 5.13(b).

"**Rights**" means any rights, claims, causes of action, actions, suits or proceedings, hearings, audits, rights of recovery, rights of setoff, rights of recoupment, rights of reimbursement, rights of indemnity or contribution and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against any Person, including all warranties, representations, guarantees, indemnities and other contractual claims (express, implied or otherwise), including any claims for past infringement or misappropriation.

"**Royalty Payment Schedule**" means, as of a given point in time, a schedule setting forth a reasonably detailed calculation of the amounts accrued for each of the Alkermes Royalty Payable and the Biogen Royalty Receivable, determined in accordance with the Accounting Principles.

"**Sale Hearing**" means the hearing conducted by the Bankruptcy Court to approve the Transactions.

"**Sale Order**" means an Order of the Bankruptcy Court substantially in the form attached hereto as Exhibit D, with such changes as are reasonably acceptable to Purchaser and Sellers, that has not been stayed, vacated or stayed pending appeal, authorizing and approving the sale of the Acquired Assets to Purchaser on the terms and conditions set forth herein.

"**Sanctions Laws**" means any economic or financial sanctions that are imposed, administered or enforced by: (a) OFAC, the U.S. Department of State, and any other U.S. Governmental Entity; (b) the United Nations Security Council; (c) the United Kingdom; and (d) the European Union or any member state thereof.

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

"**Seller**" and "**Sellers**" are defined in the Preamble.

"**Seller Benefit Plan**" means a plan, program, agreement or other arrangement providing for employment, compensation, retirement, deferred compensation, severance, separation, change

of control, relocation, repatriation, expatriation, termination pay, performance awards, bonus, incentive, stock option, stock purchase, stock bonus, phantom stock, stock appreciation right, supplemental retirement or other pension or welfare benefits, whether written or unwritten, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, (a) which is or has been sponsored, maintained, contributed to, or required to be contributed to by any Seller or its ERISA Affiliates for the benefit of any employee or former employee of Sellers or (b) with respect to which Seller or any of its ERISA Affiliates would reasonably be expected to have any Liability, in each case whether written or unwritten.

"**Seller Cure Costs**" is defined in Section 1.5(b).

"**Seller FDA Transfer Letters**" means letters to the FDA providing notice of the transfer of each NDA and IND for the Products to Purchaser and certifying that all Regulatory Materials relevant to such NDAs or INDs have been provided to Purchaser substantially in the form attached hereto as Exhibit G.

"**Seller Group**" is defined in Section 1.1.

"**Seller Intellectual Property**" means all Intellectual Property owned or purported to be owned by any member of the Seller Group, including Seller Registered Intellectual Property, which (i) claim, cover or are embodied in, or (ii) are otherwise Primarily Related to, in the case of both Clauses (i) and (ii), the Products or the Business.

"**Seller Parent**" is defined in the Preamble.

"**Seller Registered Intellectual Property**" means Seller Intellectual Property that is Registered Intellectual Property and that is registered or recorded in the name of, is or was filed or recorded in the name of, or that has been assigned to, any member of the Seller Group.

"**Seller SEC Documents**" means all forms, schedules, statements, exhibits, documents and reports filed or furnished with the SEC by Seller Parent since January 1, 2022, and the draft of the Form 10-K of Seller Parent for fiscal year 2023 (including all related notes and schedules) provided to Purchaser on March 29, 2024 (the "**Seller 10-K**").

"**Seller Confidentiality Agreements**" means those agreements by and between any Seller or any Affiliate or Representative thereof, on the one hand, and Persons expressing an interest in acquiring an ownership interest in Sellers, the Seller Group or the Business, on the other hand, with respect to the use and confidentiality of information about the Seller Group and the Business and certain other obligations.

"**Sellers Disclosure Schedule**" means the disclosure schedule delivered by Sellers to Purchaser immediately prior to the execution of this Agreement.

"**Senior Secured Notes**" means the 6.00% Convertible Senior Secured Notes due 2024 issued by Seller Parent pursuant to that certain Indenture, dated as of December 23, 2019, between the Company and Wilmington Trust, National Association, as trustee.

"**Shares**" is defined in Section 1.1(s).

"**Software**" means all types of computer and other software programs including operating systems, application programs, software tools, firmware and software imbedded in equipment, including both object code and source code versions thereof, and all related documentation.

"**Specified Pre-Paid Expenses**" means the amount accrued as of the Calculation Time (a) under the Sellers' co-pay assistance programs in respect of any Product administered by TrialCard, (b) for the Prepaid EMA Annual Fee for Inbrija and (c) for the Prepaid Food and Drug Administration Fee for FY 2024 PDUFA.

"**Specified Pre-Paid Expenses Schedule**" means, as of a given point in time, a schedule setting forth a reasonably detailed list of the Specified Pre-Paid Expenses as of such time, determined in accordance with the Accounting Principles.

"**Stock Transfer Form**" is defined in Section 2.2(a)(vii).

"**Straddle Period**" means a taxable period that includes but does not end on the Closing Date.

"**Subsidiary**" means (a) with respect to any Person, any Person (other than a natural Person) of which securities or other ownership interests (i) having ordinary voting power to elect a majority of the board of directors or others performing similar functions or otherwise direct or cause the direction of the management and policies of such Person or (ii) representing 50% or more of such securities or ownership interests, in each case, are at the time directly or indirectly owned by such first Person, or (b) with respect to a partnership, such Person or any other Subsidiary of such Person is a general partner of such partnership.

"**Successful Bidder**" is defined in the Bidding Procedures.

"**Superpriority Claim**" means a claim with priority over any and all administrative expenses, debtor-in-possession financing, adequate protection claims, diminution claims, and all other claims against the Sellers' bankruptcy estates now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 506(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise (subject to any carve-out for professional fees set forth in the applicable debtor-in-possession and/or cash collateral orders entered by the Bankruptcy Court).

"**Supply Interruption Event**" means (a) a material disruption in the supply, or delayed supply, of any material goods or services necessary to operate the Business; or (b) a material stock-out in the distribution network of the Seller Group.

"**Target Net Working Capital**" means $21,500,000.

"**Tax**" or "**Taxes**" means any and all U.S. federal, state, local and non-U.S. taxes, assessments, levies, duties, tariffs, imposts and other similar charges and fees imposed by any Governmental Entity, whether disputed or not, including income, franchise, windfall or other profits, gross receipts, property, sales, use, net worth, capital stock, payroll, employment, social

security, workers' compensation, unemployment compensation, excise, withholding, ad valorem, stamp, transfer, value-added, occupation, environmental, disability, real property, personal property, escheat or unclaimed property, registration, alternative or add-on minimum, or estimated tax, including any interest, penalty, additions to tax and any additional amounts imposed with respect thereto.

"**Tax Return**" means any report, return, certificate, claim for refund, election, estimated Tax filing or declaration filed or required to be filed with any Governmental Entity with respect to Taxes, including any schedule or attachment thereto, and including any amendments thereof.

"**Taxing Authority**" means any federal, state, local or foreign Governmental Entity or authority responsible for the imposition, collection or administration of any Tax.

"**TCA**" is defined in Section 3.19(j)(iv).

"**Trademarks**" means trademarks, trademark rights, service marks, service mark rights, trade dress, logos, slogans, trade names, trade name rights, assumed names, corporate names and other designations of origin, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith.

"**Transactions**" means the transactions contemplated by this Agreement and the Ancillary Documents, including the Acquisition.

"**Transfer**" is defined in Section 1.5(g).

"**Transfer Plan**" is defined in Section 5.20.

"**Transfer Taxes**" is defined in Section 8.2(a).

"**Transferred Service Provider**" is defined in Section 5.11.

"**Waltham Facility**" means the approximately 26,000 square foot laboratory located at 283 Bear Hill Road, Waltham, MA.

IN WITNESS WHEREOF, Sellers and Purchaser have caused this Agreement to be executed on their behalf by their officers thereunto duly authorized, as of the date first above written.

SELLERS:

ACORDA THERAPEUTICS, INC.

By: /S/ Ron Cohen
Name: Ron Cohen, M.D.
Title: President and CEO

CIVITAS THERAPEUTICS, INC.

By: /s/ Michael Gesser
Name: Michael Gesser
Title: President

IN WITNESS WHEREOF, Sellers and Purchaser have caused this Agreement to be executed on their behalf by their officers thereunto duly authorized, as of the date first above written.

PURCHASER:

MERZ PHARMACEUTICALS, LLC

By: /s/ Hans-Joerg Bergler
Name: Hans-Joerg Bergler
Title: Authorized Signatory

By: /s/ Stefan Koenig
Name: Stefan Koenig
Title: Authorized Signatory

solely with respect to Section 4.3, Section 8.19 and Article VIII (solely as such Article relates to Section 8.19):

PARENT:
MERZ PHARMA GMBH & CO. KGaA,

represented by its general partner,

MERZ MANAGEMENT GMBH

By: /s/ Hans-Joerg Bergler
Name: Hans-Joerg Bergler
Title: Managing Director

By: /s/ Kerstin Degenhardt
Name: Dr. Kerstin Degenhardt
Title: Authorized Signatory

Exhibit 10.49

Execution Version

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE SUPPORT EFFECTIVE DATE ON THE TERMS DESCRIBED IN THIS AGREEMENT, DEEMED BINDING ON ANY OF THE PARTIES TO THIS AGREEMENT.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (this "***Agreement***"), dated as of April 1, 2024, is entered into by and between:

(i) Acorda Therapeutics, Inc. ("***Acorda***"), and its direct and indirect debtor subsidiaries (each, a "***Company Party***" and, collectively, the "***Company Parties***");

(ii) the undersigned holders of Convertible Notes (as defined herein) (together with their respective successors and permitted assigns, each a "***Consenting Convertible Noteholder***" and, collectively, the "***Consenting Convertible Noteholders***"); and

(iii) the undersigned holders of DIP Commitments (as defined herein) or loans under the DIP Facility (as defined herein) (together with their respective successors and permitted assigns, each a "***DIP Lender***" and, collectively, the "***DIP Lenders***" and, collectively with the Consenting Noteholders, the "***Consenting Creditors***" and, each a "***Consenting Creditor***").

Each Company Party, each Consenting Creditor, and any subsequent Person that becomes a party hereto in accordance with the terms hereof are referred to herein as the "***Parties***" and individually as a "***Party***." Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Restructuring Term Sheet (as defined below).

RECITALS

WHEREAS, the Company has outstanding obligations under that certain Indenture, dated as of December 23, 2019 (as amended, supplemented or otherwise modified from time to time, "***Indenture***" and, the 6.00% Convertible Senior Secured Notes issued thereunder, the "***Convertible Notes***" and, each holders thereof, a "***Convertible Noteholder***" and, collectively, the "***Convertible Noteholders***");

WHEREAS, as of the date hereof, the Consenting Convertible Noteholders collectively hold approximately 90% aggregate principal amount outstanding of the Convertible Notes issued pursuant to the Indenture;

WHEREAS, the Parties have agreed to the Restructuring Transactions (as defined herein) consistent with the terms and subject to the conditions set forth in this Agreement and consistent with the Restructuring Term Sheet attached hereto as Exhibit A (together with all schedules, exhibits, and annexes attached thereto, and as may be modified in accordance with Section 9 hereof, the "***Restructuring Term Sheet***"), which are the product of arms' length, good faith discussions between the Parties and their respective professionals;

WHEREAS, the Company will implement the Restructuring Transactions in connection with pre-arranged cases (the "***Chapter 11 Cases***") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as

amended from time to time, the "***Bankruptcy Code***"), in the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***");

WHEREAS, the DIP Lenders have agreed to commit to provide the DIP Facility (as defined below) (such commitment, in each case, a "***DIP Commitment***"), and the Company and the Consenting Convertible Noteholders have reached an agreement for the consensual use of Cash Collateral (as defined in section 363(a) of the Bankruptcy Code), in accordance with and subject to the terms and conditions set forth in the DIP Orders (as defined below) and the DIP Credit Agreement (as defined below); and

WHEREAS, the Parties desire to express to each other their mutual support and commitment in respect of the matters discussed in this Agreement and in the Restructuring Term Sheet.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Certain Definitions & Other Interpretive Provisions.

(a) Definitions. As used in this Agreement, the following terms have the following meanings:

*"**Acorda***" has the meaning assigned to such term in the preliminary statement of this Agreement.

"***Ad Hoc Group***" means, collectively, the Consenting Convertible Noteholders represented by King & Spalding LLP.

"*Ad Hoc Group Advisors*" means King & Spalding LLP, Perella Weinberg Partners LP and any other advisor retained by the Ad Hoc Group from time to time.

"***Agreement***" has the meaning assigned to such term in the preliminary statement hereto.

"***Alternative Transaction***" means any plan, dissolution, winding up, liquidation, sale or disposition, reorganization, merger or restructuring of the Company Parties or their assets other than the Restructuring Transactions.

"***B&M***" has the meaning set forth in Section 3(b)(i).

"***Bankruptcy Code***" has the meaning assigned to such term in the recitals of this Agreement.

"***Bankruptcy Court***" has the meaning assigned to such term in the recitals of this Agreement.

"***Beneficial Ownership***" means the direct or indirect economic ownership of, and/or the power, whether by contract or otherwise, to direct the exercise of the voting rights and the disposition of, any Claims subject to this Agreement or the right to acquire such Claims.

"***Bidding Procedures***" means the procedures governing the auction and Sale Process, as approved by the Bankruptcy Court.

"***Bidding Procedures Motion***" means a motion filed by the Company Parties with the Bankruptcy Court for entry of the Bidding Procedures Order.

"***Bidding Procedures Order***" means an order (i) approving the Bidding Procedures, (ii) setting dates for the submission of bids and the auction (if any) in accordance with the Bidding Procedures, and (iii) granting related relief.

"***Chapter 11 Cases***" has the meaning assigned to such term in the recitals of this Agreement.

"***Claim***" has the meaning set forth in the Bankruptcy Code.

"***Collateral Agent***" means Wilmington Trust, National Association, in its capacity as collateral agent under the Indenture, and its successors and assigns.

"***Company Party"*** has the meaning assigned to such term in the preliminary statement of this Agreement.

"***Company Termination Event***" has the meaning set forth in Section 5(b).

"***Confidentiality Agreements***" means, each of the following agreements: (i) the Confidentiality Agreement, dated as of November 30, 2023, by and among, Acorda, and Canyon Capital Advisors LLC, on behalf of its participating funds and accounts, (ii) the Confidentiality Agreement, dated as of November 30, 2023, by and among, Acorda and Davidson Kempner Capital Management LP, (iii) the Confidentiality Agreement, dated as of December 1, 2023, by and among, Acorda and D. E. Shaw Valence Portfolios, L.L.C., (iv) the Confidentiality Agreement, dated as of December 1, 2023, by and among, Acorda and Highbridge Capital Management, LLC, (v) the Confidentiality Agreement, dated as of November 29, 2023, by and among, Acorda and Soros Fund Management LLC, and (vi) the Confidentiality Agreement, dated as of November 30, 2023, by and among, Acorda and NINETEEN77 Global Multi-Strategy Alpha Master Limited.

"***Confirmation Order***" means an order of the Bankruptcy Court confirming the Plan.

"***Consenting Convertible Noteholder***" has the meaning assigned to such term in the preliminary statement of this Agreement.

"***Consenting Creditors***" has the meaning assigned to such term in the preliminary statement of this Agreement.

"***Convertible Noteholders***" has the meaning assigned to such term in the recitals of this Agreement.

"***Convertible Notes***" has the meaning assigned to such term in the recitals of this Agreement.

"Creditor Termination Event" has the meaning set forth in Section 5(b).

"***Definitive Documents***" means the documents (including any related orders, agreements, instruments, schedules or exhibits) that are contemplated by the Restructuring Term Sheet and that are otherwise necessary or desirable to implement, or otherwise relate to the Restructuring Transactions, including, without limitation: (i) the Sale Documents; (ii) the Plan; (iii) each of the documents comprising the Plan Supplement; (iv) the Disclosure Statement; (v) the Disclosure Statement Motion; (vi) the Disclosure Statement Order; (vii) the Confirmation Order; (viii) the motion seeking approval by the Bankruptcy Court of the DIP Facility and the DIP Orders (including any declarations or affidavits submitted in support thereof) (the "***DIP Motion***"); (ix) the interim and final orders of the Bankruptcy Court approving the DIP Motion and authorizing the use of cash collateral (the "***Interim DIP Order***" and the "***Final DIP Order***," respectively and together the "***DIP Orders***")), (x) the DIP Credit Agreement and (xi) any other material, agreements, motions (including "first day" motions), pleadings, briefs, applications (other than applications to retain or compensate the Company Parties' advisors), orders and other filings made by the Company Parties with the Bankruptcy Court. Each of the Definitive Documents shall contain terms and conditions consistent in all material respects with this Agreement and the Restructuring Term Sheet, and shall otherwise be reasonably acceptable to the Requisite Consenting Creditors, including with respect to any modifications, amendments, deletions, or supplements to such Definitive Documents at any time during the RSA Support Period; *provided*, notwithstanding anything to the contrary herein, the DIP Orders and the DIP Credit Agreement shall be acceptable (including any modifications, amendments, deletions, or supplements thereof) in all respects to the Requisite Consenting Creditors in their sole discretion.

"***DIP Commitment***" has the meaning assigned to such term in the recitals of this Agreement.

"***DIP Credit Agreement***" means the credit agreement evidencing the DIP Facility, substantially in the form attached to this Agreement as Exhibit C and as otherwise acceptable to the Company and the DIP Lenders.

"***DIP Facility***" means the debtor-in-possession financing facility to be provided to the Company Parties in accordance with the terms, and subject in all respects to the terms and conditions, as set forth in the DIP Credit Agreement and the DIP Orders.

"***DIP Lender***" has the meaning assigned to such term in the preliminary statement of this Agreement.

"***DIP Motion***" has the meaning assigned to such term in the definition of "Definition Documents".

"***DIP Orders***" means, collectively, the Interim DIP Order and the Final DIP Order.

"***Disclosure Statement***" means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

"***Disclosure Statement Motion***" means the motion seeking approval of the Disclosure Statement and entry of the Disclosure Statement Order.

"***Disclosure Statement Order***" means an order of the Bankruptcy Court approving the Disclosure Statement, the Plan Solicitation Materials, and the procedures for solicitation of the Plan.

"***Final DIP Order***" has the meaning assigned to such term in the definition of "Definition Documents".

"***Indenture***" has the meaning assigned to such term in the recitals of this Agreement.

"***Interim DIP Order***" has the meaning assigned to such term in the definition of "Definition Documents".

"***Joinder Agreement***" has the meaning set forth in Section 3(b)(i).

"***K&S***" has the meaning set forth in Section 3(b)(i).

"***Non-Consenting Creditor***" has the meaning set forth in Section 9(b).

"Party" has the meaning assigned to such term in the preliminary statement of this Agreement.

"***Permitted Transfer***" has the meaning set forth in Section 3(b)(i).

"***Permitted Transferee***" has the meaning set forth in Section 3(b)(i).

"***Person***" means any "person" as defined in section 101(41) of the Bankruptcy Code, including, without limitation, any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

"*Petition Date*" has the meaning set forth in Section 2(b).

"***Plan***" means a chapter 11 plan implementing the Restructuring Transactions.

"***Plan Effective Date***" means the date upon which all conditions precedent to the effectiveness of the Plan have been satisfied or waived in accordance with the terms thereof, as the case may be, and the Plan is substantially consummated.

"***Plan Solicitation Materials***" means the ballots and other related materials to be distributed in connection with the solicitation of votes on the Plan.

*"**Plan Supplement**"* means a supplemental appendix to the Plan containing, among other things, forms or term sheets of applicable documents, schedules, and exhibits to the Plan to be filed with the Court.

"Qualified Marketmaker" means an entity that (a) holds itself out to the public, the syndicated loan market, or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers claims against, or equity interests in, the Company Parties, or enter with customers into long and short positions in claims against the Company Parties, in its capacity as a dealer or market maker in such claims and (b) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including term, loans, or debt or equity securities).

"***Qualified Marketmaker Joinder Date***" has the meaning set forth in Section 3(b)(i).

"***Requisite Consenting Creditors***" means, as of the date of determination, Consenting Creditors holding at least a majority in aggregate principal amount outstanding of the Convertible Notes held by all Consenting Creditors as of such date.

"***Restructuring Expenses***" means all reasonable and documented fees, costs and out-of-pocket expenses of the Ad Hoc Group Advisors, in each case, in connection with the negotiation, formulation, preparation, execution, delivery, implementation, consummation and/or enforcement of this Agreement and/or any of the other Definitive Documents, and/or the transactions contemplated hereby or thereby, and/or any amendments, waivers, consents, supplements or other modifications to any of the foregoing and the Chapter 11 Cases, in each case, if applicable, pursuant to any engagement letters or fee reimbursement letters entered into between the applicable Company Parties, on the one hand, and each Ad Hoc Group Advisor, on the other hand.

"***Restructuring Term Sheet***" has the meaning assigned to such term in the recitals of this Agreement.

"***Restructuring Transactions***" means all acts, events, and transactions contemplated by, required for, and taken to implement the restructuring of the Company Parties in accordance with this Agreement and the Restructuring Term Sheet, including the Plan and the Sale Transactions.

"***RSA Support Period***" means the period commencing on the Support Effective Date and ending on the earlier of (i) the date on which this Agreement is terminated in accordance with Section 5 and (ii) the Plan Effective Date.

"***Sale Documents***" means, collectively, (i) any asset purchase agreements and related motions, orders or other documents for or related to the Sale Transactions, (ii) the Bidding Procedures Motion and any other related motions, orders or other documents related to the Bidding Procedures (including, but not limited to, the Bidding Procedures Order) and (iii) any other motions, orders or other documents related to, or entered into by the Company Parties in connection with, the Sale Process.

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

"***Securities Act***" means the Securities Act of 1933, as amended.

"***Stalking Horse Agreement***" means that certain asset purchase agreement by and among the Company Parties party thereto, as "Sellers", and Purchaser, as "Purchaser", for sale pursuant to section 363 of the Bankruptcy Code of the assets identified therein as the "Acquired Assets".

"***Support Effective Date***" means the date on which the counterpart signature pages to this Agreement have been executed and delivered by the Company Parties and Consenting Creditors holding at least 66.7% of the aggregate principal amount of outstanding Convertible Notes.

"***Transfer***" has the meaning set forth in Section 3(b)(i).

"***Trustee***" means Wilmington Trust, National Association, in its capacity as trustee under the Indenture, and its successors and assigns.

(b) Other Interpretive Provisions. With reference to this Agreement unless otherwise specified herein:

(i) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;

(ii) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with its terms; *provided* that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(iii) unless otherwise specified, all references herein to "Sections" are references to Sections of this Agreement;

(iv) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(v) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(vi) the use of "include" or "including" is without limitation, whether stated or not; and

(vii) the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

2. Restructuring Term Sheet.

(a) The Restructuring Term Sheet is expressly incorporated herein by reference and made part of this Agreement as if fully set forth herein. The Restructuring Term Sheet, including the schedules, annexes and exhibits thereto, sets forth certain material terms and conditions of the Restructuring Transactions; *provided*, *however*, that the Restructuring Term Sheet may be supplemented by the terms and conditions of this Agreement. Notwithstanding anything else in this Agreement to the contrary, in the event of any inconsistency between this Agreement and the Restructuring Term Sheet (including the attachments thereto, as applicable), the Restructuring Term Sheet (including the attachments thereto, as applicable) shall control.

(b) Commencement of the Chapter 11 Cases. The Company hereby agrees that, as soon as reasonably practicable, but in no event later than April 2, 2024 (the date on which such filing occurs, the "***Petition Date***"), the Company shall file with the Bankruptcy Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code and any and all other documents necessary to commence the Chapter 11 Cases of the Company.

(c) DIP Financing and Cash Collateral. No later than the close of business on the second business day following the Petition Date, the Company shall file a motion with the Bankruptcy Court seeking entry of the DIP Orders.

3. Agreements of the Consenting Creditors.

(a) Agreement to Support. During the RSA Support Period, subject to the terms and conditions hereof, each of the Consenting Creditors agrees, severally and not jointly, that it shall:

(i) use its commercially reasonable efforts to support the Restructuring Transactions, act in good faith and take any and all reasonable actions necessary to consummate the Restructuring Transactions, in a manner consistent with this Agreement and the Restructuring Term Sheet;

(ii) refrain from initiating (or directing or encouraging the Trustee, Collateral Agent or any other Person to initiate) any actions, including legal proceedings, that are inconsistent with, or that would delay, prevent, frustrate or impede the approval, confirmation or consummation, as applicable, of the Chapter 11 Cases, this Agreement or the other Restructuring Transactions;

(iii) not direct the Collateral Agent, the Trustee, or any other administrative agent, collateral agent, notes agent or indenture trustee to take any action inconsistent with the Consenting Creditors' obligations under this Agreement, and, if the Collateral Agent, Trustee or any other administrative agent, collateral agent, notes agent or indenture trustee takes any action inconsistent with the Consenting Creditors' obligations under this Agreement, the Consenting Creditors shall direct and use their commercially reasonable efforts to cause the Collateral Agent, Trustee or any other administrative agent, collateral agent, notes agent or indenture trustee to cease, withdraw, and refrain from taking any such action;

(iv) (a) timely vote (pursuant to the Plan) or cause to be voted all of its Claims (including on account of any claims other than those relating to the Indenture that are owned or controlled by such Consenting Creditor) to accept the Plan by delivering its duly executed and completed ballot or ballots, as applicable, accepting the Plan on a timely basis following commencement of the solicitation of acceptances of the Plan in accordance with sections 1125 and 1126 of the Bankruptcy Code and the Disclosure Statement Order and (b) to the extent such election is available, not elect on its ballot to preserve claims, if any, that such Consenting Creditor may own or control that may be affected by any releases contemplated under the Plan (and, to the extent required by such ballot, to affirmatively "opt in" to any such releases and exculpation);

(v) negotiate in good faith with the Company Parties the forms of the Definitive Documents and execute the Definitive Documents (to the extent such Consenting Creditor is a party thereto);

(vi) not change or withdraw its votes to accept the Plan (or cause or direct such vote to be changed or withdrawn); *provided*, *however*, that such vote shall, without any further action by the applicable Consenting Creditor, be deemed automatically revoked (and, upon such revocation, deemed void *ab initio*) by the applicable Consenting Creditor at any time following the expiration of the RSA Support Period or termination of this Agreement in accordance with the terms hereof, or vote or cause to be voted its Claims in support any Alternative Transaction;

(vii) other than in respect of any such rights preserved under Section 3(d) below, not directly or indirectly, through any Person, (x) seek, solicit, propose, support, assist, engage in negotiations in connection with or participate in the formulation, preparation, filing or prosecution of any Alternative Transaction or (y) take any action, including initiating (or encouraging any other Person

to initiate) any legal proceeding, that is inconsistent with or that would reasonably be expected to prevent, interfere with, delay, or impede the consummation of the Restructuring Transactions;

(viii) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions, negotiate in good faith appropriate additional or alternative provisions to address any such impediment;

(ix) use its commercially reasonable efforts to obtain any and all required regulatory and third-party approvals for such Consenting Creditor to consummate the Restructuring Transactions and to support the Company Parties in connection with the same;

(x) support and take all reasonable actions necessary to confirm such Consenting Creditors' support for the Bankruptcy Court's approval of the Plan and Disclosure Statement, the solicitation of votes on the Plan by the Company Parties, and the confirmation and consummation of the Plan and the Restructuring Transactions;

(xi) not challenge or support any other party that challenges the validity, enforceability, or priority of the Indenture or the Notes Security Document (as defined in the Indenture) and the Claims thereunder;

(xii) not to submit any credit bid against the Stalking Horse Bidder (as defined in the Bidding Procedures);

(xiii) not to object to allowance and treatment of the Breakup Fee and Expense Reimbursement Amount (each as defined in the Bidding Procedures as of the date hereof), if applicable, as a superpriority claim with priority over any and all administrative expenses, debtor-in-possession financing, adequate protection claims, diminution claims, and all other claims against the Sellers' bankruptcy estates now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, over any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 506(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise (subject to any carve-out for professional fees set forth in the applicable debtor-in-possession and/or cash collateral orders entered by the Bankruptcy Court); and

(xiv) to the extent it is permitted to elect whether to opt out of the releases set forth in the Plan, agree to provide, and to not opt-out of, the releases substantially in the form set forth in the Restructuring Term Sheet.

(b) Transfers.

(i) Each Consenting Creditor agrees that, for the duration of the RSA Support Period, such Consenting Creditor shall not sell, transfer, loan, issue, participate, pledge, hypothecate, assign or otherwise dispose of (other than ordinary course pledges or swaps) (each, a "***Transfer***"), directly or indirectly, in whole or in part, any of its Claims (including any Beneficial Ownership in any such Claims or any proxies, deposit any Claims into a voting trust or enter into a voting agreement with respect to any such Claims), or any option thereon or any right or interest therein, unless the transferee thereof either (A) is a Consenting Creditor (with respect to a Transfer by a Consenting Creditor), in which case, within two (2) business days of such Transfer the transferee shall provide written notice to Baker & McKenzie LLP ("***B&M***"), as counsel to the Company Parties, and King & Spalding LLP, as counsel to the Consenting Creditors ("***K&S***"), detailing the principal amount of the Claims transferred and the identities of the transferee and the Consenting Creditor who has

transferred the Claims or (B) prior to such Transfer, agrees in writing for the benefit of the Parties to become a Consenting Creditor and to be bound by all of the terms of this Agreement applicable to Consenting Creditors (including with respect to any and all Claims it already may hold against or in the Company Parties prior to such Transfer) by executing a joinder agreement, a form of which is attached hereto as Exhibit B (a "***Joinder Agreement***"), and delivering an executed copy thereof within two (2) business days of such execution, to (1) B&M and (2) K&S, in which event (x) the transferee shall be deemed to be a Consenting Creditor hereunder to the extent of such Transferred Claims and (y) the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of and solely with respect to such Transferred Claims (but not with respect to any other Claims or equity interests acquired or held by such transferor) (such Transfer, a "***Permitted Transfer***" and such party to such Permitted Transfer, a "***Permitted Transferee***"); provided that notwithstanding anything to the contrary hereto, any Consenting Creditor may Transfer its Claims to an affiliate or subsidiary of such Consenting Creditor and such affiliate or subsidiary will automatically be deemed to be a "Consenting Creditor" hereunder; provided, further such affiliate or subsidiary transferee will provide a Joinder Agreement to K&S within two (2) business days of any such affiliate or subsidiary transfer. Each Consenting Creditor agrees that any Transfer of any Claim that does not comply with the terms and procedures set forth herein shall be deemed void *ab initio*, and the Company Parties and each other Consenting Creditor shall have the right to enforce the voiding of such Transfer; provided that a Consenting Creditor may Transfer its Claims to an entity that is acting in its capacity as a Qualified Marketmaker without the requirement that the Qualified Marketmaker execute a Joinder Agreement, so long as (I) any subsequent Transfer by such Qualified Marketmaker of the right, title, or interest in such Claims is to a transferee that is or becomes a Consenting Creditor at the time of such Transfer and (II) the Qualified Marketmaker complies with Section 3(b)(ii) hereof.

(ii) If at the time of a proposed Transfer of Claims to a Qualified Marketmaker, such Claims (i) may be voted on the Plan, the proposed transferor Consenting Creditor must first vote such Claims in accordance with Section 3(a) hereof or (ii) have not yet been and may not yet be voted on the Plan and such Qualified Marketmaker does not Transfer such Claims or Interests to a subsequent transferee prior to the third (3rd) business day prior to the expiration of the applicable voting deadline (such date, the "***Qualified Marketmaker Joinder Date***"), such Qualified Marketmaker shall be required to (and the transfer documentation to the Qualified Marketmaker shall have provided that it shall), on the first (1st) business day immediately following the Qualified Marketmaker Joinder Date, become a Consenting Creditor with respect to such Claims in accordance with the terms hereof (including the obligation to vote in favor of the Plan) and shall vote in favor of the Plan in accordance with the terms hereof; provided that the Qualified Marketmaker shall automatically, and without further notice or action, no longer be a Consenting Creditor with respect to such Claims at such time that the transferee of such Claims becomes a Consenting Creditor, with respect to such Claims.

(iii) This Section 3(b) shall not impose any obligation on the Company Parties to issue any "cleansing letter" or otherwise publicly disclose information for the purpose of enabling a Consenting Creditor to Transfer any Claims. Notwithstanding anything to the contrary herein, to the extent the Company Parties and another Party have entered into a separate agreement with respect to the issuance of a "cleansing letter" or other public disclosure of information, the terms of such confidentiality agreement shall continue to apply and remain in full force and effect according to its terms.

(iv) Each Consenting Creditor, severally and not jointly, agrees not to transfer any equity interests in any Company Party prior to the Petition Date in a manner that would change the

ownership of such equity interests for purposes of section 382 of title 26 of the United States Code without the prior consent of the Company Parties not to be unreasonably withheld, conditioned, or delayed.

(v) Conversion Waiver. From the date hereof until the Conversion Waiver Termination Date, each of the Consenting Convertible Noteholders (each a "***Specified Holder***", and collectively, the "***Specified Holders***") hereby waives its right to convert any of the outstanding principal amount of the Convertible Notes held by such Specified Holder into equity securities of the Company, pursuant to each Specified Holder's respective Convertible Note (the "***Conversion Waiver***"); provided, however, that, for the avoidance of doubt, the foregoing agreement not to convert shall cease to apply immediately and without further action by any Specified Holder upon any Conversion Waiver Termination Date. This Section 3(b)(v) shall automatically terminate sixty-one (61) days after the date that this Agreement expires or is terminated (the "***Conversion Waiver Termination Date***").

(c) Additional Claims. This Agreement shall in no way be construed to preclude a Consenting Creditor from acquiring additional Claims; *provided* that, to the extent any Consenting Creditor (i) acquires additional Claims, (ii) holds or acquires any other claims against the Company Parties entitled to vote on the Plan or (iii) holds or acquires any equity interests in the Company Parties entitled to vote on the Plan, then, in each case, each such Consenting Creditor shall notify B&M and K&S no more than two (2) business days following such acquisition, and each such Consenting Creditor agrees that all such Claims and/or equity interests shall be subject to this Agreement, and agrees that, for the duration of the RSA Support Period with respect to such Consenting Creditor and subject to the terms of this Agreement, it shall vote in favor of the Plan (or cause to be voted) any such additional Claims and/or equity interests entitled to vote on the Plan (to the extent still held by it on or on its behalf at the time of such vote), in a manner consistent with Section 3(a) hereof. For the avoidance of doubt, any obligation to vote for the Plan or any other plan of reorganization shall be subject to sections 1125 and 1126 of the Bankruptcy Code.

(d) Preservation of Rights. Nothing in this Agreement, and neither a vote to accept the Plan by any Consenting Creditor, nor the acceptance of the Plan by any Consenting Creditor, shall: (i) be construed to limit consent and approval rights provided in this Agreement, the Restructuring Term Sheet, and the Definitive Documents; (ii) be construed to prohibit any Consenting Creditor from contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement; (iii) except as expressly set forth herein, be construed to limit the rights of a Consenting Creditor to consult with any other Convertible Noteholder or party in interest; (iv) limit the rights of any Consenting Creditor under any applicable bankruptcy, insolvency, foreclosure or similar proceeding, or be construed to prohibit any Consenting Creditor from appearing as a party-in-interest in any matter to be adjudicated in or arising in connection with the Chapter 11 Cases, so long as such appearance and the positions advocated in connection therewith are not inconsistent with this Agreement or such Consenting Creditors' obligations hereunder and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring Transactions (and could not be reasonably expected to accomplish the same); (v) limit the ability of any Consenting Creditor to purchase, sell, or enter into any transaction in connection with its Claims, in compliance with the terms hereof and applicable law; (vi) constitute a waiver or amendment of any provision of the Indenture, the Note Security Documents (as defined in the Indenture) or any related documents or any other documents or agreements that give rise to a Consenting Creditor's Claims; (vii) bar any Consenting Creditor or the Collateral Agent or the Trustee on behalf of the Consenting Creditors from filing a proof of claim with the Bankruptcy Court, or taking action to establish the amount of such claim; or (viii) limit the ability of any Consenting Creditor to assert any rights, claims, or defenses under the Indenture, the Notes Security Documents (as defined in the Indenture), and any related documents or any other documents or agreements that give rise to a Consenting Creditor's Claims, to the extent the assertion of such rights, claims, or defenses are not inconsistent with this Agreement or such Consenting Creditors' obligations hereunder.

(e) DIP Facility Commitment. Each Party, that has executed this Agreement prior to the Petition Date as a DIP Lender hereby commits, severally and not jointly, directly or through one more affiliated funds or financing vehicles (or funds or accounts advised or sub-advised by such person), to participate in the DIP Loans based on their commitments set forth in Schedule 2.01 to the DIP Credit Agreement. In exchange for the DIP Loans, each DIP Lender shall be entitled to a commitment fee equal to 2.00% on its applicable DIP Commitment as further set forth in the DIP Credit Agreement.

(f) Tax Attribute Protection Motions. Each Consenting Creditor agrees not to contest the filing of a customary stock trading order that restricts the accumulation and disposition of equity interests in Acorda by persons who own, or would own, more than approximately 4.50% of the equity interests during the pendency of the Chapter 11 Cases.

(g) Joint and Several. The covenants and agreements of the Consenting Creditors in this Section 3 are several and not joint.

4. Agreements of the Company Parties.

(a) Covenants. Each Company Party agrees that, for the duration of the RSA Support Period, such Company Party shall:

(i) (A) support and use commercially reasonable efforts to consummate and complete the Restructuring Transactions, and all transactions contemplated under this Agreement (including, without limitation, those described in the Restructuring Term Sheet), and take any and all reasonably necessary actions in furtherance thereof, including, without limitation, (1) complete and file, within the timeframes contemplated herein, the Sale Documents, the Plan, the Disclosure Statement, and the other Definitive Documents, (2) use commercially reasonable efforts to obtain orders of the Bankruptcy Court approving the DIP Credit Agreement, the DIP Orders, the Sale Documents (to the extent requiring approval of the Bankruptcy Court), the Disclosure Statement, and confirming the Plan, and any other Definitive Document requiring the approval of the Bankruptcy Court within the timeframes contemplated by this Agreement (or, if this Agreement is silent, as soon as reasonably practicable); and (3) prosecute and defend any objections or appeals relating to the DIP Orders, any orders approving the Sale Documents, the Disclosure Statement Order, the Confirmation Order, and/or the Restructuring Transactions or any Definitive Document filed or entered into by a Company Party in connection therewith; and (B) not take any action that is inconsistent with, or to alter, delay, impede, or interfere with, approval of the DIP Motion, the Sale Documents, the Disclosure Statement, confirmation of the Plan, or consummation of the Plan and the Restructuring Transactions or any Definitive Document filed or entered into by a Company Party;

(ii) not seek, solicit, propose, or support an Alternative Transaction; *provided*, *however*, that if the Company Parties receive an unsolicited bona fide proposal or expression of interest in undertaking an Alternative Transaction that the boards of directors, members, or managers (as applicable) of the Company Parties, determine, upon advice of legal counsel and in their good-faith judgment, provides a higher or better economic recovery to the Company Parties' stakeholders (including the Consenting Creditors) than that set forth in this Agreement, and such Alternative Transaction is from a proponent that the boards of directors, members, or managers (as applicable) of the Company Parties have reasonably determined is capable of timely consummating such Alternative Transaction, the Company Parties will, within 48 hours of the receipt of such proposals or expression of interest, notify the Consenting Creditors in accordance with Section 20 hereof of the receipt thereof, with such notice to include the materials terms thereof, including the identity of the Person or Persons involved;

(iii) at least two (2) business days before the Petition Date, provide draft copies of "first day" motions and orders, including a first day declaration, the motion seeking approval of the DIP Facility, the Bidding Procedures Motion, and the Bidding Procedures Order, in each case, in form and substance reasonably acceptable to the Requisite Consenting Creditors;

(iv) provide draft copies of all material motions or applications and other documents (including the Plan, the Disclosure Statement, the ballots and other solicitation materials in respect of the Plan, and the Confirmation Order) that the Company Parties intend to file with the Bankruptcy Court to K&S, at least two (2) business days prior to the date when the Company Parties intend to file any such pleading or other document and shall consult in good faith with such counsel regarding the form and substance of any such proposed filing with the Bankruptcy Court;

(v) file the "first day" motions reasonably determined by the Company Parties, in form and substance reasonably acceptable to the Requisite Consenting Creditors, to be necessary, and to seek interim and final (to the extent necessary) orders, in form and substance reasonably acceptable to the Company Parties and the Requisite Consenting Creditors, from the Bankruptcy Court approving the relief requested in the first day" motions;

(vi) not, nor encourage any other person or entity to, take any action which would, or would reasonably be expected to, breach or be inconsistent with this Agreement or delay, impede, appeal, or take any other negative action, directly or indirectly, to interfere with the acceptance, confirmation, or consummation of the Plan or implementation of the Restructuring Transactions;

(vii) subject to appropriate confidentiality arrangements, provide to the Consenting Creditors' professionals, upon reasonable advance notice to the Company Parties: (A) reasonable access (without any material disruption to the conduct of the Company Parties' business) during normal business hours to the Company Parties' books, records, and facilities; (B) reasonable access to the respective management and advisors of the Company Parties for the purposes of evaluating the Company Parties' finances and operations and participating in the planning process with respect to the Restructuring Transactions; (C) prompt access to any information provided to any existing or prospective financing sources (including lenders under any debtor-in-possession and/or exit financing); and (D) prompt and reasonable responses to all reasonable diligence requests; provided, that, in each case, the Company Parties shall not be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter that (a) constitutes non-financial trade secrets or non-financial proprietary information, (b) in respect of which disclosure is prohibited by law or any confidentiality obligation binding on such Company Parties, or (c) is subject to attorney-client or similar privilege or constitutes attorney work product;

(viii) use their commercially reasonable efforts to support and take all actions as are reasonably necessary and appropriate to obtain any and all required regulatory and/or third-party approvals necessary to consummate the Restructuring;

(ix) promptly pay all Restructuring Expenses in accordance with Section 16 of this Agreement;

(x) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions, negotiate in good faith appropriate additional or alternative provisions to address any such impediment;

(xi) not enter into any commitment or agreement with respect to debtor-in-possession financing, use of cash collateral, adequate protection, exit financing, and/or any other financing arrangements other than the DIP Facility unless otherwise agreed to by the Company Parties, and the Requisite

Consenting Lenders, other than such financing arrangements that arise in the ordinary course of the Company Parties' business operations;

(xii) not sell any assets outside of the ordinary course of business other than in connection with the Sale Transactions contemplated by the Bidding Procedures Motion without the prior written consent (including e-mail) of the Requisite Consenting Creditors;

(xiii) subject to applicable laws, use commercially reasonable efforts to, consistent with the pursuit and consummation of the Restructuring Transactions, preserve intact in all material respects the current business operations of the Company Parties (other than as consistent with applicable fiduciary duties), keep available the services of its current officers and material employees (in each case, other than as contemplated by the Company Parties' current business plan provided to the Consenting Creditors, voluntary resignations, terminations for cause, or terminations consistent with applicable fiduciary duties) and preserve in all material respects its relationships with customers, sales representatives, suppliers, distributors, and others, in each case, having material business dealings with the Company Parties (other than terminations for cause or consistent with applicable fiduciary duties);

(xiv) not commence or support any avoidance action or other legal proceeding (or consent to any other Person obtaining standing to commence any such avoidance action or other legal proceeding) that challenges the validity, enforceability, or priority of the Credit Agreement;

(xv) provide prompt written notice (in accordance with Section 20 hereof) to the Consenting Creditors and K&S between the date hereof and the Plan Effective Date of (A) receipt of any written notice from any third party alleging that the consent of such party is or may be required in connection with the Restructuring Transactions; (B) receipt of any written notice from any governmental body in connection with this Agreement or the Restructuring Transactions; and (C) receipt of any written notice of any proceeding commenced, or, to the actual knowledge of the Company Parties, threatened against the Company Parties, relating to or involving or otherwise affecting in any material respect the Restructuring Transactions.

(b) Automatic Stay. The Company Parties acknowledge and agree and shall not dispute that after the commencement of the Chapter 11 Cases, the giving of notice of termination by any Party pursuant to this Agreement shall not be a violation of the automatic stay of section 362 of the Bankruptcy Code (and the Company Parties hereby waive, to the greatest extent legally possible, the applicability of the automatic stay to the giving of such notice); *provided* that nothing herein shall prejudice any Party's rights to argue that the giving of notice of default or termination was not proper under the terms of this Agreement.

5. Termination of Agreement.

(a) This Agreement shall terminate upon the receipt of written notice to the other Parties, delivered in accordance with Section 20 hereof, from, as applicable, (x) the Requisite Consenting Creditors at any time after and during the continuance of any Creditor Termination Event (as defined herein); or (y) Company Parties at any time after and during the continuance of any Company Termination Event, as applicable. Notwithstanding any provision to the contrary in this Section 5, no Party may exercise any of its respective termination rights as set forth herein if such Party has failed to perform or comply in all material respects with the terms and conditions of this Agreement (unless such failure to perform or comply arises as a result of another Party's actions or inactions), with such failure to perform or comply causing, or resulting in, the occurrence of a Creditor Termination Event or Company Termination Event (as defined herein) specified herein. This Agreement shall terminate on the Plan Effective Date without any further required action or notice.

(b) A "***Creditor Termination Event***" shall mean any of the following:

(i) the breach in any material respect by any Company Party of (a) any covenant contained in this Agreement or (b) any other obligations of the Company Parties set forth in this Agreement, and, in either respect, such breach remains uncured (solely to the extent capable of being cured) for a period of three (3) business days following the Company Parties' receipt of written notice from the Requisite Consenting Creditors pursuant to Sections 5(a) and 20 hereof (as applicable);

(ii) any representation or warranty in this Agreement made by a Company Party shall have been untrue in any material respect when made or shall have become untrue in any material respect, and such breach remains uncured for a period of five (5) business days following the Company's receipt of notice pursuant to Sections 5(a) and 20 hereof (as applicable);

(iii) the Definitive Documents and any amendments, modifications, or supplements thereto filed or entered into by the Company Parties include terms that are materially inconsistent with the Restructuring Term Sheet and are not otherwise reasonably acceptable to the Requisite Consenting Creditors, and such event remains unremedied for a period of five (5) calendar days following the Company Parties' receipt of notice pursuant to Sections 5(a) and Section 20 hereto (as applicable);

(iv) a Definitive Document alters the treatment of the DIP Lenders specified in the Restructuring Term Sheet without complying with Section 9 hereof and the Requisite Consenting Creditors have not otherwise consented to such Definitive Document;

(v) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (a) enjoining the consummation of the Restructuring Transactions or rendering illegal this Agreement, the Plan or the Restructuring Transactions, and (b) remains in effect for twenty-five (25) business days after such terminating Consenting Creditors transmit a written notice in accordance with Section 20 hereof detailing any such issuance; *provided*, that this termination right may not be exercised by any Consenting Creditor that sought or requested such ruling or order in contravention of any obligation set out in this Agreement;

(vi) the Support Effective Date shall not have occurred on or before the Petition Date;

(vii) the Company Parties shall not have complied with Milestones set out in the Restructuring Term Sheet; provided that the date for compliance with any such Milestone may be extended with the consent of the Requisite Consenting Creditors;

(viii) the Bankruptcy Court enters an order that is not stayed (A) directing the appointment of a trustee or examiner with expanded powers to operate the Company Parties' business in the Chapter 11 Cases, (B) converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, (C) dismissing the Chapter 11 Cases, (D) denying confirmation of the Plan, the effect of which would render the Plan incapable of consummation on the terms set forth herein or (E) granting relief that is inconsistent with this Agreement or the Plan in any materially adverse respect to the Consenting Creditors, in each case;

(ix) the Confirmation Order is reversed or vacated by a final order without the consent of the Requisite Consenting Creditors;

(x) if either (A) any Company Party (or any person or entity on behalf of any Company Party or its bankruptcy estate with proper standing) files a motion, application or adversary proceeding (or supports or fails to timely object to such a filing) (1) challenging the validity, enforceability, perfection or priority of, or seeking invalidation, avoidance, disallowance, recharacterization or subordination of any of the obligations or Claims under the Indenture and Note Security Document

(as defined in the Indenture), or (B) the Bankruptcy Court (or any court with jurisdiction over the Chapter 11 Cases) enters an order providing relief against the interests of the Lenders with respect to any of the foregoing causes of action or proceedings, including, but not limited to, invalidating, avoiding, disallowing, recharacterizing, subordinating, or limiting the enforceability of any of the obligations or Claims arising under or related to the Indenture and Note Security Documents (as defined in the Indenture);

(xi) the DIP Facility is not approved by the Bankruptcy Court or is terminated in accordance with the terms of the DIP Credit Agreement and the DIP Orders;

(xii) the Company Parties' use of cash collateral is not approved by the Bankruptcy Court or has been terminated in accordance with the terms of the DIP Orders;

(xiii) any Company Party files or seeks approval of, or supports (or fails to timely object to) another party in, filing or seeking approval of an Alternative Transaction;

(xiv) if any Company Party (A) withdraws the Plan or the Bidding Procedures Motion, (B) announces its intention not to support the Restructuring Transactions or the Plan, (C) files a motion with the Bankruptcy Court seeking the approval of an Alternative Transaction or (D) agrees to pursue (including, for the avoidance of doubt, as may be evidenced by a term sheet, letter of intent, or similar document) or announces its intent to pursue an Alternative Transaction;

(xv) the Bankruptcy Court enters an order modifying or terminating the Company Parties' exclusive right to file and solicit acceptances of a plan of reorganization (including the Plan);

(xvi) the Bankruptcy Court grants relief terminating, annulling, or modifying the automatic stay (as set forth in section 362 of the Bankruptcy Code) in order for the moving party to foreclose on any Material Asset of a Company Party in a manner that materially impacts Restructuring Transactions without the prior written consent of the Requisite Consenting Creditors;

(xvii) the termination of the Stalking Horse Agreement or the asset purchase agreement(s) entered into in connection with the Sale Process (if not the Stalking Horse Agreement) without entry into a new purchase agreement reasonably acceptable to the Requisite Consenting Creditors within ten (10) business days; or

(xviii) the Bankruptcy Court enters a final order disallowing, invalidating, subordinating, recharacterizing, or declaring unenforceable the claims, liens or interests, in any material respect, held by any Consenting Creditor or the Collateral Agent or Trustee arising under the Credit Agreement.

(c) A "***Company Termination Event***" shall mean any of the following:

(i) the breach in any material respect by one or more of the Consenting Creditors, of any of the undertakings, representations, warranties, or covenants of the Consenting Creditors set forth herein in any material respect that remains uncured (solely to the extent capable of being cured) for a period of five (5) business days after the receipt of written notice of such breach pursuant to Sections 5(a) and 20 hereof (as applicable), *provided*, that this Agreement is still binding on other Consenting Creditors if they hold more than 66 2/3% of the aggregate outstanding amount of the Convertible Notes;

(ii) the board of directors, members, or managers (as applicable) of any Company Party reasonably determines in good faith based upon the advice of outside counsel that continued performance under this Agreement or pursuit of the Restructuring Transactions would be

inconsistent with the exercise of its fiduciary duties under applicable law; *provided*, that the Company Parties shall provide notice of such determination to K&S via email within one (1) business day after the date thereof; *provided further* that the Consenting Creditors reserve all rights they may have to challenge the exercise by the Company Parties of their ability to terminate this Agreement pursuant to this Section 5(c)(ii);

(iii) the Company Parties shall not have obtained votes accepting the Plan from holders of the Convertible Notes sufficient to satisfy the conditions for acceptable set forth in section 1126(c) of the Bankruptcy Code on or before the voting deadline set forth in the solicitation materials distributed in connection with the Plan;

(iv) the Support Effective Date shall not have occurred on or before the Petition Date;

(v) if the Plan Effective Date shall not have occurred on before 120 days following the Petition Date; or

(vi) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for twenty-five (25) business days after the Company Parties transmits a written notice in accordance with Section 20 hereof detailing any such issuance; provided, that this termination right may not be exercised by the Company Parties if it sought or requested such ruling or order in contravention of any obligation set out in this Agreement.

(d) Mutual Termination. This Agreement may be terminated by mutual agreement of the Company Parties and the Requisite Consenting Creditors upon the receipt of written notice delivered in accordance with Section 20 hereof.

(e) Automatic Termination. This Agreement shall terminate automatically, without any further action required by any Party, upon the occurrence of the Plan Effective Date.

(f) Effect of Termination. Upon the termination of this Agreement in accordance with this Section 5 (other than pursuant to Section 5(e) if the Restructuring Transactions have not been consummated, and except as provided in Section 13 hereof, this Agreement shall forthwith become void and of no further force or effect and each Party shall, except as provided otherwise in this Agreement, be immediately released from its liabilities, obligations, commitments, undertakings and agreements under or related to this Agreement and shall have all the rights and remedies that it would have had and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including all rights and remedies available to it under applicable law, the Indenture and any ancillary documents or agreements thereto; *provided*, *however*, that in no event shall any such termination relieve a Party from liability for its breach or non-performance of its obligations hereunder prior to the date of such termination. Upon any such termination of this Agreement, each vote or any consents given by any Consenting Creditor prior to such termination shall be deemed, for all purposes, to be null and void *ab initio* and shall not be considered or otherwise used in any manner by the Parties in connection with the Restructuring Transactions and this Agreement, in each case, without further confirmation or other action by such Consenting Creditor. If this Agreement has been terminated in accordance with Section 5(a), the Company Parties shall not oppose any attempt by a Consenting Creditor to change or withdraw (or cause to change or withdraw) its vote to accept the Plan. Such Consenting Creditor shall have no liability to the Company Parties or to any other Consenting Creditor in respect of any termination of this Agreement in accordance with the terms of this Section 5 and Section 21 hereof.

(g) If the Restructuring Transactions have not been consummated prior to the date of termination of this Agreement, nothing herein shall be construed as a waiver by any Party of any or all of such Party's rights and

the Parties expressly reserve any and all of their respective rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms.

6. Definitive Documents; Good Faith Cooperation; Further Assurances.

(a) Subject to the terms and conditions described herein, during the RSA Support Period, each Party, severally and not jointly, hereby covenants and agrees to reasonably cooperate with each other in good faith in connection with, and shall exercise commercially reasonable efforts with respect to the pursuit, approval, implementation, and consummation of the Plan and the Restructuring Transactions, as well as the negotiation, drafting, execution (to the extent such Party is a party thereto), and delivery of the Definitive Documents, which will, after the Support Effective Date, remain subject to negotiation and shall, upon completion, contain terms, conditions, representations, warranties, and covenants consistent in all material respects with the terms of this Agreement (including the exhibits and schedules) and be in a form and substance reasonably acceptable to the Requisite Consenting Creditors (subject to any consent rights with respect to the applicable Definitive Document, including those in the definition of such Definitive Document or set forth herein or in the Restructuring Term Sheet). Furthermore, subject to the terms and conditions hereof, each of the Parties shall take such action as may be reasonably necessary or reasonably requested by the other Parties to carry out the purposes and intent of this Agreement, and shall refrain from taking any action that would frustrate the purposes and intent of this Agreement; *provided* that no Consenting Creditor shall be required to incur any cost, expense, or liability in connection therewith.

(b) Each of the Parties agrees to negotiate in good faith any amendments and modifications to the Definitive Documents as reasonably necessary and appropriate to effectuate the Restructuring Transaction and obtain confirmation of the Plan pursuant to an order of the Bankruptcy Court; *provided that* each Party shall have no obligation to agree to any modification that (i) is inconsistent with this Agreement in any material respect, (ii) creates any new material obligations on any Party, or (iii) adversely changes or otherwise adversely affects the economic treatment of such Party whether such change is made directly to the treatment of the Consenting Creditors or otherwise.

7. Representations and Warranties.

(a) Each Party, severally and not jointly, represents and warrants to the other Parties that the following statements are true, correct and complete as of the date hereof (or, with respect to a Consenting Creditor that becomes a party hereto after the date hereof, as of the date such Consenting Creditor becomes a party hereto):

(i) such Party is validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, and has all requisite corporate, partnership, limited liability company or similar authority to enter into this Agreement and carry out the transactions contemplated hereby and perform its obligations contemplated hereunder, and the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate, limited liability company, partnership or other similar action on its part;

(ii) the execution, delivery and performance by such Party of this Agreement does not and will not (A) violate any material provision of law, rule or regulation applicable to it or its charter or bylaws (or other similar governing documents) or (B) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it is a party other than any default caused by the commencement of the Chapter 11 Cases or as contemplated by the Restructuring Transactions; and

(iii) this Agreement is the legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability or a ruling of the Bankruptcy Court.

(b) Each Consenting Creditor severally (and not jointly), represents and warrants to the Company Parties that, as of the date hereof (or as of the date such Consenting Creditor becomes a party hereto), such Consenting Creditor (i) is the beneficial owner of, or investment advisor or manager of funds that are beneficial owners of, the aggregate principal amount of Convertible Notes set forth below its name on the signature page hereof (or below its name on the signature page of a Joinder Agreement for any Consenting Creditor that becomes a party hereto after the date hereof) and does not beneficially own, or manager or advisor funds that own, any other Convertible Notes and (ii) has, with respect to the beneficial owners of such Convertible Notes, (A) sole investment or voting discretion with respect to such Convertible Notes, (B) full power and authority to vote on and consent to matters concerning such Loans or to exchange, assign and transfer such Convertible Notes, and (C) full power and authority to bind or act on the behalf of, such beneficial owners.

8. Disclosure; Publicity.

Each Company Party shall submit drafts to K&S of any press releases that constitute disclosure of the existence or terms of this Agreement or any amendment to the terms of this Agreement at least two (2) business days before making any such disclosure. Except as required by applicable law or otherwise permitted under the terms of any other agreement between the Company Parties and any Consenting Creditor, no Party or its advisors shall disclose to any person (including, for the avoidance of doubt, any other Consenting Creditor), other than advisors to the Company Parties and the Consenting Creditors, the principal amount of the Loans held by the Consenting Creditor or the identity of the Consenting Creditor, without such Consenting Creditor's prior written consent, including, without limitation, in any public filing or press release; *provided*, however, that (i) if such disclosure is required by law, subpoena, or other legal process or regulation, the disclosing Party shall afford the relevant Consenting Creditor a reasonable opportunity to review and comment in advance of such disclosure and shall take all reasonable measures to limit such disclosure, (ii) the foregoing shall not prohibit the disclosure of the aggregate percentage or aggregate outstanding principal amount of the Loans held by all the Consenting Creditors collectively, and (iii) any Party may disclose information requested by a regulatory or licensing authority with jurisdiction over its operations to such authority without limitation or notice to any Party or other person. Notwithstanding the provisions in this Section 8, any Party may disclose, only to the extent consented to in writing by such Consenting Creditor, such Consenting Creditor's individual holdings. Any public filing of this Agreement, with the Bankruptcy Court or otherwise, which includes executed signature pages to this Agreement shall include such signature pages only in redacted form with respect to the Consenting Creditors and holdings of each Consenting Creditors (provided that the names and holdings disclosed in such signature pages may be filed in unredacted form with the Bankruptcy Court under seal).

9. Amendments and Waivers.

(a) This Agreement, including any exhibits or schedules hereto, may not be waived, modified, amended or supplemented except with the written consent of the Company Parties and the Requisite Consenting Creditors; *provided*, *however*, that any waiver, modification, amendment or supplement to this Section 9 shall require the written consent of all of the Parties; *provided, further*, to the extent the DIP Credit Agreement is not yet executed and effective, any amendment, modification or change to the form of DIP Credit Agreement shall require the written consent of the DIP Lenders; *provided*, *further*, that any modification, amendment or change to the definition of Requisite Consenting Creditors shall require the written consent of each Consenting Creditor that is a holder of Convertible Notes; *provided*, *further*, that any change, waiver, modification or amendment to this Agreement or the Restructuring Term Sheet that treats or affects any Consenting Creditor in a manner that is materially

disproportionately and adverse, on an economic basis to the manner in which any of the other Consenting Creditors are treated (after taking into account each of the Consenting Creditor's respective Claims, the relative priorities of such Claims set forth in the Indenture, and the recoveries contemplated by the Restructuring Term Sheet (as in effect on the date hereof)) shall require the written consent of such Consenting Creditor.

(b) In the event that an adversely affected Consenting Creditor does not consent to a waiver, change, modification or amendment to this Agreement requiring the consent of each Consenting Creditor (such lender, a "***Non-Consenting Creditor***"), but such waiver, change, modification or amendment receives the consent of Consenting Creditors owning at least 66 2/3% of the aggregate outstanding principal amount of Convertible Notes, this Agreement shall be deemed to have been terminated only as to such Non-Consenting Creditor, but this Agreement shall continue in full force and effect in respect to all other Consenting Creditors who have so consented, in a way consistent with this Agreement and the Restructuring Term Sheet as waived, changed, modified, or amended, as applicable.

10. Effectiveness.

This Agreement shall become effective and binding upon each Party upon the execution and delivery by such Party of an executed signature page hereto and shall become effective and binding on all Parties on the Support Effective Date; *provided* that signature pages executed by Consenting Creditors shall be delivered to (a) the other Consenting Creditors in a redacted form that removes such Consenting Creditors' holdings of the Loans or any other Claims against or interests in the Company Parties and any schedules to such Consenting Creditors' holdings (if applicable) and (b) the Company Parties, B&M, and K&S in an unredacted form (and to be kept confidential by the Company Parties, B&M, and K&S).

11. Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York, without giving effect to the conflict of laws principles thereof.

(b) Each of the Parties irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Agreement brought by any Party or its successors or assigns shall be brought and determined in any federal or state court in the Borough of Manhattan in the State of New York, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such proceeding arising out of or relating to this Agreement or the Restructuring Transactions. Each of the Parties agrees not to commence any proceeding relating hereto or thereto except in the courts described above in the Borough of Manhattan in the State of New York, other than proceedings in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in New York as described herein. Each of the Parties further agrees that notice as provided herein shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any proceeding arising out of or relating to this Agreement or the Restructuring Transactions, (i) any claim that it is not personally subject to the jurisdiction of the courts in New York as described herein for any reason, (ii) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (iii) that (A) the proceeding in any such court is brought in an inconvenient forum, (B) the venue of such proceeding is improper or (C) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Notwithstanding the foregoing, during the pendency of the Chapter 11 Cases, all proceedings contemplated by this Section 11(b) shall be brought in the Bankruptcy Court.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

12. Specific Performance/Remedies.

It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (including attorneys' fees and costs) as a remedy of any such breach, without the necessity of proving the inadequacy of money damages as a remedy, including an order of the Bankruptcy Court requiring any Party to comply promptly with any of its obligations hereunder. Each Party also agrees that it will not seek, and will waive any requirement for, the securing or posting of a bond in connection with any Party seeking or obtaining such relief.

13. Survival.

Notwithstanding the termination of this Agreement pursuant to Section 5 hereof, the agreements and obligations of the Parties in this Section 13, and Sections 4(b), 5(g), 10 (with respect to the redacted information), 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23 (and any defined terms used in any such Sections) shall survive such termination and shall continue in full force and effect in accordance with the terms hereof; *provided*, *however*, that any liability of a Party for failure to comply with the terms of this Agreement shall survive such termination.

14. Headings.

The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and shall not affect the interpretation hereof or, for any purpose, be deemed a part of this Agreement.

15. Successors and Assigns; Severability; Several Obligations.

This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, permitted assigns, heirs, executors, administrators and representatives; *provided*, *however*, that nothing contained in this Section 15 shall be deemed to permit Transfers of the Convertible Notes or Claims other than in accordance with the express terms of this Agreement. If any provision of this Agreement, or the application of any such provision to any Person or circumstance, shall be held invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision hereof and this Agreement shall continue in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon any such determination of invalidity, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible. The agreements, representations and obligations of the Parties are, in all respects, ratable and several and neither joint nor joint and several.

16. Restructuring Expenses.

Whether or not the transactions contemplated by this Agreement are consummated, the Company Parties hereby agree to pay, in cash, all Restructuring Expenses as follows: (i) all accrued and unpaid Restructuring Expenses shall be paid in full in cash on or prior to the Support Effective Date, (ii) prior to the Petition Date and after the Support Effective Date, all Restructuring Expenses incurred during such period (and not previously paid pursuant to the preceding clause (i), if any) shall be paid in full in cash by the Company Parties on a regular and continuing basis as soon as reasonably practicable after receipt of invoices, and in any event, prior to the Petition Date, and (iii) after the Petition Date and during the RSA Support Period, all accrued and unpaid Restructuring Expenses incurred up to (and including) the Plan Effective Date (including all accrued and unpaid fees and expenses incurred through the Support Effective Date) shall be paid in full in cash on the Plan Effective Date (provided, for the avoidance of doubt, that such Restructuring Expenses have not been satisfied during the Chapter 11 Cases pursuant to the DIP Orders) against receipt of invoices, without any requirement for Bankruptcy Court review or further Bankruptcy Court order. Notwithstanding the foregoing, nothing herein shall affect or limit any obligations of the Company Parties to pay the Restructuring Expenses as provided in the DIP Orders.

17. No Third-Party Beneficiaries.

Subject to Section 25 and unless otherwise expressly stated herein, this Agreement shall be solely for the benefit of the Parties (and their respective successors, permitted assigns, heirs, executors, administrators and representatives) and no other Person shall be a third-party beneficiary hereof.

18. Prior Negotiations; Entire Agreement.

This Agreement, including the exhibits and schedules hereto (including the Restructuring Term Sheet) constitutes the entire agreement of the Parties, and supersedes all other prior negotiations, with respect to the subject matter hereof and thereof, except that the Parties acknowledge that any confidentiality agreements (if any) heretofore executed between the Company Parties and each Consenting Creditor shall continue in full force and effect.

19. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same agreement. Execution copies of this Agreement may be delivered by electronic mail in portable document format (pdf), which shall be deemed to be an original for the purposes of this paragraph.

20. Notices.

All notices hereunder shall be deemed given if in writing and delivered, if contemporaneously sent by electronic mail, by overnight courier or by registered or certified mail (return receipt requested) to the following addresses:

(a) If to the Company Parties, to:

c/o Acorda Therapeutics, Inc.
2 Blue Hill Plaza, 3rd Floor
Pearl River, NY United States 10965
Attention:
E-mail:

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

Baker & McKenzie LLP
452 Fifth Avenue
New York, New York 10018
Attention:
E-mail:

(b) if to a Consenting Creditor or a transferee thereof, to the addresses or e-mail addresses set forth below such Consenting Creditor's signature hereto (or as directed by any transferee thereof), as the case may be, with a copy (which shall not constitute notice) to:

King & Spalding LLP
110 N Wacker Drive
Suite 3800
Chicago, IL 60606
Attention:
E-mail:

Any notice given by delivery, mail or courier shall be effective when received. Any notice given by electronic mail shall be effective upon transmission.

21. Reservation of Rights; No Admission.

(a) Nothing contained herein shall limit (A) the ability of any Party to consult with other Parties or (B) the rights of any Party under any applicable bankruptcy, insolvency, foreclosure, or similar proceeding, including the right to appear as a party in interest in any matter to be adjudicated in order to be heard concerning any matter arising in the Chapter 11 Cases, in each case, so long as such consultation or appearance is consistent with such Party's obligations hereunder.

(b) Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict the ability of each of the Parties to protect and preserve its rights, remedies, and interests, including its claims against any of the other Parties (or their respective affiliates or subsidiaries) or its full participation in any bankruptcy case filed by the Company Parties. This Agreement and the Restructuring Term Sheet are part of a proposed settlement of matters that could otherwise be the subject of litigation among the Parties. Pursuant to Rule 408 of the Federal Rules of Evidence and any other applicable rules of evidence, and any other applicable law, foreign or domestic, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms. This Agreement shall in no event be construed as or be deemed to be evidence of an admission or concession on the part of any Party of any claim or fault or liability or damages whatsoever. Each of the Parties denies any and all wrongdoing or liability of any kind and does not concede any infirmity in the claims or defenses which it has asserted or could assert.

22. Relationship Among Consenting Creditors.

It is understood and agreed that no Consenting Creditor has any duty of trust or confidence of any kind or form with any other Consenting Creditor, and, except as expressly provided in this Agreement, there are no commitments among or between them. No prior history, pattern, or practice of sharing confidences among or between the Consenting Creditor shall in any way affect or negate this understanding and agreement.

23. No Solicitation; Representation by Counsel; Adequate Information.

(a) This Agreement is not and shall not be deemed to be a solicitation for votes in favor of the Plan in the Chapter 11 Cases by the Consenting Creditors or a solicitation to tender or exchange any of the Loans. The acceptances of the Consenting Creditors with respect to the Plan will not be solicited until such Consenting Creditor

has received the Disclosure Statement and related ballots and solicitation materials, each as approved or ratified by the Bankruptcy Court.

(b) Each Party acknowledges that it has had an opportunity to receive information from the Company Parties and that it has been, or is part of a group that has been, represented by counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against such Party based upon lack of legal counsel shall have no application and is expressly waived.

(c) Although none of the Parties intends that this Agreement should constitute, and they each believe it does not constitute, a solicitation or acceptance of a chapter 11 plan of reorganization or an offering of securities, each Consenting Creditor acknowledges, agrees and represents to the other Parties that it (i) is an accredited investor (as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act) and a qualified institutional buyer as such term is defined in Rule 144A of the Securities Act, (ii) understands that the securities to be acquired by it (if any) pursuant to the Restructuring have not been registered under the Securities Act and that such securities are, to the extent not acquired pursuant to section 1145 of the Bankruptcy Code, being offered and sold pursuant to an exemption from registration contained in the Securities Act, based in part upon such Consenting Creditor's representations contained in this Agreement and cannot be sold unless subsequently registered under the Securities Act or an exemption from registration is available, and (iii) has such knowledge and experience in financial and business matters that such Consenting Creditor is capable of evaluating the merits and risks of the securities to be acquired by it (if any) pursuant to Restructuring and understands and is able to bear any economic risks with such investment.

24. Confidentiality Agreement Amendment

Each Consenting Convertible Noteholder hereby agrees that Section 13 of the Confidentiality Agreement applicable to it is hereby amended to replace the date "March 31, 2024" contained in the second sentence thereof, with "April 1, 2024".

25. Prepetition Agent

Each Consenting Convertible Noteholder hereby authorizes and directs the Prepetition Agent (as defined in the DIP Orders) to consent to the DIP Orders and the terms and conditions set forth therein, and the Consenting Convertible Noteholders agree that the Prepetition Agent shall be afforded and entitled to all benefits, indemnities, immunities, privileges, protections and rights that are conferred upon it under the Indenture and other Notes Documents and applicable law in connection with its compliance with such instruction and direction, and the Prepetition Agent shall have no liability to any Convertible Noteholder for, or in any way related to or arising from, whether directly or indirectly, such instruction and direction. Each of the Parties agrees that the Prepetition Agent is an express third party beneficiaries of, and may enforce, any of the provisions of this Section 25.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized officers, solely in their respective capacity as officers of the undersigned and not in any other capacity, as of the date first set forth above.

ACORDA THERAPEUTICS, INC.
on its own behalf and on behalf of its direct and indirect debtor subsidiaries

By: /s/ Michael Gesser

Name: Michael Gesser

Title: Chief Financial Officer

Exhibit 10.49

Execution Version

D. E. Shaw Valence Portfolios, L.L.C., as a Consenting Creditor, a DIP Lender and Convertible Noteholder

By: /s/ Harry Chiel

Name: Harry Chiel

Title: Authorized Signatory

[Signature Page to Restructuring Support Agreement (D.E. Shaw)]

Davidson Kempner Arbitrage, Equities and Relative Value LP, as a Consenting Creditor and Convertible Noteholder
By: Davidson Kempner Multi-Strategy GP II LLC, its general partner
By: Davidson Kempner Liquid GP Topco LLC, its managing member

By: /s/ Gabriel T. Schwartz

Name: Gabriel T. Schwartz

Title: Co-Deputy Executive Managing Member

M. H. Davidson & Co., as a Consenting Creditor and Convertible Noteholder
By: M. H. Davidson & Co. GP, L.L.C., its general partner
By: Davidson Kempner Liquid GP Topco LLC, its managing member

By: /s/ Gabriel T. Schwartz

Name: Gabriel T. Schwartz

Title: Co-Deputy Executive Managing Member

Midtown Acquisitions L.P., as a Consenting Creditor and a DIP Lender
By: Midtown Acquisitions GP LLC, its general partner

By: /s/ Gabriel T. Schwartz

Name: Gabriel T. Schwartz

Title: Co-Deputy Executive Managing Member

Exhibit 10.49

Execution Version

Highbridge Tactical Credit Institutional Fund, Ltd., as a Consenting Creditor, a DIP Lender and Convertible Noteholder

By: Highbridge Capital Management, LLC, as Trading Manager and not in its individual capacity

By: /s/ Jonathan Segal

Name: Jonathan Segal

Title: Managing Director, Co-CIO

Highbridge Tactical Credit Master Fund, L.P., as a Consenting Creditor, a DIP Lender and Convertible Noteholder

By: Highbridge Capital Management, LLC, as Trading Manager and not in its individual capacity

By: /s/ Jonathan Segal

Name: Jonathan Segal

Title: Managing Director, Co-CIO

[Signature Page to Restructuring Support Agreement (Highbridge)]

Quantum Partners LP, as a Consenting Creditor and Convertible Noteholder
By: QP GP LLC, its general partner

By: /s/ Neal Paul Donnelly

Name: Neal Paul Donnelly

Title: Attorney-in-Fact

Palindrome Master Fund LP, as a Consenting Creditor, a DIP Lender and Convertible Noteholder
By: Palindrome Master Fund GP LLC, its general partner

By: /s/ Neal Paul Donnelly

Name: Neal Paul Donnelly

Title: Attorney-in-Fact

Cedar Grove Holdings Ltd., as a Consenting Creditor and DIP Lender

By: /s/ Neal Paul Donnelly

Name: Neal Paul Donnelly

Title: Attorney-in-Fact

Exhibit 10.49

Execution Version

Nineteen77 Global Multi-Strategy Alpha Master Limited, as a DIP Lender and Convertible Noteholder, by UBS O'Connor LLC, its investment advisor

By: /s/ Doyle Horn

Name: Doyle Horn

Title: Director

By: /s/ James DelMedico

Name: James DelMedico

Title: Executive Director

[Signature Page to Restructuring Support Agreement (UBS)]

Exhibit 10.49

Execution Version

THE CANYON VALUE REALIZATION MASTER FUND, L.P.
CANYON VALUE REALIZATION FUND, L.P., each as a Consenting Creditor, a DIP Lender and Convertible Noteholder

By: Canyon Capital Advisors LLC, as Investment Advisor

By: /s/ Luis A. Silva

Name: Luis A. Silva

Title: Authorized Signatory

[Signature Page to Restructuring Support Agreement (Canyon)]

Exhibit 10.50

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of April [_____], 2024

Among

ACORDA THERAPEUTICS, INC.,
as Borrower and as Debtor and Debtor-in-Possession,

THE LENDERS PARTY HERETO

and

GLAS USA LLC,
as Administrative Agent

and

GLAS Americas LLC,
as Collateral Agent

TABLE OF CONTENTS

SCHEDULES

EXHIBITS

Exhibit A-1	--	Form of Committed Loan Notice
Exhibit A-2	--	Form of Prepayment Notice
Exhibit B	--	Form of Note
Exhibit C	--	Form of Compliance Certificate
Exhibit D	--	Form of Assignment and Assumption
Exhibit E	--	Form of Officer's Certificate
Exhibit F	--	Form of Administrative Questionnaire
Exhibit G	--	Form of Interim Order

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement") is entered into as of [_____], 2024 among ACORDA THERAPEUTICS, INC., a Delaware corporation and a debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code (as hereinafter defined) (the "Borrower"), each Subsidiary Guarantor (together each other Person that executes a joinder agreement and becomes a "Guarantor" hereunder, each a "Guarantor" and collectively, the "Guarantors") each Lender (as hereinafter defined) from time to time party hereto and GLAS USA LLC, a limited liability company organized and existing under the laws of the State of New Jersey, as administrative agent (in such capacities, together with any successor administrative agent, the "Administrative Agent") and GLAS Americas, LLC, a limited liability company organized and existing under the laws of the State of New York, as collateral agent for the Lenders (in such capacities, together with any successor collateral agent, the "Collateral Agent").

PRELIMINARY STATEMENTS

1. On April 1, 2024 (the "Petition Date"), the Borrower and certain of its Subsidiaries (collectively, the "Debtors") filed in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") a voluntary petition for relief under Chapter 11 of the United States Code (the "Bankruptcy Code") and have continued in the possession of their assets and in the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code, and such reorganization case is being jointly administered under Case Number [___] (the "Chapter 11 Case").

2. Prior to the Petition Date, certain of the Lenders and/or certain of their affiliates or controlled funds provided financing to the Borrower, pursuant to those certain 6.00% Convertible Senior Secured Notes due 2024, dated as of December 23, 2019 (the "Prepetition Notes") among the Borrowers, the guarantors from time to time party thereto, the lenders party thereto from time to time (the "Prepetition Noteholders"), and Wilmington Trust, National Association as administrative agent and collateral agent (the "Prepetition Agent") (the Prepetition Notes, as amended, restated, amended and restated, supplemented or otherwise modified through the Petition Date, the "Prepetition Indenture" and, together with all related Loan Documents (as defined therein), the "Prepetition Notes Documents", and the outstanding principal amount of debt under the Prepetition Indenture, the "Prepetition Secured Obligations").

3. The Borrower has requested that the Lenders party hereto provide a senior secured, "superpriority" debtor-in-possession term loan facility available in multiple draws as set forth herein to the Borrowers in the maximum aggregate original principal amount of $60,000,000, consisting of (i) an interim term loan facility in an aggregate maximum original principal amount of $10,000,000 (the "Interim DIP Loans") available immediately upon entry of the Interim Order; and (ii) a final delayed draw term loan facility in an aggregate maximum original principal amount of $10,000,000 (the "Final DIP Loans", such loans, together with the Interim DIP Loans, the "New Money DIP Loans") (clauses (i) and (ii) hereof, the "New Money DIP Facility") and (iii) a roll-up facility in the aggregate maximum principal amount of $40,000,000, representing a roll-up of Prepetition Secured Obligations on a two dollars to one dollar basis of the Commitments hereunder made pursuant to the Prepetition Notes Documents (the "Roll-Up Financing", and such loans the

"Roll-Up Loans"), which shall be included, in the Final Order (clause (iii) hereof, the "Roll-Up DIP Facility" and together with the New Money DIP Facility, the "DIP Facility").

4. The Guarantors have agreed to guarantee the obligations of the Borrower hereunder and the Borrower and the Guarantors have agreed to secure their respective Obligations by granting to the Administrative Agent, for the benefit of the Secured Parties (as hereinafter defined), a lien on substantially all of their respective assets, in accordance with the priorities provided in the Loan Documents (as hereinafter defined) and the Final Order (as hereinafter defined).

Subject to and upon the terms and conditions set forth herein, the Lenders are willing to make available to the Borrower the "super-priority" debtor-in-possession term loan facility provided for herein:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Administration Fee" has the meaning specified in Section 2.06(d).

"Administrative Agent" has the meaning specified in the first paragraph of this Agreement and shall include any successor administrative agent appointed in accordance with Section 9.09.

"Administrative Agent's Office" means, the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire substantially in the form of Exhibit F.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means, in respect of any Person which, directly or indirectly, controls, is controlled by or is under common control with such Person; and for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" or "under common control with") means the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting Equity Interests or by contract or otherwise;

"Agent" means, individually or collectively, Administrative Agent or Collateral Agent. as applicable.

"Agent Fee Letter" means that certain fee letter by and among GLAS Americas LLC, GLAS USA LLC and the Borrower.

"Agent Parties" has the meaning specified in Section 10.02(f).

"Agent-Related Persons" means the Administrative Agent, together with its Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

"Aggregate Commitments" means the Commitments of all the Lenders. As of the Closing Date, the amount of the Aggregate Commitments is $60,000,000.

"Agreement" has the meaning specified in the introductory paragraph hereto.

"Anti-Corruption Laws" has the meaning specified in Section 5.15(g).

"Anti-Terrorism Law" means any Requirement of Law related to money laundering or financing terrorism, including the PATRIOT Act, and its implementing regulations, The Currency and Foreign Transactions Reporting Act (also known as the Bank Secrecy Act, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended), Executive Order 13224 (effective September 24, 2001) and the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956 and 1957).

"Applicable Lending Office" means for any Lender, such Lender's office, branch or affiliate designated for the Loans, as notified to the Administrative Agent and the Borrower or as otherwise specified in the Assignment and Assumption pursuant to which such Lender became a party hereto, any of which offices may, subject to the applicable provisions of Article III, be changed by such Lender upon ten (10) days' prior written notice to the Administrative Agent and the Borrower; provided that for the purposes of the definition of "Excluded Taxes" and Section 3.01, any such change shall be deemed an assignment made pursuant to an Assignment and Assumption.

"Applicable Rate" means a percentage per annum equal to, as of any date of determination, 10.5%.

"Approved Bankruptcy Court Order" means (a) the applicable Financing Order, as such order is in effect from time to time and (b) any other order entered by the Bankruptcy Court that (x) is in form and substance satisfactory to the Required Lenders in all respects, (y) once entered, has not been vacated, reversed or stayed, and (z) has not been amended or modified except in a manner satisfactory to the Required Lenders.

"Approved Budget" means, initially, the Initial Approved Budget, and, following approval of any Supplemental Approved Budget, the "Approved Budget" as defined in and approved pursuant to the Financing Orders.

"Approved Fund" means any Fund that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or Affiliate of an entity that administers, advises or manages a Lender.

"Article 9 Collateral" shall have the meaning assigned to such term in Section 13.01.

"Assignment and Assumption" means an Assignment and Assumption substantially in the form of Exhibit D.

"Attorney Costs" means and includes, regardless of if any transactions are ever actually consummated, all reasonable and documented fees, out-of-pocket costs, disbursements and expenses and actual disbursements of any law firm or other external legal counsel, limited to one counsel to the Agent (which on the date hereof is King & Spalding LLP) and one counsel to the Lenders (which on the date hereof is King & Spalding LLP) and, to the extent reasonably necessary, local counsel for each of the Agent and the Lenders in any relevant jurisdiction (and, in the event of any actual conflict of interest, additional counsel to the affected parties).

"Attributable Indebtedness" means, at any date, (a) in respect of any Capital Lease Obligation (other than a lease resulting from a Sale Leaseback) of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Sale Leaseback, the lesser of (i) the present value, discounted in accordance with GAAP at the interest rate implicit in the related lease, of the obligations of the lessee for net rental payments over the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor be extended) and (ii) the fair market value of the assets subject to such transaction.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto.

"Bankruptcy Court" has the meaning specified in the Preliminary Statements hereto.

"Borrower" has the meaning specified in the introductory paragraph hereto.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close under the Laws of, or are in fact closed in, the State of New York.

"Capital Lease" means, with respect to any Person, any leasing or similar arrangement conveying the right to use any property, whether real or personal property, or a combination thereof, by that Person as lessee that, in conformity with GAAP, is required to be accounted for as a capital lease on the balance sheet of such Person.

"Capital Lease Obligation" means, with respect to any Person, all monetary or financial obligations of such Person and its Subsidiaries under any Capital Leases, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date on which such lease may be terminated by the lessee without payment of a penalty.

"Carve-Out" means the "Carve-Out" as defined in the Financing Orders.

"Cash Equivalents" means any of the following: (a) readily marketable direct obligations of the Government of the United States or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of the Government of the United States, (b) insured certificates of deposit of or time deposits with any commercial bank that is a Lender or any other domestic commercial bank having capital and surplus in excess of $500,000,000 maturing not more than one year after the date of issuance, (c) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the Government of the United States, (d) securities with maturities of three hundred and sixty-five (365) days or less from the date of acquisition that are issued or fully guaranteed by any state, district or territory of the United States, by any political subdivision or taxing authority of any such state, district or territory or by any foreign government, the securities of which state, district or territory, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's, (e) commercial paper maturing not more than two hundred and seventy (270) days from the date of issue and issued by a corporation (other than an Affiliate of any Loan Party) organized under the laws of any state of the United States of America or of the District of Columbia and, at the time of acquisition thereof, rated A 2 or higher by S&P, P 2 or higher by Moody's or F2 or higher by Fitch, (f) money market mutual or similar funds that invest substantially all of their assets in one or more type of securities satisfying the requirements of clauses (a) through (e) of this definition, (g) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by financial institutions having capital of at least $500,000,000, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a) and (b) of this definition, (h) agencies (LSE's), State (municipal bonds), or corporate bonds having a long term rating of at least A- or A3 from S&P, Moody's or Fitch, having maturities of not more than fifteen (15) months from the date of acquisition and (i) money market funds having a rating of AAAm/Aaa or better from S&P, Moody's or Fitch.

"Casualty Event" means any casualty, loss, damage, destruction or other similar loss with respect to real or personal property or improvements.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"Change in Law" means (a) the adoption of any law, treaty, order, policy, rule or regulation after the date of this Agreement, (b) any change in any law, treaty, order, policy, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) the making or issuance of any guideline, request or directive issued or made after the date hereof by any central bank or other Governmental Authority (whether or not having the force of law); provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in implementation thereof and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Change of Control" means the occurrence of any of the following events:

(a) any direct or indirect Subsidiary of the Borrower on the Closing Date shall cease to be a Wholly-owned direct or indirect Subsidiary of the Borrower; or

(b) any Person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) shall have (x) acquired beneficial ownership or control of 25% or more on a fully diluted basis of the voting and/or economic interest in the Equity Interests of the Borrower; or (y) obtained the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of the Borrower;

For the avoidance of doubt the proposal or entry into (but not the consummation of the transactions pursuant to) the definitive documents contemplated by the Restructuring Support Agreement shall not constitute a Change of Control.

"Chapter 11 Case" has the meaning specified in the Preliminary Statements hereto.

"Closing Date" means the date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means a collective reference to all property required to be pledged to the Collateral Agent, for the benefit of the Secured Parties, to secure all or part of the Obligations

pursuant to the Collateral Documents or the applicable Financing Order; provided that "Collateral" shall include the collective reference to Article 9 Collateral and Pledged Collateral.

"Collateral Agent" has the meaning specified in the first paragraph of this Agreement and shall include any successor agent appointed in accordance with Section 9.09.

"Collateral Documents" means, collectively, the applicable Financing Order (with respect to the granting of Liens thereunder), this Agreement, and, to the extent required hereunder or reasonably requested by the Administrative Agent (at the direction of the Required Lenders) and the Lenders, any mortgages, any collateral assignments, any security agreements, pledge agreements, control agreements or other similar agreements, or any supplements to any of the foregoing, in each case delivered to the Administrative Agent and the Lenders in connection with this Agreement or any other Loan Document or any transaction contemplated hereby or thereby to secure or guarantee the payment of any part of the Obligations or the performance of any Loan Party's other duties and obligations under the Loan Documents. The Collateral Documents shall supplement, and shall not limit, the grant of a Lien on the Collateral pursuant to this Agreement or the applicable Financing Order.

"Commitment" means, as to each Lender, its obligations to make Loans pursuant to Section 2.01 in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on Schedule 2.01 hereto under the caption "Commitment". Commitments will reduce on a dollar for dollar basis once advanced.

"Commitment Expiration Date" means the earliest to occur of (i) the date on which the entire amount of the Aggregate Commitments has been drawn and (ii) the date on which the Aggregate Commitments have been terminated pursuant to this Agreement and the applicable Financing Order.

"Commitment Fee" has the meaning provided in Section 2.06(a).

"Committed Loan Notice" means a notice of borrowing substantially in the form of Exhibit A-1.

"Communications" has the meaning specified in Section 10.02(e).

"Compliance Certificate" means a certificate substantially in the form of Exhibit C.

"Confirmation Order" means the "Confirmation Order" as defined in the Restructuring Support Agreement.

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

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Copyright License" shall mean any written agreement, now or hereafter in effect, granting any right to any Pledgor under any Copyright now or hereafter owned by any other person, and all rights of any Pledgor under any such agreement (including, without limitation, any such rights that such Pledgor has the right to license).

"Copyright Security Agreement" means any Copyright Security Agreement, in form and substance satisfactory to Required Lenders.

"Copyrights" shall mean all of the following which any Pledgor now or hereafter owns or in which any Pledgor now or hereafter has an interest (pursuant to a Copyright License or otherwise): (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, whether registered or unregistered, (b) all registrations and applications for registration of any such Copyright in the United States or any other country, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule 5.17, (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing and (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

"Credit Agreement" shall have the meaning assigned to such term in the preliminary statement of this Agreement.

"Debtors" has the meaning set forth in the recitals hereto.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means an interest rate equal to the Applicable Rate plus 2.0% per annum to the fullest extent permitted by applicable Laws.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided

that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state, federal or foreign regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrower and each Lender.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition of any asset or property by any Person (including any Sale Leaseback and any sale of Equity Interests).

"Disqualified Equity Interests" means, with respect to any Person, any Equity Interest of such Person which, by its terms, or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable, or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety one (91) days after the Maturity Date then in effect; provided that, if such Equity Interests are issued pursuant to a plan for the benefit of employees of the Borrower or any of its Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 10.07(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.07(b)(iii)).

"Environmental Action" means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating to any Environmental Law, any Environmental Permit or Hazardous Material or arising from alleged injury or threat to health and safety as it relates to any Hazardous Material or the environment, including, without limitation, (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages relating to Releases of Hazardous Materials or actual or alleged violations of Environmental Laws and (b) by any Governmental Authority or third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

"Environmental Laws" means any and all federal, provincial, local and foreign statutes, laws, regulations, ordinances, rules, decrees or other governmental restrictions of legal effect relating to the environment, to the release of any Hazardous Materials into the environment or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials but only to the extent such Environmental Laws are legally applicable to any Loan Party pursuant to any Environmental Law.

"Environmental Liability" in respect of any Person, any and all legal obligations and liabilities under Environmental Laws for any Release caused by such Person or which is discovered or uncovered during the ownership or control of any real property by such Person and which adversely impacts any Person, property or the environment whether or not caused by a breach of applicable laws (including Environmental Laws).

"Environmental Permit" means any permit, approval, hazardous waste identification number, license or other authorization issued by or submitted to a Governmental Authority required under any Environmental Law.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time and Treasury regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is under common control with any Loan Party and is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations at any facility of any Loan Party or ERISA Affiliate as described in Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan, notification of any Loan Party or ERISA Affiliate concerning the imposition of withdrawal liability or notification that a Multiemployer Plan is insolvent or is in reorganization within the meaning of Title IV of ERISA (or that is in endangered or critical status, within the meaning of Section 305 of ERISA); (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; (g) a determination that any Pension Plan is, or is expected to be, in "at-risk" status (within the meaning of Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); or (h) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Pension Plan.

"Erroneous Payment" has the meaning assigned to it in Section 9.15(a).

"Erroneous Payment Deficiency Assignment" has the meaning assigned to it in Section 9.15(d)(i).

"Erroneous Payment Impacted Class" has the meaning assigned to it in Section 9.15(d)(i).

"Erroneous Payment Return Deficiency" has the meaning assigned to it in Section 9.15(d)(i).

"Erroneous Payment Subrogation Rights" has the meaning assigned to it in Section 9.15(e).

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning specified in Section 8.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.

"Excluded Account" shall mean any Deposit Account or Securities Account that (a) is solely used for the purpose of (x) making payroll and withholding tax payments related thereto and other employee wage and benefits payments and accrued and unpaid employee compensation payments (including salaries, wages, benefits, and expense reimbursements, 401(k) and other retirement plans and employee benefits, including rabbi trusts for deferred compensation and health care benefits), (y) paying taxes, including sales taxes or (z) the Professional Fee Escrow Account (as defined in the applicable Financing Order), or (b) is a fiduciary or trust account or otherwise held exclusively for the benefit of an unaffiliated third party.

"Excluded Collateral" shall have the meaning assigned to such term in Section 13.01.

"Excluded Equity Interests" shall have the meaning assigned to such term in Section 12.01.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.07(b) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Excluded Subsidiary" means Biotie Therapies GmbH, a German limited liability company, and Acorda Therapeutics Ireland Limited, an Irish company.

"Existing Agreements" means, the Prepetition Notes Documents.

"Exit Fee" has the meaning specified in Section 2.06(b).

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or

convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Final DIP Loan Commitment" means, with respect to each Lender holding an Interim DIP Loan Commitment, the commitment of such Lender to make an Final DIP Loan, which commitment is in the amount set forth opposite such Lender's name on Schedule 2.01 hereto under the caption "Final DIP Loan Commitment." The aggregate amount of the Final DIP Loan Commitments on the Closing Date shall be the lesser of (a) $10,000,000 and (b) such amount as approved by the Bankruptcy Court authorizing Final DIP Loan Commitments pursuant to the Final Order.

"Final DIP Loans" has the meaning specified in the Preliminary Statements hereto; provided that such Loans shall be in one or more drawings, but in any event the Final DIP Loans shall not exceed two drawings in aggregate, and shall be in an aggregate principal amount not to exceed the aggregate Final DIP Loan Commitments.

"Final Order" means the order or judgment of the Bankruptcy Court as entered on the docket of the Bankruptcy Court substantially in the form of Interim Order, inter alia, (a) approving on a final basis this Agreement and the other Loan Documents, (b) authorizing the incurrence by the Loan Parties of the post-petition secured indebtedness under this Agreement, (c) approving the payment by the Loan Parties of the fees contemplated by this Agreement and the other Loan Documents, (d) authorizing on a final basis the Loan Parties to use cash collateral (as defined in the Bankruptcy Code), and (b) granting the Prepetition Noteholders certain adequate protection, among other related relief, which order or judgment is in effect and not stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof with the consent of the Required Lenders.

"Final Sale Order" has the meaning set forth in the applicable Financing Order.

"Financial Advisor" means Perella Weinberg Partners, in its capacity as financial advisor to the Lenders and their counsel solely with respect to the Loan Documents.

"Financing Orders" means, collectively, the Interim Order and the Final Order.

"Fiscal Year" means the fiscal year of the Borrower and its Subsidiaries, ending on December 31 of each calendar year.

"Fitch" means Fitch Ratings, Inc. and its successors.

"Foreign Lender" means (a) if the borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is a resident or organized under the laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes.

"Foreign Subsidiary" means any direct or indirect Subsidiary of the Borrower organized outside the United States.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fund" means any Person (other than an individual) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"GAAP" means generally accepted accounting principles in the United States, as in effect from time to time.

"Governmental Authority" means any nation or government, any provincial, state, local, municipal or other political subdivision thereof, and any entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Governmental Authorization" means any authorization, approval, consent, franchise, license, covenant, order, ruling, permit, certification, exemption, notice, declaration or similar right, undertaking or other action of, to or by, or any filing, qualification or registration with, any Governmental Authority.

"Granting Lender" has the meaning specified in Section 10.07(f).

"Guarantee Obligations" means, with respect to any Person, any obligation or arrangement of such Person to guarantee or intended to guarantee any Indebtedness or other payment obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guarantee, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the Obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement or (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof. The amount of any Guarantee Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Guarantee Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

"Guarantors" means the has the meaning specified in the Preliminary Statements hereto.

"Hazardous Materials" means any material, substance or waste that is regulated, classified, or otherwise characterized under or pursuant to any Environmental Law as "hazardous",

"toxic", a "pollutant", a "contaminant", a "deleterious substance", "dangerous goods", "radioactive" or words of similar meaning or effect, including petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, greenhouse gases, mold, urea formaldehyde insulation, chlorofluorocarbons and all other ozone-depleting substances.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding in each case (i) accounts payable and other accrued liabilities incurred in the ordinary course of business not past due for more than ninety (90) days after its stated due date (except for accounts payable contested in good faith), (ii) any earn-out obligation until such obligation is both required to be reflected as a liability on the balance sheet of such Person in accordance with GAAP and not paid after becoming due and payable and (iii) deferred or equity compensation arrangements entered into in the ordinary course of business and payable to directors, officers or employees), (e) all Indebtedness (excluding prepaid interest thereon) of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed but, in the case of Indebtedness which is not assumed by such Person, limited to the lesser of (x) the amount of such Indebtedness and (y) the fair market value of such property, (f) all Attributable Indebtedness of such Person, (g) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty (excluding the portion thereof that has been fully cash collateralized in a manner permitted by this Agreement), (h) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, surety bonds and performance bonds, whether or not matured, (i) all obligations of such Person in respect of Disqualified Equity Interests and (j) all guarantees by such Person in respect of any of the foregoing. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is directly liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. Anything herein to the contrary notwithstanding, obligations in respect of any Indebtedness that has been irrevocably defeased (either covenant or legal) or satisfied and discharged pursuant to the terms of the instrument creating or governing such Indebtedness shall not constitute Indebtedness.

"Indemnified Liabilities" has the meaning specified in Section 10.05(a).

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

"Indemnitees" has the meaning specified in Section 10.05(a).

"Information" has the meaning specified in Section 10.08.

"Initial Approved Budget" means the "Initial Approved Budget" as defined in the Financing Orders.

"Intellectual Property" has the meaning specified in Section 5.17.

"Interim DIP Loan Commitment" means, with respect to each Lender holding an Interim DIP Loan Commitment, the commitment of such Lender to make an Interim DIP Loan, which commitment is in the amount set forth opposite such Lender's name on Schedule 2.01 hereto under the caption "Interim DIP Loan Commitment." The aggregate amount of the Interim DIP Loan Commitments on the Closing Date shall be the lesser of (a) $10,000,000 and (b) such amount as approved by the Bankruptcy Court authorizing Interim DIP Loan Commitments pursuant to the Interim Order.

"Interim DIP Loans" has the meaning specified in the Preliminary Statements hereto; provided that such Loans shall be made on the Closing Date, and shall be in an aggregate principal amount not to exceed the aggregate Interim DIP Loan Commitments.

"IP Agreements" shall mean all Copyright Licenses, Patent Licenses, Trademark Licenses, and all other material agreements relating to the license, development, use or disclosure of any Intellectual Property to which a Pledgor, now or hereafter, is a party or beneficiary, including, without limitation, the agreements set forth on Schedule 5.17 hereto.

"Interest Payment Date" means the last Business Day of each calendar month, commencing April 30, 2024, and the Maturity Date.

"Interest Period" means, with respect to each Loan, a period commencing on the date of the making of such Loan and ending one month thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(d) below) to the next succeeding Business Day, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is one month after the date on which the Interest Period began, as applicable, and (d) the Borrower may not elect an Interest Period which will end after the Maturity Date.

"Interim Order" means the order or judgment of the Bankruptcy Court as entered on the docket of the Bankruptcy Court with respect to the Chapter 11 Case substantially in the form of Exhibit G, inter alia, (a) authorizing, on an interim basis, the Loan Parties to use cash collateral (as defined in the Bankruptcy Code), and (b) granting the Prepetition Noteholders certain adequate protection, among other related relief, which order or judgment is in effect and not stayed, and as the same may be amended, supplemented or modified from time to time after entry thereof with the consent of the Required Lenders.

"Investment" in any Person, means any loan or advance to such Person, any purchase or other acquisition of any voting Equity Interests or other Equity Interests or

Indebtedness or the assets comprising a division or business unit or a substantial part or all of the business of such Person, any capital contribution to such Person or any other direct or indirect investment in such Person.

"IRS" means the United States Internal Revenue Service.

"Laws" means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"Lender" means any Lender that may be a party to this Agreement from time to time, including its successors and assigns as permitted hereunder (each of which is referred to herein as a "Lender").

"Lien" means any assignment, mortgage, charge, pledge, lien, encumbrance, title retention agreement (including Capital Leases but excluding operating leases) or any other security interest whatsoever, howsoever created or arising, whether fixed or floating, legal or equitable, perfected or not, but specifically excludes any legal, contractual or equitable right of set-off.

"Loan" means an extension of credit by a Lender to the Borrower under Article II, which shall include (a) the Interim DIP Loans, (b) the Final DIP Loans and (c) following the Roll-Up Effective Time, the deemed extensions of credit under Section 2.02(d) in the form of Roll-Up Loans, and "Loan" means any of such Loans.

"Loan Documents" means, collectively, (i) the Collateral Documents, (ii) the Notes, (iii) any agency fee letter entered into between the Borrower and the Agent in connection with this Agreement and the other Loan Documents, (v) the Financing Orders and (vi) all other instruments and documents delivered from time to time by or on behalf of the Borrower or any of its Subsidiaries in connection herewith or therewith.

"Loan Parties" or "Loan Party" means, collectively or individually as the context may require, the Borrower and each Guarantor.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, assets, liabilities (actual or contingent), financial condition of the Borrower and its Subsidiaries, taken as a whole, except as a result of (i) the commencement of the Chapter 11 Case or the events and conditions related and/or leading up thereto, (ii) the effects that customarily result from the commencement of a Chapter 11 Case (including the issuance of the Financing Orders), or (iii) any defaults under agreements as a result of the commencement of the Chapter 11 Case that have no effect under the terms of the Bankruptcy Code; (b) a material impairment of the ability of any Loan Party or its Subsidiaries to perform its obligations under any Loan Document to which it is a party; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party; or (d) a material impairment of the Agent's or the Lenders' ability to enforce the Obligations or realize upon the Collateral.

"Material Contracts" means any Contractual Obligation of any Loan Party the failure to comply with which, or the termination (without contemporaneous replacement) of which, could reasonably be expected to have a Material Adverse Effect or otherwise result in liabilities in excess of $500,000.

"Maturity Date" means, the earliest to occur of (i) the date that is one hundred and eighty (180) calendar days after the Petition Date, (ii) if the Final Order has not been entered, twenty nine (29) calendar days after the Petition Date, (iii) the acceleration of the Loans and the termination of the Commitments upon the occurrence, and during the continuance of an Event of Default, (iv) the effective date of any Chapter 11 plan, (v) the date the Bankruptcy Court converts any of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, (vi) the date the Bankruptcy Court dismisses any of the Chapter 11 Case, (vii) the date of the entry of the Final Sale Order by the Bankruptcy Court, (viii) the Final Sale Order and (ix) the date an order is entered in any bankruptcy case appointing a Chapter 11 trustee or examiner.

"Milestone" has the meaning assigned to such term in the then applicable Financing Order.

"Moody's" means Moody's Investors Service, Inc. and its successors.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"Net Cash Proceeds" means:

(a) with respect to the Disposition of any asset by any Loan Party or any Casualty Event the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Disposition or Casualty Event (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received and, with respect to any Casualty Event, any insurance proceeds or condemnation awards in respect of such Casualty Event actually received by or paid to or for the account of the Borrower or any of its Subsidiaries) over (ii) the sum of (A) the principal amount of any Indebtedness permitted by this Agreement that is secured by a lien (other than a Lien on the Collateral that is subordinated or junior to the Liens securing the Obligations) by the asset subject to such Disposition or Casualty Event and that is repaid (and is timely repaid) in connection therewith (other than Indebtedness under the Loan Documents), (B) the reasonable out-of-pocket expenses actually incurred and paid by the Borrower or any of its Subsidiaries in connection with such Disposition or Casualty Event (including, reasonable and documented attorney's, accountant's and other similar professional advisor's fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant, and other customary fees) to third parties (other than the Loan Parties or any of their

Affiliates), (C) taxes paid or reasonably estimated to be actually payable or that are actually accrued in connection therewith with respect to the current tax year as a result of any gain recognized in connection therewith by such Person or any of the direct or indirect stockholders thereof and attributable to such Disposition or Casualty Event; provided that, if the amount of any estimated taxes pursuant to this subclause (C) exceeds the amount of taxes actually required to be paid in cash, the aggregate amount of such excess shall constitute Net Cash Proceeds and (D) any reasonable reserve actually maintained in respect of (x) the sale price of such asset or assets established in accordance with GAAP, and (y) any liabilities associated with such asset or assets and retained by the Borrower or any of its Subsidiaries after such sale or other Disposition thereof, including pension and other post-employment benefit liabilities and liabilities related against any indemnification obligations associated with such transaction and it being understood that "Net Cash Proceeds" shall include any cash or Cash Equivalents (1) received upon the Disposition of any non-cash consideration received by such Person in any such Disposition, and (2) received upon the reversal (without the satisfaction of any applicable liabilities in cash in a corresponding amount) of any reserve described in subclause (D) above or, if such liabilities have not been satisfied in cash and such reserve not reversed within two years after such Disposition or Casualty Event, the amount of such reserve, in each case of subclauses (A) through (D) above, to the extent approved by the Bankruptcy Court (if such approval is necessary pursuant to the Bankruptcy Code); and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries not permitted under Section 7.03, the excess, if any, of (i) the sum of the cash received in connection with such incurrence or issuance over (ii) the investment banking fees, underwriting discounts, commissions, costs and other out-of-pocket expenses and other customary expenses (including reasonable attorney's, accountant's and other similar professional advisor's fees), incurred by such Loan Party in connection with such incurrence or issuance to third parties (other than the Loan Parties or any of their Affiliates), in the case of the foregoing clause (ii), to the extent approved by the Bankruptcy Court (if such approval is necessary pursuant to the Bankruptcy Code)

"New Money DIP Facility" has the meaning assigned to such term in the recitals to this Agreement.

"New Money DIP Loans" has the meaning assigned to such term in the recitals to this Agreement.

"New York UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "New York UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

"Non-Consenting Lender" has the meaning specified in Section 3.07(c).

"Note" means a promissory note of the Borrower payable to a Lender or its assigns, substantially in the form of Exhibit B hereto, evidencing the aggregate Indebtedness of the Borrower owing to such Lender resulting from the Loans made by such Lender.

"NPL" means the National Priorities List under CERCLA.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include the obligation (including Guarantee Obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees (including pursuant to the Agent Fee Letter), Attorney Costs, any Loan Party's obligations to pay, discharge and satisfy subrogation rights in connection with any the Erroneous Payment Subrogation Rights, indemnities, and other amounts payable by any Loan Party under any Loan Document.

"Organization Documents" means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws; (b) with respect to any limited liability company, the certificate and/or articles of formation, incorporation, association or organization and, if applicable, operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, declaration, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.07(b)).

"Participant" has the meaning specified in Section 10.07(d).

"Participant Register" has the meaning specified in Section 10.07(d).

"Patent License" shall mean any written agreement, now or hereafter in effect, granting to any Pledgor any right under any Patent, now or hereafter owned by any other person

(including, without limitation, any such rights that such Pledgor has the right to license) and all rights of any Pledgor under any such agreement.

"Patent Security Agreement" means any Patent Security Agreement, in form and substance satisfactory to Required Lenders.

"Patents" shall mean all of the following which any Pledgor now or hereafter owns or in which any Pledgor now or hereafter has an interest (pursuant to a Patent License or otherwise): (a) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule 5.17, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule 5.17, (b) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import, offer for sale and/or sell the inventions or designs disclosed or claimed therein, (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing and (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

"Payment Recipient" has the meaning assigned in Section 9.15(a).

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor thereof).

"Pension Plan" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA) other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time since January 1, 2003.

"Permitted Liens" has the meaning specified in Section 7.01.

"Permitted Variances" means the "Permitted Variances" as defined in the Financing Orders.

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

"Petition Date" has the meaning specified in the Preliminary Statements hereto.

"PIK Interest" has the meaning set forth in Section 2.05(a).

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Platform" has the meaning specified in Section 10.02(e).

"Pledged Collateral" shall have the meaning assigned to such term in Section 12.01.

"Pledged Debt Securities" shall have the meaning assigned to such term in Section 12.01.

"Pledged Equity Interests" shall have the meaning assigned to such term in Section 12.01.

"Pledged Securities" shall mean any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral.

"Pledgor" shall mean the Borrower and each Subsidiary Loan Party.

"Prepayment Notice" means a notice of prepayment in respect of any voluntary or mandatory prepayment in substantially the form of Exhibit A-2.

"Pro Rata Share" means, with respect to each Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Commitment of such Lender at such time and the denominator of which is the amount of the Aggregate Commitments at such time; provided that if the Aggregate Commitments have been terminated, then the Pro Rata Share of each Lender shall be determined based on the outstanding principal amount of the Loans held by such Lender divided by the aggregate principal amount of all outstanding Loans held by all Lenders.

"Proceeding" has the meaning specified in Section 10.05(a).

"Professional Persons" means professionals or professional firms retained by the Debtors, Lenders and any official committee of creditors.

"Public Lender" has the meaning specified in Section 10.02(h).

"Qualified Equity Interests" means any Equity Interests that are not Disqualified Equity Interests.

"Recipient" means the Agent or any Lender, as applicable.

"Register" has the meaning specified in Section 10.07(c).

"Registered" means, with respect to Intellectual Property, issued by, registered with, renewed by or the subject of a pending application before any Governmental Authority or Internet domain name registrar.

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

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, leeching or migration of any Hazardous Material in or into the environment (including the abandonment or disposal of any barrels, tanks, containers or receptacles containing any Hazardous Material), or out of any vessel or facility, including the movement of any Hazardous Material through the air, soil, subsoil, surface, water, ground water, rock formation or otherwise.

"Reportable Event" means with respect to any Plan any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived that could reasonably be expected to result in a material liability for a Loan Party.

"Required Lenders" means, as of any date of determination, Lenders holding more than 50% of the aggregate principal amount of all outstanding Loans and unused Commitments at such time. provided that the unused Commitments of, and the portion of the Aggregate Commitments held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lender.

"Requirement of Law" means, as to any Person, any law (including common law), statute, ordinance, treaty, rule, regulation, order, decree, judgment, writ, injunction or settlement agreement, requirement or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer or, except for purposes of Sections 6.02 or 6.03, any other similar officer or a Person performing similar functions of a Loan Party (and, as to any document delivered on the Closing Date, to the extent permitted or required by the terms of this Agreement, any secretary or assistant secretary of a Loan Party). Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any:

(a) dividend or other distribution (whether in cash, securities or other property) or any payment (whether in cash, securities or other property), in each case, with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, including any sinking fund or similar deposit, on account of the purchase, retraction, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof and including any thereof acquired through the exercise of warrants or rights of conversion, exchange or purchase); and

(b) payment of any management or similar type fees by a Loan Party or its Subsidiary to any Affiliate thereof.

"Restricting Information" has the meaning assigned to such term in Section 10.02(i).

"Restructuring Support Agreement" means the Restructuring Support Agreement dated as of April 1, 2024, by and among [_____].

"Roll-Up DIP Facility" has the meaning assigned to such term in the recitals to this Agreement.

"Roll-Up Effective Time" means, as applicable, the moment in time with respect to the Roll-Up Financing, immediately following the entry of the Final Order by the Bankruptcy Court approving the roll-up of the Prepetition Secured Obligations as contemplated therein and herein.

"Roll-Up Lender" means each Person listed on Schedule 2.02(d) (as updated by the Administrative Agent from time to time on or prior to the Roll-Up Effective Time in accordance with the terms of the Final Order, as set forth in Section 2.02(d)) and any other Person that shall become a party to this Agreement as a Roll-Up Lender pursuant to an Assignment and Assumption with respect to a Roll-Up Loan, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption.

"Roll-Up Loan Amount" means, with respect to a Roll-Up Lender, the percentage of the Roll-Up Loans allocated to such Roll-Up Lender as set forth opposite such Roll-Up Lender's name on Schedule 2.02(d) under the heading "Roll-Up Loan Amount" (as updated by the Administrative Agent from time to time on or prior to the Roll-Up Effective Time in accordance with the terms of Final Order, as set forth in Section 2.02(d)).

"Roll-Up Loans" has the meaning assigned thereto in Section 2.02(d).

"S&P" means Standard & Poor's Ratings Services LLC, a Standard & Poor's Financial Services LLC business, and its successors.

"Sale Leaseback" means any transaction or series of related transactions pursuant to which the Borrower or any of its Subsidiaries (a) sells, transfers or otherwise disposes of any property, real or personal, whether now owned or hereafter acquired, and (b) as part of such transaction, thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold, transferred or disposed.

"Sanctions" means economic or financial sanctions or trade embargos imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, Canada, any European Union member state, His Majesty's Treasury of the United Kingdom or the Swiss State Secretariat for Economic Affairs SECO and the Swiss Directorate of International Law.

"Sanctioned Country" means, at any time, a country or territory which is itself the subject or target of any comprehensive Sanctions (at the time of this Agreement, the so-called

Donetsk People's Republic, the so- called Luhansk People's Republic, the Crimea Region of Ukraine, Zaporizhzhia and Kherson Regions of Ukraine, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" means any individual or entity, at any time, that is the subject or target or Sanctions, including (a) any individual or entity listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, the United Nations Security Council, the European Union, Canada, any Member State of the European Union, the United Kingdom or Switzerland, (b) any individual or entity operating, organized or resident in a Sanctioned Country or (c) any entity that is, in the aggregate, 50 percent or greater owned, directly or indirectly or otherwise, or where relevant under Sanctions, controlled by any such person or entity described in clause (a).

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Parties" means, collectively, (a) the Lenders, (b) the Agent, (c) each Supplemental Agent, (d) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (d) the successors and permitted assigns of each of the foregoing.

"Security Interest" shall have the meaning assigned to such term in Section 13.01.

"SPC" has the meaning specified in Section 10.07(f).

"Subsidiary" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Guarantor" means (a) each Subsidiary of the Borrower, including each Subsidiary listed under the heading "Subsidiary Guarantors" on Schedule 2, and (b) each other Subsidiary that becomes a Guarantor pursuant to a Supplement or other documentation in form and substance reasonably satisfactory to the Required Lenders, provided that in no event shall any Excluded Subsidiary be a Subsidiary Guarantor.

"Subsidiary Loan Party" shall include each Subsidiary of Borrower identified on Schedule 2 hereto and any other person that is required to become a Subsidiary Guarantor pursuant to the Credit Agreement.

"Supplement" means a Supplement to this Agreement, in form and substance satisfactory to Required Lenders.

"Supplemental Agent" has the meaning specified in Section 9.13(a) and "Supplemental Agents" shall have the corresponding meaning.

"Supplemental Approved Budget" means the "Supplemental Approved Budget" as defined in the Financing Orders.

"Swiss Limitation" has the meaning given to that term in paragraph (a) of Section 10.22.

"Swiss Loan Party" means any Loan Party incorporated in Switzerland.

"Swiss Restricted Obligations" has the meaning given to that term in paragraph (a) of Section 10.22.

"Swiss Withholding Tax" means any Taxes levied pursuant to the Swiss Federal Act on Withholding Tax (*Bundesgesetz über die Verrechnungssteuer vom 13. Oktober 1965, SR 642.21*), together with the related ordinances, regulations and guidelines, all as amended and applicable from time to time.

"Taxes" means any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, stamp taxes, withholdings (including backup withholding) or other charges imposed by any Governmental Authority (including additions to tax, penalties and interest with respect thereto).

"Termination of the DIP Financing" means, collectively, the termination of all Lenders' Commitments and payment in full in cash of all Obligations (other than Unasserted Contingent Obligations).

"Threshold Amount" means $1,000,000.

"Ticking Fee" has the meaning specified in Section 2.06(c).

"Trade Date" has the meaning specified in Section 10.07(h).

"Trademark License" shall mean any written agreement, now or hereafter in effect, granting to any Pledgor any right under any Trademark now or hereafter owned by any third party (including, without limitation, any such rights that such Pledgor has the right to license).

"Trademark Security Agreement" means any Trademark Security Agreement, in form and substance satisfactory to Required Lenders.

"Trademarks" shall mean all of the following which any Pledgor now or hereafter owns or in which any Pledgor now or hereafter has an interest (pursuant to a Trademark License or otherwise): (a) all trademarks, service marks, trade names, brand names, domain names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State

of the United States or any other country or any political subdivision thereof (except for "intent-to-use" applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed and accepted, to the extent that, and solely during the period for which, any assignment of an "intent-to-use" application prior to such filing and acceptance would violate the Lanham Act), and all renewals thereof, including those listed on Schedule 5.17, (b) all goodwill associated therewith or symbolized thereby, (c) all claims for, and rights to sue for, past or future infringements of any of the foregoing and (d) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Uniform Commercial Code" means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any security interest in any item or items of Collateral.

"United States" and "U.S." mean the United States of America.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning specified in Section 3.01(g)(ii)(B)(3).

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

"Unasserted Contingent Obligations" means, at any time, any contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted as of such time.

"Wholly-owned" means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director's qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly-owned Subsidiaries of such Person.

"Withdrawal Liability" means the liability of a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Withholding Agent" means any Loan Party and the Administrative Agent.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "herein", "hereto", "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(c) Article, Section, paragraph, clause, subclause, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(d) The term "including" is by way of example and not limitation.

(e) The term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(f) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(g) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(h) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine or neuter forms.

Section 1.03 Accounting Terms. (a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP consistently applied, except as otherwise specifically prescribed herein; provided, however, that if the Borrower notifies the Administrative Agent in writing that the Borrower requests an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision, regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then the Lenders and the Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and the Borrower after such Accounting Change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, (i) the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred and (ii) the Borrower shall provide to the Administrative Agent and the Lenders a written reconciliation in form and substance reasonably satisfactory to the Required Lenders, between calculations of any baskets and other requirements hereunder before and after giving effect to such Accounting Change.

(b) Where reference is made to a Person "and its Subsidiaries on a consolidated basis" or similar language, such consolidation shall not include any subsidiaries other than Subsidiaries.

Section 1.04 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, amendments and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.06 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

Section 1.07 UCC Terms. The following terms shall have the respective meanings provided for in the Uniform Commercial Code as in effect from time to time in the State of New York: "Accounts", "Account Debtor", "Cash Proceeds", "Certificate of Title", "Chattel Paper", "Commercial Tort Claim", "Commodity Account", "Commodity Contracts", "Deposit Account", "Documents", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-Credit Rights",

"Noncash Proceeds", "Payment Intangibles", "Proceeds", "Promissory Notes", "Record", "Securities Account", "Software", "Supporting Obligations" and "Tangible Chattel Paper".

Section 1.08 Swiss Terms. In this Agreement with respect to a Swiss Loan Party, a reference to:

(a) receiver, administrative receiver, administrator, trustee in bankruptcy, custodian, conservator, liquidator, receiver manager, compulsory manager, monitor or similar officer refers to any (i) *Sachwalter* appointed in accordance with the Swiss Code of Obligations (*Schweizerisches Obligationenrecht*; SR 220, "Swiss Code of Obligations"), (ii) *Liquidator* appointed in accordance with the Swiss Code of Obligations and (iii) *Konkursamt, Konkursverwaltung* or *Sanierunsbeauftragter* (including a supervisory authority acting in any such capacity) or any of its officials or employees, any *Liquidator* or *Sachwalter* or other officer appointed in accordance with the Swiss Federal Act on Debt Enforcement and Bankruptcy (*Bundesgesetz über Schuldbetreibung und Konkurs*; SR 281.1, "Swiss Federal Act on Debt Enforcement and Bankruptcy").

(b) a liquidation, winding-up, administration, dissolution, bankruptcy, liquidation, composition with creditors or moratorium refers to (i) a filing for the declaration of bankruptcy (*Antrag auf Konkurseröffnung*) or a formal declaration of bankruptcy (*Konkurseröffnung*) within the meaning of the Swiss Federal Act on Debt Enforcement and Bankrupt, (ii) the filing for a request for a moratorium (*Gesuch um Nachlassstundung*) or a grant of a moratorium (*provisorische oder definitive Nachlassstundung/Stundung/Notstundung/Fälligkeitsaufschub*) or protective measures (*Schutzmassnahmen/sichernde Massnahmen*) within the meaning of the Swiss Federal Act on Debt Enforcement and Bankruptcy, (iii) a moratorium on any of its indebtedness, its dissolution or liquidation and (iv) the notification of the court of over-indebtedness pursuant to article 725b paragraph 3 of the Swiss Code of Obligations.

(c) a person being unable to pay its debts refers to that person being in a state of inability to make payments (*Zahlungsunfähigkeit*) and being over-indebted (*Überschuldung*).

(d) a director or a manager refers to in relation to a company limited by shares (*Aktiengesellschaft*) a member of the board of directors (*Verwaltungsrat*) or a member of the executive management (*Geschäftsleitung*).

ARTICLE II

THE COMMITMENTS AND THE LOANS

Section 2.01 The Commitments and the Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make (or cause its Applicable Lending Office to make) to the Borrower, from time to time on and after the Closing Date and until the Commitment Expiration Date, term loans in one or more drawings in an aggregate principal amount not to exceed such Lender's Commitment; provided that the Loans made by all Lenders under this Section 2.01 shall not exceed in the aggregate the lesser of (i) the Aggregate Commitments and (ii) the maximum amount authorized by the Final Order. The Commitment of each Lender shall

be reduced by the amount of any funding thereunder and shall be terminated on the Commitment Expiration Date. Amounts paid or prepaid in respect of the Loans may not be reborrowed. Subject to Section 6.19, the proceeds of all Loans shall remain in a bank account maintained by the Borrower that is subject to a control agreement in favor of the Administrative Agent (for the benefit of the Secured Parties) until such proceeds are used in accordance with Section 6.12.

Section 2.02 Borrowings of Loans. (a) Each borrowing of Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent of such borrowing. Each such notice must be received by the Administrative Agent not later than 12:00 noon (New York, New York time) four (4) Business Days prior to the requested date of any borrowing of Loans in the form of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each borrowing of Loans shall be in a principal amount of $5,000,000 or a whole multiple of $5,000,000 in excess thereof. Each Committed Loan Notice shall specify, as applicable, (i) the requested date of the borrowing (which shall be a Business Day), (ii) the principal amount of Loans to be borrowed (iii) the principal amount of Loans to be borrowed and (iv) the location and number of the relevant Borrower's account or any other designated account(s) to which funds are to be disbursed (which may be in the form of a funds flow memorandum). Notwithstanding anything to the contrary contained herein, the Borrower may not submit more than three (3) Committed Loan Notices in connection with borrowings, such Committed Loan Notices to be delivered (ii) in connection with the initial borrowing on the Closing Date (if any) and (ii) in connection with the borrowings to be made (if any) thereafter in accordance with the terms of this Agreement and the Final Order.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the Loans requested. In the case of each borrowing, each Lender shall make (or cause its Applicable Lending Office to make) the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. (New York, New York time) on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.02 (or, if such borrowing is the initial borrowing, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) The failure of any Lender to make the Loan to be made by it as part of any borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any borrowing.

(d) Effective upon the occurrence of the Roll-Up Effective Time, without any further action by any party to this Agreement, the Bankruptcy Court or any other Person, to the extent set forth in the Final Order, a portion of the Prepetition Secured Obligations owing to the Prepetition Noteholders at the Roll-Up Effective Time shall, on a pro rata basis as among each Roll-Up Lender in respect of its Roll-Up Loan Amount, be substituted and exchanged for (and deemed prepaid by) and deemed to be Loans hereunder held by (and owing by the Borrowers to) each Roll-Up Lender in an aggregate principal amount for such Roll-Up Lender

equal to such Roll-Up Lender's Roll-Up Loan Amount (collectively, the "Roll-Up Loans"); provided that, for the avoidance of doubt, such Roll-Up Loans shall be secured by a perfected lien and security interest on all Collateral unless otherwise provided for under the Loan Documents. Subject to the terms and conditions set forth herein and in the Final Order, on the Roll-Up Effective Time, each Roll-Up Lender's Roll-Up Loans shall, from and after such date, be designated as such and administered hereunder. For the avoidance of doubt, each Roll-Up Lender acknowledges and agrees that by accepting the benefits of this Agreement, on the Roll-Up Effective Time, each Prepetition Noteholder rolling up Prepetition Secured Obligations under this Agreement shall, to the extent such Roll-up Lender has not executed a signature page to this Agreement on the Closing Date, become a party to this Agreement as a Roll-Up Lender hereunder by executing and delivering a joinder to this Agreement. Amounts of Roll-Up Loans that are issued or deemed issued under this Section 2.02(d) that are repaid or prepaid may not be reborrowed. At the Roll-Up Effective Time, the Administrative Agent shall update Schedule 2.02(d) in accordance with the terms of the Final Order, as applicable, to reflect each Roll-Up Lender's Roll-Up Loan Amount (which Roll-Up Loan Amount shall be conclusive absent manifest error) and deliver such updated Schedule 2.02(d) to the Borrower and the Roll-Up Lenders, whereupon such updated Schedule 2.02(d) shall constitute Schedule 2.02(d) for all purposes hereunder. Notwithstanding anything in this Agreement, including Schedule 2.02(d) as in effect from time to time, or any other Loan Document to the contrary, (a) the aggregate principal amount of each Roll-Up Lender's Roll-Up Loans shall not exceed such Roll-Up Lender's Roll-Up Loan Amount and (b) the aggregate principal amount of all Roll-Up Loans of all Roll-Up Lenders shall not exceed $40,0000,000 at any time. To the extent that there is a successful challenge to any Prepetition Secured Obligations that are converted into the Roll-Up Loans, (i) the Roll-Up Loans shall be automatically unwound and deemed null and void in an equivalent amount and (ii) notwithstanding anything to the contrary in this Section 2.02(d), the Prepetition Secured Obligations that previously were deemed "Roll-Up Loans" shall be reinstated and constitute outstanding Prepetition Secured Obligations under the Prepetition Indenture on the same terms and priorities as if the Roll-Up Loans never occurred. Notwithstanding anything to the contrary set forth herein, upon the Required Lenders' consent the outstanding principal amount of Roll-Up Loans and any accrued and unpaid interest thereon may be subject to a different treatment, including pursuant to a plan of reorganization filed in the Chapter 11 Case.

Section 2.03 Prepayments. (a) Optional Prepayments. The Borrower may, upon delivery of a Prepayment Notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans, in whole or in part subject to payment of the Exit Fee at the time of such prepayment; provided that (1) such notice must be received by the Administrative Agent not later than 12:00 noon (New York, New York time) two (2) Business Days prior to any date of prepayment of Loans; and (2) any prepayment of Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding, in each case, with accrued and unpaid interest on the Loans to be repaid. Each such notice shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Each prepayment of Loans pursuant to this Section 2.03(a) shall be paid to the Lenders in accordance with their respective Pro Rata Shares.

(b) Mandatory Prepayments.

(i) If the Borrower or any of its Subsidiaries receives any Net Cash Proceeds from any Disposition (other than any Disposition permitted under Section 7.05 (c), (d), (e) or (f), the Borrower shall, subject to Section 2.03(c), cause to be prepaid an aggregate principal amount of the Loans equal to 100% of all Net Cash Proceeds received therefrom as promptly as reasonably practicable, but in any event prior to the date which is three (3) Business Days after the receipt of such Net Cash Proceeds. If the Borrower or any of its Subsidiaries receives any Net Cash Proceeds from any Casualty Event, the Borrower shall, subject to Section 2.03(c), cause to be prepaid an aggregate principal amount of the Loans equal to 100% of all Net Cash Proceeds received therefrom as promptly as reasonably practicable, but in any event prior to the date which is three (3) Business Days after the receipt of such Net Cash Proceeds.

(ii) If the Borrower or any of its Subsidiaries incurs or issues any Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall cause to be prepaid an aggregate principal amount of the Loans equal to 100% of all Net Cash Proceeds received therefrom as promptly as reasonably practicable, but in any event, prior to the date which is three (3) Business Days after the receipt of such Net Cash Proceeds.

(b) If the Borrower or any of its Subsidiaries receives any Net Cash Proceeds from any issuance of Equity Interests (including capital contributions), the Borrower shall cause to be prepaid an aggregate principal amount of the Loans equal to 100% of all Net Cash Proceeds received therefrom as promptly as reasonably practicable, but in any event, prior to the date which is three (3) Business Days after the receipt of such Net Cash Proceeds.

(iv) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Loans required to be made pursuant to clauses (i) through (iv) of this Section 2.03(b) at least two (2) Business Days prior to the date of such prepayment pursuant to a Prepayment Notice. Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the amount of such prepayment. The Administrative Agent will promptly notify each Lender of the contents of the Borrower's Prepayment Notice and of such Lender's Pro Rata Share of the prepayment, in each case, with accrued and unpaid interest on the Loans to be repaid and the Exit Fee with respect to such Loans.

(c) Restrictions. Notwithstanding the foregoing, to the extent any or all of the Net Cash Proceeds of any Disposition by, or Casualty Event of, a Foreign Subsidiary otherwise giving rise to a prepayment pursuant to Section 2.03(b) is prohibited or delayed by any applicable local Requirements of Law from being repatriated to the Borrower including through the repayment of intercompany Indebtedness (each, a "Repatriation"; with "Repatriated" having a correlative meaning) (Borrower hereby agreeing to use reasonable efforts to cause the applicable Foreign Subsidiary to take promptly all actions reasonably required by such Requirements of Law to permit such Repatriation), or if the Borrower has determined in good faith that Repatriation of any such amount would reasonably be expected to have material adverse tax or legal consequences with respect to its Subsidiaries, after taking into account any foreign tax credit or benefit actually

received in connection with such Repatriation, the portion of such Net Cash Proceeds so affected (such amount, the "Excluded Prepayment Amount") will not be required to be applied to prepay Loans at the times as provided in this Section 2.03; provided, that if and to the extent any such Repatriation ceases to be prohibited or delayed by applicable local Requirements of Law at any time immediately following the date on which the applicable mandatory prepayment pursuant to this Section 2.03(c) was required to be made, the Borrower shall reasonably promptly repatriate, or cause to be repatriated, an amount equal to such portion of the Excluded Prepayment Amount, and the Borrower shall reasonably promptly pay such portion of the Excluded Prepayment Amount to the Lenders, which payment shall be applied in accordance with this Section 2.03. For the avoidance of doubt, the non-application of any Excluded Prepayment Amount pursuant to this Section 2.03(c) if such Repatriation ceases to be prohibited or delayed shall constitute a Default or an Event of Default.

(d) Interest. All prepayments under this Section 2.03 shall be accompanied by all accrued interest thereon.

Section 2.04 Repayment of Loans. The Borrower shall repay in cash on the Maturity Date to the Administrative Agent (for the ratable account of the Lenders) the aggregate principal amount of all Loans, together with all accrued and capitalized interest (including interest paid in kind) and fees thereon (including the Exit Fee and all other outstanding Obligations), outstanding on such date.

Section 2.05 Interest (a) Subject to the provisions of Section 2.05(b), each Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Applicable Rate. The accrued interest shall be due and payable in kind on each Interest Payment Date. Notwithstanding the foregoing or anything to the contrary contained herein, on each date on which interest is to be paid in accordance with this Section 2.05, such interest shall be paid in kind on each such date by capitalizing and adding such interest to the then outstanding principal balance of each Loan ("PIK Interest") and any interest to be so capitalized pursuant to this clause (a) shall be capitalized on the relevant date provided for payment herein and added to the then-outstanding principal amount of the applicable Loans so as to increase the principal balance of such Loan, which principal amount shall be payable when the principal amount of such Loans is payable in accordance with Section 2.06. For purposes of this Agreement and the other Loan Documents, from the date so capitalized, PIK Interest capitalized pursuant to this Section 2.05 shall bear interest in accordance with this Section 2.05 as if it had originally been part of the outstanding principal amount of the applicable Loans and all references herein or in any other Loan Document to the principal amount of the applicable Loans shall include PIK Interest. For avoidance of doubt, interest at the Default Rate shall not be PIK Interest.

(b) Commencing upon the occurrence and during the continuance of any Event of Default, the Borrower shall pay interest on (i) the principal amount of the Loans and (ii) to the extent then due and payable all other outstanding Obligations hereunder, in each case under clauses (i) and (ii), at an interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest to the fullest extent permitted by applicable Laws) shall be due and payable upon demand in cash.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto in accordance with Section 2.05(a) and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after any judgment. Interest shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans.

(d) The basis for determining the rate of interest with respect to any Loan, and the Interest Period, shall be as set forth herein and notified to Administrative Agent and Lenders pursuant to any Committed Loan Notice.

Section 2.06 Fees.

(a) Commitment Fee. The Borrower shall pay to each Lender on the Closing Date a commitment fee (the "Commitment Fee") equal to 2.00% of the sum of the (x) Interim DIP Loan Commitments and (y) Final DIP Loan Commitments, in each case of such Lender as of the Closing Date. The Commitment Fee of each Lender shall be fully earned and due on the Closing Date and, shall be paid in kind and capitalized to the balance sheet of the Borrower upon the entry of the Final Order. For the avoidance of doubt, no Commitment Fee shall be earned or payable on the Roll-Up Loans.

(b) Exit Fee. The Borrower shall pay in cash to each Lender, on the earlier of (i) the date of repayment of all or a portion of any Loans and (ii) the Maturity Date, for the account of each Lender, an exit fee (the "Exit Fee") equal to 2.00% of the aggregate Loans actually advanced hereunder, payable to each Lender ratably based on the amount of Loans actually advanced by such Lender hereunder (whether or not such Lender is a Lender as of the date of the payment of the Exit Fee), subject to reduction in the case of any partial payment of the Exit Fee in connection with any partial repayment of the Loans in accordance with this Agreement. The Exit Fee (x) shall be fully earned on the Closing Date, and (y) once paid shall not be refundable. For the avoidance of doubt, an Exit Fee shall be earned and payable on the Roll-Up Loans.

(c) Ticking Fee. The Borrower shall pay to each Lender a ticking fee (the "Ticking Fee") equal to such Lender's Pro Rata Share of the product of (i) 2.00% per annum multiplied by (ii) for each monthly period (or partial period if applicable), the actual daily amount by which the Aggregate Commitment exceeds the aggregate amount of Loans advanced. The Ticking Fee shall be payable monthly in arrears on the last Business Day of each calendar month, commencing April 30, 2024 and shall accrue at all times from and after the execution and delivery of this Agreement through the earlier of: (a) the Commitment Expiration Date and (b) the Termination of the Obligations. The Ticking Fee shall, subject to Section 2.04, be paid in cash and fully earned and due when paid and once paid shall not be refundable for any reason.

(d) Administration Fee. The Borrower shall pay to the Lenders or their respective designees on the Closing Date, for the account of each Lender, an administration fee (the "Administration Fee") in the aggregate amount for all such Lenders equal to $50,000, paid ratably to the Lenders based on their Pro Rata Share of the Commitments. The Administration

Fee shall be paid in cash and fully earned on the Closing Date and once paid shall not be refundable for any reason.

(e) Agent Fees. The Borrower shall pay to the Agent, for its own account, the fees set forth in the Agent Fee Letter as between the Borrower and the Agent.

Section 2.07 Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a three hundred and sixty (360) day year and actual days elapsed. Interest shall accrue on each Loan for the day on which such Loan is made, and shall not accrue on such Loan, or any portion thereof, for the day on which such Loan or such portion is paid; provided that any such Loan that is repaid on the same day on which it is made shall, subject to Section 2.09(a), bear interest for one (1) day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.08 Evidence of Indebtedness. (a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Loans made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent upon reasonable notice, the Borrower shall execute and deliver to such Lender (directly or through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.08(c), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to Section 2.08(a), and by each Lender in its account or accounts pursuant to Section 2.08(a), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.09 Payments Generally. (a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office and in immediately available funds not later than 2:00 p.m. (New York, New York time) on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Applicable Lending Office. All payments received by the Administrative Agent after 2:00 p.m. (New York, New York time) shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Agent because the conditions (if any) to the Loan set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and neither the Agent nor any Lender shall be responsible for the failure of any other Lender to make its Loan.

(e) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Whenever any payment received by the Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Agent and applied by the Agent and the Lenders in the order of priority set forth in Section 8.03. If the Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of the aggregate principal amount of all Loans outstanding at such time.

Section 2.10 Sharing of Payments. If, other than as expressly provided elsewhere herein (including, without limitation, in Section 10.07), any Lender shall obtain on account of the Loans made by it in excess of its ratable share (or other share contemplated hereunder subject to the priorities set forth herein) thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact and (b) purchase from the other Lenders such participations in the Loans made

by them as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.09) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.10 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.10 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

ARTICLE III

TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Defined Terms. For purposes of this Section 3.01, the term "applicable law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.01(b)) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01 (d)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Agent, for the full amount of any Taxes imposed by any Governmental Authority that are attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), and that are payable or paid by the Agent, together with all interest, penalties, reasonable costs and expenses arising therefrom or with respect thereto, as determined by the Agent in good faith. Should the applicable Withholding Agent not deduct or withhold any Taxes imposed by FATCA from a payment under any Loan Document based on the documentation provided by a Lender pursuant to Section 3.01(g)(ii), any amounts subsequently determined by a Governmental Authority to be subject to United States Federal withholding Tax imposed pursuant to FATCA (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) shall be indemnified by such Lender. A certificate as to the amount of such payment or liability delivered to any Lender by the Withholding Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.01, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. in addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(iv) (A), (B) and (D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material

unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(iv) Without limiting the generality of the foregoing.

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

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form provided by Administrative Agent and the other Lenders to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN (or W-8BEN-E, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or W-8BEN-E, as applicable), a U.S. Tax Compliance Certificate substantially in the form provided by Administrative Agent and the other Lenders, IRS Form W-9, and/or other

certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form provided by Administrative Agent and the other Lenders on behalf of each such direct and indirect partner;

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

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

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

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party,

shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 3.02 [Reserved].

Section 3.03 [Reserved].

Section 3.04 Increased Cost and Reduced Return; Capital and Liquidity Requirements.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.05 [Reserved].

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) The Agent or any Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder, which shall be conclusive absent manifest error. In determining such amount, the Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Sections 3.01 or 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make Loans or continue to make Loans from one Interest Period to another, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(c) shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) If the obligation of any Lender to make or continue any Loan shall be suspended pursuant to Section 3.06(b) hereof, such Lender's applicable Loan shall be repaid on the last day of the then current Interest Period for such Loan and, unless and until such Lender

gives notice that the circumstances specified in Section 3.01 or Section 3.04 hereof that gave rise to such conversion no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist).

Section 3.07 Mitigation Obligations; Replacement of Lenders under Certain Circumstances.

(a) Designation of a Different Applicable Lending Office. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different Applicable Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.04 or Section 3.01, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If at any time (i) any Lender requests compensation under Section 3.04, (ii) the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 and, in each case, such Lender has declined or is unable to designate a different Applicable Lending Office in accordance with Section 3.07(a), (iii) any Lender is a Non-Consenting Lender, or (iv) any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender (and such Lender shall be obligated to) to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07(b)), all of its interests, rights (other than its existing rights to payments pursuant to Section 3.04 or Section 3.01) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.07(b);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law;

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent; and

(vi) in connection with any such replacement, if any such Non-Consenting Lender or Defaulting Lender does not execute and deliver to the Administrative Agent a duly executed Assignment and Assumption reflecting such replacement within five (5) Business Days of the date on which the assignee Lender executes and delivers such Assignment and Assumption to such Non-Consenting Lender or Defaulting Lender, then such Non-Consenting Lender or Defaulting Lender shall be deemed to have executed and delivered such Assignment and Assumption without any action on the part of the Non-Consenting Lender or Defaulting Lender.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(c) In the event that (i) the Borrower or the Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of all affected Lenders in accordance with the terms of Section 10.01 or all the Lenders and (iii) the Required Lenders have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "Non-Consenting Lender".

Section 3.08 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

CONDITIONS PRECEDENT TO LOANS

Section 4.01 Conditions to Initial Loans. The obligation of each Lender to make initial Loans is subject to satisfaction or waiver of the following conditions precedent, except as otherwise agreed between the Borrower, the Administrative Agent and the Required Lenders:

(a) The Administrative Agent's or the Lenders' (as applicable) receipt of the following, each properly executed by a Responsible Officer of the signing Loan Party, and each in form and substance reasonably satisfactory to the Required Lenders:

(i) executed counterparts of this Agreement and each other Loan Document by each party thereto;

(ii) an original Note executed by the Borrower in favor of each Lender that has requested a Note;

(iii) a Committed Loan Notice relating to the initial Loans; and

(iv) the certificates, documents, instruments, agreements and deliverables set forth on the Closing Checklist attached hereto as Schedule 1.

(b) The Administrative Agent and each Lender shall have received the Initial Approved Budget.

(c) All proceedings commenced in connection with the execution of this Agreement, all other Loan Documents and approval thereof by the Bankruptcy Court (including, without limitation, the nature, scope and extent of notices to interested parties with respect to all hearings related hereto and thereto) shall be satisfactory in all respects to the Administrative Agent and the Required Lenders.

(d) The Loan Parties shall have commenced the Chapter 11 Case and all of the "first day motions," "first day orders" and all related pleadings entered or to be entered at the time of the Petition Date or shortly thereafter shall have been made available to the Administrative Agent and Lenders in advance, and shall be reasonably satisfactory in form and substance to the Administrative Agent and the Required Lenders.

(e) The Interim Order shall have been entered by the Bankruptcy Court, within five (5) days of the Petition Date (but in any event not later than the Closing Date), which Interim Order shall be in form and substance satisfactory to the Administrative Agent and the Required Lenders and shall have been entered on the docket for the Chapter 11 Case on such prior notice to such parties in accordance with Bankruptcy Rule 4001, and the Administrative Agent and the Lenders (or their respective counsel) shall have received a copy of same, and such order shall be in full force and effect and shall not have been stayed, vacated, revised, rescinded, amended or modified in a manner that is adverse to the Administrative Agent and the Lenders without the prior written consent of the Administrative Agent and the Required Lenders. The Loan Parties shall be in compliance in all respects with the Interim Order.

(f) All orders entered by the Bankruptcy Court pertaining to cash management and adequate protection, including the Financing Orders, and all other motions and documents filed or to be filed with, and submitted to the Bankruptcy Court in connection therewith, shall be satisfactory in all respects in form and substance to the Administrative Agent and the Required Lenders.

(g) (i) No trustee, examiner or receiver shall have been appointed or designated with respect to the Loan Parties or their business, properties or assets and no motion shall be pending seeking any such relief, and (ii) no order shall have been entered permitting a Person to exercise control over Collateral with an aggregate fair market value in excess of $100,000 with respect to all such orders; provided that this clause (ii) shall not apply to any order that is being contested in good faith by the Loan Parties.

(h) The Borrower shall have paid all accrued and unpaid costs, fees and expenses (including applicable Attorney Costs (with respect to the reasonable and documented fees and expenses of King & Spalding LLP) and the reasonable and documented out-of-pocket fees and expenses of the Financial Advisor, and any other advisors to the Agent and the Lenders

(including pursuant to the Agent Fee Letter)) and any other compensation required to be paid to the Agent and the Lenders on or prior to the Closing Date shall have been received (to the extent an invoice for such costs, fees and expenses has been provided to the Borrower at least three (3) Business Days prior to the Closing Date).

(i) The Lenders shall have received at least three (3) Business Days on or prior to the Closing Date (or such shorter period as the Lenders may reasonably agree) all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations that each Lender reasonably requests, including without limitation the USA PATRIOT Act, to each Lender who has requested the same at least five (5) Business Days prior to the Closing Date, in order to allow the Lenders to comply therewith.

(j) The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower in substantially the form of Exhibit E certifying as to clauses (a) and (b) of Section 4.02.

(k) Since the Petition Date, there shall have been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect, except for (i) the commencement of the Chapter 11 Case, (ii) the continuation of the circumstances giving rise to the filing thereof or as a result thereof, and (iii) any defaults under agreements as a result of the commencement of the Chapter 11 Case that have no effect under the terms of the Bankruptcy Code.

(l) The Restructuring Support Agreement shall have been executed by all parties thereto and shall be in full force and effect.

(m) The filing of the Chapter 11 Case with the Bankruptcy Court (the date of such filing, the "Petition Date").

(n) The Chapter 11 Case of the Debtors shall not have been dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

(o) The entry into the Loan Documents shall not violate any Requirement of Law and shall not be enjoined, temporarily, preliminarily or permanently.

(p) Pursuant to the Interim Order, the Collateral Agent shall have a valid and perfected lien on and security interest in the Collateral with the priority described herein.

Without limiting the generality of the provisions of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the Closing Date specifying its objection thereto.

Section 4.02 Conditions to all Loans. The obligation of each Lender to make Loans on any date, including on the Closing Date, is subject to satisfaction or waiver of the following conditions

precedent, except as otherwise agreed between the Borrower, the Administrative Agent and the Lenders in accordance with Section 10.01:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of the incurrence of such Loans (before and after giving effect to the incurrence of such Loans); provided that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; provided further that any representation and warranty that is qualified as to "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(b) No Default or Event of Default shall exist, or would result from the incurrence of such Loans or from the application of the proceeds therefrom.

(c) The aggregate outstanding amount of Loans after giving effect to such Loan shall not exceed the lesser of (i) the Aggregate Commitments and (ii) the maximum amount authorized by the applicable Financing Order, and each condition to borrowing such Loan in the applicable Financing Order shall have been satisfied.

(d) The applicable Financing Order shall be in full force and effect, and shall not have been vacated, reversed, rescinded, and an appeal of such order shall not have been timely filed and a stay of such order pending appeal shall not be presently effective, and without the prior written consent of the Administrative Agent and the Required Lenders, such order shall not have been amended or modified. The Loan Parties shall be in compliance with the applicable Financing Order.

(e) With respect to any Final DIP Loan, (i) such borrowing shall be in an amount of $5 million, (ii) the projected cash reserve in an Approved Budget for the two weeks following the date of the applicable Final DIP Loan is less than $10,000,000 (excluding any cash held by Biotie Therapies AG in any deposit account or securities account) and (iii) the proceeds of the Final DIP Loan shall be used to make the expenditures set forth in the Approved Budget (subject to the Permitted Variances).

Each Committed Loan Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Section 4.02(a) through (e) have been satisfied on and as of the date of the applicable Loans.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

Section 5.01 Existence, Qualification and Power; Compliance with Laws. Except as set forth on Schedule 5.01 or, in the case of clause (d), Schedule 5.06, each Loan Party and each of its Subsidiaries (a) is duly incorporated, organized or formed, and validly existing and in good

standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction), (b) subject to the entry of the applicable Financing Order and subject to the terms thereof, has all requisite power and authority to (i) own or lease its material assets and carry on its business and (ii) subject to the entry and effectiveness of the applicable Financing Order, execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) subject to the entry of the applicable Financing Order and subject to the terms thereof, is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws (including, without limitation, Regulation X of the Board of Governors of the Federal Reserve System), orders, writs, injunctions (except to the extent failure to comply therewith is permitted by Chapter 11 of the Bankruptcy Code) and orders and (e) subject to the entry of the applicable Financing Order, has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted, except, with respect to the foregoing clauses (c), (d) and (e), to the extent failure to do so would not, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect.

Section 5.02 Authorization; No Contravention. Subject to the entry of the applicable Financing Order, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the any transactions hereunder, (a) are within such Loan Party's corporate or other powers, (b) have been duly authorized by all necessary corporate or other organizational action, and (c) do not and will not (i) contravene the terms of any of such Person's Organization Documents, (ii) except as set forth on Schedule 5.02, conflict with or result in any breach or contravention (except in respect of the Existing Agreements) of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment to be made under (x) any Material Contracts to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (y) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject, or (iii) violate any material applicable Law.

Section 5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority (except as required under the Bankruptcy Code and applicable state and federal bankruptcy rules) or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Agent (at the direction of the Required Lenders) or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) the approval of the Bankruptcy Court in or pursuant to the applicable Financing Order; and (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect; (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.04 Binding Effect. Subject to the entry of the applicable Financing Order and subject to the terms thereof, this Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. Upon entry of the applicable Financing Order, this Agreement and each other Loan Document constitutes a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws at the time in effect affecting the rights of creditors generally and to the effect of general principles of equity whether applied by a court of law or equity.

Section 5.05 No Material Adverse Effect Since the Petition Date, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect, except for (i) the commencement of the Chapter 11 Case, (ii) the continuation of the circumstances giving rise to the filing thereof or as a result thereof, or (iii) any defaults under agreements as a result of the commencement of the Chapter 11 Case that have no effect under the terms of the Bankruptcy Code.

Section 5.06 Litigation. Except for the Chapter 11 Case and claims, actions, suits, investigations, litigation or proceedings stayed by 11 U.S.C. § 362 and set forth on Schedule 5.06, there is no action, suit, investigation, litigation or proceeding affecting any Loan Party or its Subsidiaries, including any Environmental Action, pending or, to the knowledge of any Loan Party, threatened in writing before any Governmental Authority or arbitrator that (i) would be reasonably likely to result in liabilities in excess of the Threshold Amount other than liabilities for which payment is stayed or excused under the Bankruptcy Code or (ii) purports to affect the legality, validity or enforceability of any Loan Document in a way that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.07 Ownership of Property; Liens. (a) Each Loan Party and its Subsidiaries is the legal and beneficial owner of the Collateral pledged by it free and clear of any Lien, except for Permitted Liens.

(b) Each Loan Party and each of its Subsidiaries has good and marketable title in fee simple to (or otherwise holds full legal (and, if applicable, beneficial) ownership under applicable Law), or valid leasehold interests in, or easements or other limited property interests in, all material real property necessary in the ordinary conduct of its business, free and clear of all Liens except for defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01 and except where the failure to have such title or other interest would not reasonably be expected to have a Material Adverse Effect. Set forth as Schedule 5.07(b) hereto is a complete and accurate list of all real property owned by any Loan Party or any of its Subsidiaries, showing, as of the date hereof, the street address, state and any other relevant jurisdiction, record owner and fair market value. Set forth on Schedule 5.07(b) hereto is a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary is the tenant, showing as of the date hereof the street address, state and any other relevant jurisdiction, parties thereto, sublessee (if any), expiration date and annual base rental cost thereof.

Section 5.08 Secured, Super-Priority Obligations. Subject to the entry of the applicable Financing Order, the provisions of the Collateral Documents, taken together with, and subject to

the terms of, the applicable Financing Order are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties and any other secured parties identified therein, a legal, valid and enforceable Lien or security interest in all right, title and interest of the Loan Parties in the Collateral and all proceeds thereof with the priority set forth in the applicable Financing Order (and subject to the Carve-Out). Pursuant to the terms of the applicable Financing Order, no filing or other action will be necessary to perfect or protect such Liens and security interests.

Section 5.09 Environmental Compliance. Except as set forth on Schedule 5.09 or as would not individually be reasonably expected to result in a liability in excess of the Threshold Amount to the Loan Parties and their Subsidiaries (provided that the aggregate of all such events, circumstances, developments and liabilities could not reasonably be expected to result in a Material Adverse Effect):

(a) The operations and properties of each Loan Party and each of its Subsidiaries comply in all material respects with all applicable Environmental Laws and Environmental Permits, all past non-compliance with such Environmental Laws and Environmental Permits has been resolved without ongoing obligations or costs, and no circumstances exist that would be reasonably likely to (A) to the knowledge of the Loan Parties, form the basis of an Environmental Action against any Loan Party or any Subsidiary or any of their properties or (B) cause any such property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(b) None of the properties currently or, to the knowledge of the Loan Parties, formerly, owned or operated by any Loan Party or any of its Subsidiaries is listed or, to such Loan Party's or each of its Subsidiaries' knowledge, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no, and, to the knowledge of the Loan Parties, never have been, any underground or aboveground storage tanks other than in compliance with applicable Environmental Laws or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any of its Subsidiaries or, to the best of its knowledge, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries other than in compliance with applicable Environmental Laws; and other than in compliance with applicable Environmental Laws, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and Hazardous Materials have not been released, discharged or disposed of by any Loan Party or any of its Subsidiaries on any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries other than in material compliance with applicable Environmental Laws.

(c) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any governmental or regulatory authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported by or on behalf of any Loan

Party or any of its Subsidiaries to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have, to the knowledge of the Loan Parties, been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries.

(d) The Borrower and each of its Subsidiaries has obtained all material Environmental Permits required for ownership and operation of its property and business as presently conducted. Neither the Borrower nor any of its Subsidiaries has received any written notification pursuant to any applicable Environmental Law or otherwise has knowledge that (A) any work, repairs, construction or capital expenditures are required to be made in order to be in or continue to be in compliance with any applicable Environmental Laws or any material Environmental Permit or (B) any Environmental Permit is about to be reviewed, made subject to new limitations or conditions, revoked, withdrawn or terminated.

(e) Except as would not reasonably be expected to result in a material liability, no Loan Party nor any of its Subsidiaries has contractually assumed any liability or obligation under or relating to any applicable Environmental Law.

(f) Nothing contained in this Section 5.09 is intended to apply to any action, suit, investigation, litigation or proceeding (including any Environmental Action) relating to exposure to asbestos, in any form, or any asbestos containing materials.

Section 5.10 Taxes. (a) Each of the Loan Parties and each of their respective Subsidiaries has timely filed all income and all other material Tax returns and reports required to be filed, and have timely paid all Taxes (whether or not shown on such tax returns or reports) and all other amounts of federal, provincial, state, municipal, foreign and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are set forth on Schedule 5.10(a), are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP, or for which payment is stayed or excused pursuant to the Bankruptcy Code.

(a) Except as set forth on Schedule 5.10(b) or as would not, individually or in the aggregate, be reasonably likely to result in any material liability (including because payment is stayed or excused pursuant to the Bankruptcy Code), (i) there are no claims being asserted in writing with respect to any amounts of Taxes, (ii) there are no presently effective waivers or extensions of statutes in writing with respect to any amounts of Taxes, and (iii) no Tax returns are being examined by, and no written notification of intention to examine has been received from, the IRS or any other Taxing authority, in each case, with respect to the Loan Parties or any of their respective Subsidiaries.

(c) Neither the Borrower nor any of its Subsidiaries is party to any Tax sharing agreement other than with an affiliate included in a consolidated or combined Tax return.

Section 5.11 Compliance with ERISA. (a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws, except as is not, either individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

(b) Except as is not, either individually or in the aggregate, reasonably likely to have a Material Adverse Effect (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) none of the Loan Parties or any of their Subsidiaries has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 *et seq.* or 4243 of ERISA with respect to a Multiemployer Plan; and (iii) none of the Loan Parties or any of their Subsidiaries or any ERISA Affiliate has engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA.

Section 5.12 Labor Matters. There are no strikes pending or, to the knowledge of any Loan Party, threatened in writing against the Borrower or any of its Subsidiaries that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The (i) hours worked and payments made to employees of the Borrower or any of its Subsidiaries have not been in violation in any material respect of the Fair Labor Standards Act or any other applicable law dealing with such matters, except where such violations, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, and (ii) all material payments due from the Borrower or any of its Subsidiaries or for which any claim may be made against the Borrower or any of its Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Borrower or such Subsidiary to the extent required by GAAP except for liabilities the payment of which is stayed or excused pursuant to the Bankruptcy Code and except as would not, individually or in the aggregate, be expected to have a Material Adverse Effect.

Section 5.13 Insurance. The properties of the Loan Parties and their Subsidiaries are insured in the manner contemplated by Section 6.07.

Section 5.14 Subsidiaries; Equity Interests. As of the date hereof, the Loan Parties do not have any Subsidiaries other than those specifically disclosed in Schedule 5.14, and all of the outstanding Equity Interests in each such Person and each such Subsidiary have been validly issued, are fully paid and non-assessable. As of the date hereof, Schedule 5.14 (a) sets forth the name and ownership interest of each Person that owns any Equity Interests in the direct and indirect Subsidiaries of the Borrower, (b) sets forth the name and jurisdiction of organization of the Borrower and each direct and indirect Subsidiary of the Borrower, (c) sets forth the ownership interest of each direct and indirect Subsidiary of the Borrower, including the percentage of such ownership and (d) sets forth a notation as to whether each such Subsidiary is a debtor in the Chapter 11 Case.

Section 5.15 Margin Regulations; Investment Company Act; Anti-Terrorism Laws; Sanctions and Other Regulations. (a) None of the Loan Parties or any of their Subsidiaries is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Loans will be used for any purpose that violates Regulation U issued by the FRB.

(b) None of the Loan Parties or any of their Subsidiaries is required to be registered as an "investment company" under the Investment Company Act of 1940, as amended.

(c) No Loan Party nor any of its Subsidiaries or to its knowledge any of the respective officers, directors, brokers or agents of such Loan Party or Subsidiary has violated any applicable Anti-Terrorism Law in any material respect.

(d) No Loan Party, nor any of its Subsidiaries, any of their respective directors, officers or employees, or to the knowledge of the Loan Party, any agent of the Loan Party or any Subsidiary that act in any capacity in connection with the Loans, is (i) a Sanctioned Person, (ii) organized, resident or located in a Sanctioned Country, (iii) in violation of Sanctions, or (iv) engaged in any transactions or dealings with a Sanctioned Person or in a Sanctioned Country; and each Loan Party has instituted and maintains policies and procedures designed to ensure continued compliance by each Loan Party, its Subsidiaries, and their respective directors, officers, employees and agents with Sanctions.

(e) No Loan Party or any of its Subsidiaries or to its knowledge any of the respective officers, directors, brokers or agents of such Loan Party or Subsidiary acting or benefiting in any capacity in connection with the Loans (i) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law or (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(f) No Loan Party nor any of its Subsidiaries or any of the respective officers, directors, brokers or agents of such Loan Party or Subsidiary will directly or indirectly use the proceeds of the Loans or otherwise make available such proceeds to any individual or entity (i) for the purpose of funding, financing, or facilitating any activities, business or transaction of or with a Sanctioned Person, or in any Sanctioned Country, or (ii) in any manner that would result in a violation of Sanctions by any party to this agreement.

(g) None of the Loan Parties or any of its Subsidiaries nor, to the knowledge of the Borrower, any director, officer, agent, employee or other person acting on behalf of the Borrower or any of its Subsidiaries has taken any action, directly or indirectly, that would result in a material violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder or any other applicable anti-corruption law (collectively, "Anti-Corruption Laws"); and the Loan Parties have instituted and maintain policies and procedures designed to ensure continued compliance therewith in all material respects.

(h) None of the Loan Parties or any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005.

Section 5.16 Disclosure. No report, financial statement, certificate or other written information furnished by or on behalf of the Borrower or any of its Subsidiaries to the Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other

information so furnished) when taken as a whole contains when furnished any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided to the extent any information is included in an Approved Budget or constitutes projections or other forward-looking information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

Section 5.17 Intellectual Property. As of the date hereof, set forth on Schedule 5.17 and the schedules to the Collateral Documents is a complete and accurate list of all Registered patents, trademarks, service marks, domain names and copyrights, owned by the Borrower or any of its Subsidiaries and all IP Agreements as of such date, showing as of such date the jurisdiction in which each such item of registered Intellectual Property is registered or in which an application is pending and the registration or application number. The Borrower and each Subsidiary owns or has the right to use, all of the trademarks, service marks, trade names, domain names, copyrights, patents, know-how, technology and other intellectual property recognized under applicable Law (collectively, "Intellectual Property") that are material to the operation of their respective businesses as currently conducted and, to the knowledge of the Loan Parties, except as set forth in the "Disputes or Litigation" section of Schedule 5.17, the use of such Intellectual Property by such Person or the operation of their respective businesses is not infringing upon any Intellectual Property rights held by any other Person and there are no other disputes or litigation proceedings involving such Intellectual Property.

Section 5.18 Initial Approved Budget. The Initial Approved Budget was prepared in good faith by the management of the Loan Parties, based on assumptions believed by the management of the Loan Parties to be reasonable at the time made and upon information believed by the management of the Loan Parties to have been accurate based upon the information available to the management of the Loan Parties at the time such Initial Approved Budget was furnished (it being understood and agreed that financial projections are not a guarantee of financial performance, actual results may differ from financial projections and such differences may be material and financial projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties).

Section 5.19 EEA Financial Institution. Neither the Borrower nor any other Loan Party is an EEA Financial Institution.

Section 5.20 Contractual Obligations. Set forth on Schedule 5.20 hereto are all Material Contracts to which the Loan Parties and their Subsidiaries are party as of the Closing Date. As of the Closing Date, none of the Loan Parties or their Subsidiaries have knowledge of any events of default under any such Material Contracts.

Section 5.21 Financing Order.

(a) The Loan Parties are in compliance with the terms and conditions of the applicable Financing Order.

(b) The applicable Financing Order is in full force and effect and has not been vacated, reversed, rescinded, amended or modified without the prior written consent of the Administrative Agent and the Required Lenders, in their sole discretion and no appeal of such order has been timely filed or, if timely filed, no stay pending such appeal is currently effective.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment outstanding hereunder or any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, the Borrower shall, and shall (except in the case of the covenants set forth in Section 6.01, Section 6.02 and Section 6.03) cause each Subsidiary to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent and to each Lender:

(a) Quarterly and Annual Financial Statements. (i) As soon as available, but in any event, within forty-five (45) days after the end of each of the first three fiscal quarters of each Fiscal Year of the Borrower (commencing with the first full fiscal quarter ended after the Closing Date), unaudited internally prepared balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related unaudited internally prepared consolidated statements of income or operations and cash flows for such fiscal quarter, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to year-end adjustments, and (ii) as soon as available, but no later than one hundred and twenty (120) days after the last day of Borrower's fiscal year, internally prepared consolidated financial statements of the Borrower for the fiscal year then ended (to be comprised of a consolidated balance sheet and income statement and cash flows covering the Borrower's and its Subsidiaries' operations for such fiscal year), prepared in a manner consistent with GAAP and with prior practices, and complete and correct in all material respects, subject to normal year-end adjustments that, in the aggregate, are not material to the Borrower's business operations, certified by a Responsible Officer.

(b) Management Discussion and Analysis Reports. Simultaneously with the delivery of each set of consolidated financial statements referred to in Section 6.01(a), a report setting forth management's analysis and discussion of the condition (financial and otherwise) and operations, in respect of the business of the Borrower and its Subsidiaries.

(c) Approved Budget. The Borrower shall deliver to the Administrative Agent and the Lenders the proposed Supplemental Approved Budget and variance reports in accordance with the applicable Financing Order;

(d) Monthly Financial Statements. At the request of the Required Lenders, the Borrower shall provide to the Lenders a consolidated balance sheet of the Borrower and its

Subsidiaries as of the end of last fiscal month, and the related consolidated statements of income or operations for such fiscal month.

(e) [Reserved].

(f) Other Statements. Contemporaneous with the delivery to the holders under the Prepetition Notes Documents (and in any case no later than three (3) days following such delivery), copies of all statements, reports, notices made available to Borrower's security holders generally, or to any other holders of Indebtedness for borrowed money or notes, including, without limitation, (i) notice of the occurrence of any default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto and (ii) notice of the occurrence of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(g) Notices to Prepetition Noteholders. Copies of all notices to or from, and agreements and documents (including any amendments or modifications thereto) entered into in connection with the documents in connection with the Prepetition Indenture (or the trustee thereof), in each case, within one (1) Business Day of delivery, receipt or execution as the case may be.

Section 6.02 Certificates; Reports; Other Information. Promptly deliver to the Administrative Agent and to each Lender:

(a) upon delivery of the financial statements referred to in Section 6.01(a) a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower;

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower files with the SEC or with any successor Governmental Authority (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered), exhibits to any registration statement and, if applicable, any registration statement on Form S-8) and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(c) promptly upon receipt thereof, notice that any third party has expressed an interest in writing (either formally or informally) in acquiring all or substantially all of the Loan Parties' business (other than the Stalking Horse Bidder (as defined in the First Day Declaration referred to in the Financing Orders);

(d) prior to the filing thereof in the Bankruptcy Court, drafts of all material filings related to the transactions contemplated by this Agreement and the other Loan Documents; it being understood that the foregoing requirement will be deemed satisfied to the extent such drafts are delivered to counsel for the Administrative Agent and counsel for the Lenders;

(e) all filings made with the Bankruptcy Court by any of the Loan Parties in the Chapter 11 Case (except to the extent filed under seal and disclosure to the Administrative Agent or Lenders is not permitted); it being understood that the foregoing requirement will be deemed

satisfied to the extent such filings required to be delivered are available online and reasonably accessible to the Administrative Agent and Lenders; and

(f) no later than the first Business Day after delivery thereof, all written reports given by any of the Loan Parties to any official or unofficial creditors' committee in the Chapter 11 Case, except to the extent disclosure thereof is not permitted.

(g) as soon as commercially reasonable, and in any event not less than two (2) Business Days prior to filing, all material pleadings, motions and other documents (provided that any of the foregoing relating to the Loan Documents shall be deemed material) to be filed on behalf of the Debtors with the Bankruptcy Court to the Administrative Agent and the Lenders and their counsel.

(h) Promptly deliver via email, upon receipt of same, to the Administrative Agent and the Lenders copies of any term sheets, proposals, presentations or other documents, from any party, related to (i) the restructuring of the Debtors, or (ii) the sale of assets of one or all of the Debtors.

Delivery of any reports, information and documents under Section 6.01 and Section 6.02 as well as any such reports, information and documents pursuant to this Agreement, to the Administrative Agent and the Lenders is for informational purposes only and the Administrative Agent's and Lenders' receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Borrower's compliance with any of its covenants hereunder (as to which the Administrative Agent and the Lenders are entitled to rely exclusively on the Compliance Certificates). The Administrative Agent and the Lenders shall have no responsibility or liability for the filing, timeliness or content of any report required under Section 6.01 or Section 6.02 or any other reports, information and documents required under this Agreement (aside from any report that is expressly the responsibility of the Lenders subject to the terms hereof).

Section 6.03 Notice Requirements; Other Information. Promptly after a Responsible Officer obtains knowledge thereof, notify the Administrative Agent and each Lender of each of the following events or circumstances and provide to the Administrative Agent and each Lender the following information and documents:

(a) the occurrence of any Default, which notice shall specify the nature thereof, the period of existence thereof and what action the Borrower proposes to take with respect thereto;

(b) the occurrence of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) the commencement of, or any material development in, any litigation or governmental proceeding (including without limitation pursuant to any applicable Environmental Laws) pending against the Borrower or any of the Subsidiaries that could reasonably be expected to be determined adversely and, if so determined, to result in a Material Adverse Effect;

(d) the occurrence of any ERISA Event (x) that results in a liability of a Loan Party which is above the Threshold Amount or (y) which could otherwise have a Material Adverse Effect or the material breach of any representation in Section 5.12;

(e) any information with respect to environmental matters as required by Section 6.04(b);

(f) copies of all notices, requests and other documents (other than any filings made with the Bankruptcy Court that are available online and reasonably accessible to the Administrative Agent and the Lenders) received by any Loan Party or any of its Subsidiaries under or pursuant to any instrument, indenture, loan or credit or similar agreement relating to Indebtedness in excess of the Threshold Amount regarding or related to any breach or default by any party thereto or any other event that could materially impair the value of the interests or the rights of any Loan Party or otherwise have a Material Adverse Effect and copies of any amendment, modification or waiver of any provision of any such instrument, indenture, loan or credit or similar agreement relating to Indebtedness in excess of the Threshold Amount and, from time to time upon request by the Administrative Agent (at the direction of the Required Lenders), such information and reports regarding such instruments, indentures and loan and credit and similar agreements relating to Indebtedness in excess of the Threshold Amount as the Administrative Agent may reasonably request (at the direction of the Required Lenders);

(g) a tax event or liability not previously disclosed in writing by the Borrower to the Administrative Agent which would reasonably be expected to result in a material liability, together with any other information as may be reasonably requested by the Required Lenders to enable the Required Lenders to evaluate such matters, other than any tax event or liability the payment of which is stayed or excused under the Bankruptcy Code;

(h) any occurrence of a Change of Control; and

(i) any change (i) in any Loan Party's corporate name, (ii) any Loan Party's identity and corporate structure, (iii) any Loan Party's taxpayer identification number or (iv) any Loan Party's jurisdiction of incorporation.

Section 6.04 Environmental Matters. (a) Comply and cause each of its Subsidiaries to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew, and cause each of its Subsidiaries to obtain and renew, all material Environmental Permits required under Environmental Laws for its operations and properties; and conduct, and cause each of its Subsidiaries to conduct, any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action required to remove and clean up all releases or threatened releases of Hazardous Materials from any of its properties, as required under, and in accordance with the requirements of all Environmental Laws; provided, however, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and, to the extent required by GAAP, appropriate reserves are being maintained with respect to such circumstances.

(b) Promptly, and in any event within ten (10) Business Days, after a Responsible Officer obtains knowledge thereof, notify the Administrative Agent of, or deliver to the Administrative Agent, for further distribution to each Lender, copies of any and all material, non-privileged written communications and material, non-privileged documents concerning:

(i) any Environmental Action against or of any non-compliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that would (1) reasonably be expected to result in a liability to any Loan Party in excess of the Threshold Amount or (2) cause any owned real property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law;

(ii) to the extent any of the following is reasonably expected to result in a liability to any Loan Party in excess of the Threshold Amount: (1) any occurrence of any release or threatened release of Hazardous Materials required to be reported to any Governmental Authority under applicable Environmental Law, (2) any remedial actions taken by any Loan Party or its Subsidiaries in respect of any such release or threatened release that could reasonably be expected to result in an Environmental Action or (3) the Loan Parties' discovery of any occurrence of or condition on any real property adjoining or in the vicinity of any site or facility that would be reasonably expected to cause such site or facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

(iii) to the extent reasonably expected to result in a liability to any Loan Party in excess of the Threshold Amount, any action proposed to be taken by the Borrower or any of its Subsidiaries to modify current operations in a manner that would reasonably be expected to subject the Borrower and its Subsidiaries to any material additional obligations or requirements under Environmental Laws;

(iv) copies of all material environmental reports or audits (whether produced by the Borrower or its Subsidiaries or any third party or Governmental Authority) and any Phase I or Phase II reports in respect of any sites or real property owned, leased or operated by the Borrower and its Subsidiaries that are in possession or control of any Loan Party or any of its Subsidiaries;

(v) to the extent any of the following is reasonably expected to result in a liability to any Loan Party in excess of the Threshold Amount: copies of any and all material, non-privileged written communications with respect to (A) any Environmental Action, (B) any release or threatened release or non-compliance with any Environmental Law required to be reported to any Governmental Authority and (C) any request for information from a Governmental Authority that suggests such Governmental Authority is investigating the potential responsibility of the Borrower or any of its Subsidiaries as a potentially responsible party;

(vi) the good faith belief that a release of Hazardous Materials, or a violation of Environmental Law reasonably likely to result in a fine or penalty in excess of the Threshold Amount, has occurred on or after the Closing Date, and within 60 days after such request and at the expense of the Borrower, any additional environmental site

assessment reports for any of its or its Subsidiaries' properties described in such request prepared by an environmental consulting firm acceptable to the Required Lenders, indicating the presence or absence of such Hazardous Materials and the estimated cost of any compliance, removal or remedial action in connection with any such Hazardous Materials on such properties; without limiting the generality of the foregoing, if the Required Lenders reasonably determine at any time that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrower, and the Borrower hereby grants and agrees to cause any Subsidiary that owns any property described in such request to grant at the time of such request to the Administrative Agent, the Lenders, such firm and any agents or representatives thereof, the right, subject to the rights of tenants, to enter onto their respective properties to undertake such an assessment; and

(vii) any such other documents and information as the Administrative Agent (at the direction of the Required Lenders) may reasonably request from time to time.

Section 6.05 Maintenance of Existence. (a) Preserve, renew and maintain in full force and effect its legal existence, structure and name under the Laws of the jurisdiction of its organization and (b) take all commercially reasonable action to maintain all rights, privileges (including its good standing, where such concept exists), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except (i) other than with respect to any Loan Party, to the extent the Borrower's board of directors (or in the case of clause (b), a Responsible Officer) shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Borrower and its Subsidiaries and to the extent that the loss thereof shall not be disadvantageous to Borrower, its Subsidiaries or the Lenders in any material respect, (ii) pursuant to a transaction permitted by Section 7.04 or Section 7.05 or (iii) in the case of clause (b), failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 6.06 Maintenance of Properties. Maintain, preserve and protect all of its material properties and equipment that are used or useful in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted, and make all commercially reasonable and appropriate repairs, renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof except where failure to do so would not reasonably be expected to materially adversely affect the use of the related property.

Section 6.07 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies (in the good faith judgment of management of the Borrower), insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and its Subsidiaries) as are customarily carried by Person engaged in similar businesses and owning or leasing similar properties in the same general areas in which the Borrower or such Subsidiary operates. Subject to the terms of the applicable Financing Order, Borrower shall cause all property policies to have a lender's loss payable endorsement showing Collateral Agent as lender loss payee for the benefit of the Lenders

and use commercially reasonable efforts to cause such endorsement to provide that the insurer must give Collateral Agent at least thirty (30) days' notice before canceling, amending, or declining to renew its policy. All liability policies shall show, or have endorsements showing, Collateral Agent as an additional insured, and all such policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall give Collateral Agent at least twenty (30) days' notice before canceling, amending, or declining to renew its policy. At any Lender's request, each Loan Party shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any casualty policy in connection with a Casualty Event shall be subject to Section 2.03(b)(ii).

Section 6.08 Compliance with Laws. Except as otherwise excused or prohibited by the Bankruptcy Code, and subject to any required approval by the Bankruptcy Court, comply in all material respects with the requirements of all Laws and all orders, writs, injunctions, decrees and judgments applicable to it or to its business or property, except where such non-compliance is not, either individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

Section 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects and as are sufficient to permit the preparation of financial statements in conformity with GAAP consistently applied, shall be made of all material financial transactions and matters involving the assets and business of any of the Loan Parties.

Section 6.10 Inspection Rights; Lender Calls. (a) Permit representatives and independent contractors of the Agent and each Lender (including, without limitation, financial advisors retained by or for the benefit of the Agent or the Lenders or their counsel, including the Financial Advisor) to visit and inspect any properties and books and records of the Borrower and its Subsidiaries (subject, in the case of third party customer sites, to customary access agreements) and to discuss its affairs, finances and accounts with its directors, officers, advisors and independent public accountants, all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that such visits and inspections shall be coordinated through the Required Lenders and any review of books and records shall be done no more frequently than once per month absent the continuation of an Event of Default. The Agent and the Lenders shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants to the extent reasonably feasible. Neither the Borrower nor any Subsidiary shall be required to disclose to the Agent or any Lender any information that, in the opinion of counsel to the Borrower or such Subsidiary, is prohibited by Law to be disclosed, is subject to attorney client privilege or constitutes attorney work product or the disclosure of which would cause a material breach of a binding non-disclosure agreement with a third party to the extent such agreement is not made in contemplation of the avoidance of this Section 6.10.

(b) Up to one (1) time in every two-week period, upon the reasonable request of the Required Lenders, the Borrower's chief financial officer, together with the Borrower's financial advisor shall hold a conference call (at a mutually agreeable time, the cost of such call to be paid by the Borrower) with the Administrative Agent and the Lenders, on which conference calls shall be reviewed the Loan Parties' financial performance, operations, current trends and variance reports.

Section 6.11 Additional Guarantors. Notify the Administrative Agent and the Lenders at the time that any Subsidiary becomes a debtor in the Chapter 11 Case, and (a) promptly thereafter (and in any event within five business (5) days), seek an order of the Bankruptcy Court authorizing such Person to become a Guarantor and (b) immediately upon the entry of such order, (i) cause such Person to become a Guarantor by executing and delivering to the Administrative Agent a supplement to this Agreement substantially in the form attached to this Agreement, and (ii) deliver to the Administrative Agent any applicable documents of the types referred to in Section 4.01(a), all in form, content and scope reasonably satisfactory to the Required Lenders.

Section 6.12 Use of Proceeds. Use the proceeds of any Loan, whether directly or indirectly, (i) to pay certain costs, fees, and expenses related to the Chapter 11 Case, including the fees, costs, and expenses of Professional Persons, (ii) to make adequate protection payments and other payments pursuant to any applicable Financing Order entered by the Bankruptcy Court and any related orders; provided that the form and substance of such orders shall be acceptable to the Required Lenders, and (iii) to fund working capital needs and expenditures of the Debtors during the Chapter 11 Case, in each case in accordance with the Approved Budget and the Loan Documents; provided further, solely in the manner set forth in the applicable Financing Order, and the Approved Budget, subject to the Permitted Variances. Notwithstanding the foregoing and subject to the terms of the Restructuring Support Agreement, no part of the proceeds of any Loan shall be used directly or indirectly:

(a) for any purpose that is prohibited under the Bankruptcy Code or the applicable Financing Order;

(b) to make any distribution under a plan of reorganization in the Chapter 11 Case; or

(c) to finance in any way payment of the fees and expenses of any Person incurred in connection with (i) the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings, suits, arbitrations, proceedings, applications, motions or other litigation of any type adverse to any of the Secured Parties or any of their respective Affiliates, agents or representatives, or their respective rights and remedies under or in respect of the Loans provided pursuant to this Agreement or the applicable Financing Order; (ii) challenging the amount, validity, perfection, priority or enforceability of, or asserting any defense, counterclaim or offset to, the obligations and liens and security interests granted under the Loan Documents or the Existing Agreements, including, in each case, without limitation, for lender liability or pursuant to Section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; or (iii) attempting to prevent, hinder or otherwise delay any of the Lenders' or the Collateral Agent's assertion, enforcement or realization upon any of the Collateral.

Notwithstanding the foregoing, the Loan Parties shall be permitted to pay compensation and reimbursement of fees and expenses of professionals allowed and payable under Sections 328, 330 and 331 of the Bankruptcy Code, as the same may be due and payable, to the extent expressly permitted by the applicable Financing Order.

Nothing herein shall in any way prejudice or prevent the Agent or the Lenders from objecting, for any reason, to any requests, motions or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest (and each such order shall preserve the Agent's and the Lenders' right to review and object to any such requests, motions or applications).

Section 6.13 Anti-Corruption and Sanctions Laws. To the extent existing on the Closing Date, the Borrower will maintain in effect such policies and procedures designed to promote compliance in all material respects by the Borrower, its Subsidiaries, and their respective directors, officers, employees, and agents with the FCPA and any other applicable anti-corruption laws as well as Sanctions.

Section 6.14 Taxes. To the extent permitted by the Bankruptcy Court and the Bankruptcy Code, pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all Taxes, assessments and governmental charges or levies arising after the Closing Date imposed upon it or upon its income or profits, or upon any properties belonging to it, in each case on a timely basis, which, if unpaid when due and payable, may reasonably be expected to become a Tax Lien upon any properties of the Borrower or any of its Subsidiaries thereof not otherwise permitted under this Agreement; provided that neither the Borrower nor any of its Subsidiaries shall be required to pay any such Tax, assessment, charge, levy or claim (i) which is being contested in good faith and by proper proceedings if it has maintained adequate reserves with respect thereto in accordance with GAAP unless and until any Tax Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors or (ii) non-payment of which is required under the Bankruptcy Code or order of the Bankruptcy Court.

Section 6.15 End of Fiscal Years; Fiscal Quarters. Cause (i) its fiscal year to end on or about December 31 of each calendar year and (ii) its fiscal quarters to end on or about March 31, June 30, September 30 and December 31 of each calendar year, in each case unless otherwise approved by the Required Lenders.

Section 6.16 ERISA. (a) ERISA Events and ERISA Reports. (i) Promptly and in any event within ten (10) days after any Loan Party, any Subsidiary or any ERISA Affiliate knows or has reason to know that any ERISA Event that could reasonably be expected to result in a liability of a Loan Party in excess of the Threshold Amount has occurred, a statement of a Responsible Officer of the Borrower describing such ERISA Event and the action, if any, that such Loan Party, such Subsidiary or such ERISA Affiliate has taken and proposes to take with respect thereto and (ii) on the date any records, documents or other information must be furnished to the PBGC with respect to any Plan pursuant to Section 4010 of ERISA, a copy of such records, documents and information.

(b) Plan Terminations. Promptly and in any event within five (5) Business Days after receipt thereof by any Loan Party or any ERISA Affiliate, copies of each notice from the PBGC stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan.

(c) Plan Annual Reports. Promptly and in any event within thirty (30) days after the filing thereof with the IRS, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Plan.

(d) Multiemployer Plan Notices. Promptly and in any event within five (5) Business Days after receipt thereof by any Loan Party, any Subsidiary or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (i) the imposition of Withdrawal Liability by any such Multiemployer Plan, (ii) the reorganization or termination, or a determination that such Multiemployer Plan is in endangered or critical status, within the meaning of Title IV of ERISA, of any such Multiemployer Plan or (iii) the amount of liability incurred, or that may be incurred, by such Loan Party, such Subsidiary or such ERISA Affiliate in connection with any event described in clause (i) or (ii).

Section 6.17 Further Assurances. Execute and deliver, or cause to be executed and delivered, to the Agent such reasonable documents and agreements, and shall take or cause to be taken such reasonable actions, as the Agent may, from time to time, reasonably request (at the direction of the Required Lenders) to carry out the terms and conditions of this Agreement and the other Loan Documents.

Section 6.18 Business. Except to the extent required or authorized by the Bankruptcy Court, the Borrower will only, and will only permit the Subsidiaries to, engage directly or indirectly in the business engaged in by the Borrower and the Subsidiaries as of the Closing Date and reasonable extensions thereof and businesses ancillary, corollary, synergistic or complimentary thereto.

Section 6.19 Post-Closing Matters. To the extent not prohibited by any Requirement of Law and not otherwise resulting in material adverse tax consequences to the Borrower and its Subsidiaries, at the request of the Required Lenders (or automatically to the extent requested under the Prepetition Indenture), the Borrower shall cause its Foreign Subsidiaries designated by the Required Lenders to execute such guarantees, pledge agreements and security documents as shall be customary in such local jurisdictions to grant to Collateral Agent, for the benefit of the Secured Parties, a guaranty of the Obligations secured by the equity interests and substantially all assets of such Subsidiaries within sixty (60) days of such request (or such longer period as the Required Lenders may agree in their sole discretion). In addition, the Borrower shall deliver the following within forty-five (45) days of the Closing Date (or such longer period as the Required Lenders may agree in their sole discretion): (i) control agreements with respect to the Borrower's deposit accounts listed on the schedules to the Collateral Documents (other than any Excluded Account) and (ii) insurance endorsements in accordance with Section 6.07, in each case in form and substance reasonably acceptable to the Collateral Agent (subject to indemnity provisions in such control agreements being subject to the Collateral Agent's approval in its sole discretion) and the Required Lenders.

Section 6.20 Compliance with Financing Order. Comply with the applicable Financing Order to the extent the Loan Parties' compliance therewith is required at such time.

Section 6.21 Milestones. Each of the Debtors covenants and agrees with Administrative Agent and each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all fees and all other expenses

or amounts payable under any Loan Document have been paid in full in cash, each of the Debtors shall and shall cause each of the Subsidiaries to ensure that each of the Milestones set forth in the applicable Financing Order is achieved in accordance with the applicable timing referred to therein (or such later dates as may be approved in writing by the Required Lenders in their sole discretion).

Section 6.22 Bankruptcy Covenants. Notwithstanding anything in the Loan Documents to the contrary, the Debtors shall comply with all material covenants, terms and conditions and otherwise perform all obligations set forth in the applicable Financing Orders in all material respects.

Section 6.23 Cash Management. Subject to approval by the Bankruptcy Court, after commencement of the Chapter 11 Case, the Debtors shall use a cash management system that is the same as or substantially similar to its cash management system in effect prior to such date. Any material changes from such prepetition cash management system must be acceptable to the Agent (at the direction of the Required Lenders).

Section 6.24 No Flowback to Switzerland. None of the proceeds borrowed under the Loans may be used in Switzerland in a manner which would constitute a use of proceeds in Switzerland as interpreted by the Swiss Federal Tax Administration for purposes of Swiss Withholding Tax unless: (i) a tax ruling countersigned by the Swiss Federal Tax Administration is obtained confirming that any such use of proceeds in Switzerland does not result in Swiss Withholding Tax consequences, or (ii) any such use of proceeds in Switzerland does not result in any Swiss Withholding Tax consequences under then applicable Swiss tax laws.

ARTICLE VII

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment outstanding hereunder or any Loan or other Obligation hereunder which is accrued and payable shall remain unpaid or unsatisfied, the Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

Section 7.01 Liens. Subject to the applicable Financing Order, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues (including accounts receivable), whether now owned or hereafter acquired, other than the following Liens (collectively, "Permitted Liens"):

(a) Liens pursuant to any Loan Document which shall have the priority set forth in the applicable Financing Order;

(b) Liens existing on the Petition Date and listed on Schedule 7.01(b);

(c) Liens for Taxes, assessments, governmental charges which are not overdue for a period of more than thirty (30) days or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP;

(d) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, suppliers, construction contractors, employees, pension plan administrators or other like Liens arising in the ordinary course of business which secure amounts not overdue for a period of more than thirty (30) days or if more than thirty (30) days overdue, are unfiled (or if filed have been discharged or stayed) and no other action has been taken to enforce such Lien or which are being contested in good faith, if adequate reserves with respect thereto are maintained on the books of the applicable Person to the extent required in accordance with GAAP;

(e) Liens (i) arising out of pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security or other insurance (including unemployment insurance) and (ii) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Subsidiary and (iii) Liens securing the financing of insurance premiums (to the extent such Liens extend to the unearned premiums for such insurance) in the ordinary course of business;

(f) Liens consisting of deposits made in connection with Indebtedness of the types permitted under Sections 7.03(e) or 7.03(g) (in each case, other than for borrowed money) entered into in the ordinary course of business or to secure the obligations otherwise permitted;

(g) easements, rights-of-way, covenants, conditions, restrictions, encroachments, and other survey defects protrusions and other similar encumbrances and minor title defects affecting real property which were not incurred in connection with Indebtedness and do not in any case materially and adversely interfere with the use of the property encumbered thereby for its intended purposes;

(h) Liens arising by virtue of any contractual, statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary Guarantor (so long as such Subsidiary remains a Subsidiary Guarantor) to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or such Subsidiary Guarantor or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(i) Liens arising from precautionary Uniform Commercial Code financing statement filings regarding leases entered into by the Borrower and its Subsidiaries in the ordinary course of business;

(j) any zoning, land-use or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property;

(k) the modification, replacement, renewal or extension of any Lien permitted by clause (b) of this Section 7.01; provided that (i) the Lien does not extend to any additional property or additional Indebtedness (except with respect to paid-in-kind obligations pursuant to the terms of such Indebtedness as in effect on the Closing Date) other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien or financed by Indebtedness permitted under Section 7.03, and (B) proceeds and products thereof; and (ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by Section 7.03;

(l) nonconsensual statutory Liens arising after the Petition Date;

(m) judgment Liens in existence for less than thirty (30) days after the entry thereof, or with respect to which execution has been stayed or the payment of which is covered in full by insurance maintained with responsible insurance companies, or which judgment Liens do not otherwise result in an Event of Default under Section 8.01(h);

(n) any interest or title of a lessor, licensor or sublessor under any lease, license or sublease entered into by the Borrower or any of its Subsidiaries in the ordinary course of its business and covering only the assets so leased, or subleased;

(o) to the extent constituting a Lien and permitted under Section 7.05, any non-exclusive licenses of Intellectual Property granted to third parties and set forth on Schedule 5.17 and other non-exclusive licenses after the Closing Date, in each case to the extent not resulting in a legal transfer of title of the licensed Intellectual Property and in the ordinary course of business;

(p) to the extent constituting Liens and permitted under Section 7.05, any leases, subleases, licenses, or sublicenses (other than licenses of Intellectual Property) granted to third parties that do not materially interfere with the Loan Parties' ordinary course of business;

(q) Liens securing Indebtedness permitted under Section 7.03(g) which shall have the priority set forth in the applicable Financing Order;

(r) other Liens granted pursuant to the Financing Orders.

Section 7.02 Investments. Make any Investments, except:

(a) Investments by the Borrower or its Subsidiaries in cash and Cash Equivalents;

(b) Investments existing as of the Closing Date and disclosed on Schedule 7.02(b) and Investments consisting of any modification, replacement, renewal, reinvestment or extension of any such Investment; provided that the amount of any Investment permitted pursuant to this Section 7.02(b) is not increased from the amount of such Investment on the Closing Date;

(c) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(d) Investments in the form of trade credit to customers of the Loan Parties arising in the ordinary course of business and consistent with past practices;

(e) Contributions, loans, or advances to, or investments in, a Loan Party made by another Loan Party;

(f) Promissory notes and other noncash consideration received by any Loan Party in connection with any asset sale permitted hereunder, with the bankruptcy or reorganization of suppliers and customers, or with the settlement of delinquent obligations of, and disputes with, customers and suppliers arising in the ordinary course of business;

(g) Investments consisting of inter-company loans and inter-company receivables owed to a Loan Party by an Affiliate of such Loan Party (that is itself not a Loan Party), solely to the extent set forth in the Approved Budget.

Section 7.03 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except the following, without duplication:

(a) Indebtedness of the Borrower and other Loan Parties under the Loan Documents;

(b) Indebtedness outstanding on the Closing Date and listed on Schedule 7.03(b);

(c) Indebtedness in respect of performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, indemnity, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations), and, in each case, letters of credit in respect thereof, incurred in the ordinary course of business;

(d) non-recourse Indebtedness incurred by the Borrower or any of its Subsidiaries to finance the payment of insurance premiums of such Person;

(e) Indebtedness owed to any Person providing worker's compensation, unemployment insurance and other social security legislation, health, disability or other employee benefits or property, casualty or liability insurance to the Borrower or any of its Subsidiaries incurred in connection with such Person providing such benefits or insurance pursuant to customary reimbursement or indemnification obligations to such Person;

(f) to the extent constituting Indebtedness, each of the Investments permitted pursuant to Section 7.02;

(g) Indebtedness of the Borrower and the Loan Parties under the Prepetition Indenture in an aggregate principal amount not to exceed the outstanding aggregate principal amount thereof as of the Closing Date plus any paid-in-kind interest in accordance with the terms thereof to the extent permitted in an Approved Bankruptcy Court Order; provided, that no Subsidiaries of the Borrower shall guaranty such Indebtedness unless such Subsidiaries also guaranty the Obligations; and

Section 7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, split or allow any change to the ownership of the Borrower or any of its Subsidiaries, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except any liquidation or share capital reduction by the Swiss Loan Party.

Section 7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete, worn out or surplus property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful in the conduct of the business of the Borrower and its Subsidiaries, in each case to the extent constituting immaterial property;

(b) Dispositions in the ordinary course of business of Cash Equivalents;

(c) sales of inventory in the ordinary course of business;

(d) the leasing, as lessor, of real or personal property not presently used or useful in such Person's business and is otherwise in the ordinary course of business;

(e) Dispositions of equipment or other assets, to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment or assets or the proceeds of such Dispositions are reasonably promptly applied to the purchase price of similar replacement equipment, all in the ordinary course of business;

(f) Dispositions constituting an Intellectual Property that is not material to the conduct of the business of the Borrower and its Subsidiaries;

(g) Dispositions otherwise permitted by Sections 7.01, 7.02 or 7.03 and Dispositions from any Subsidiary that is not a Loan Party to any other Subsidiary that is not a Loan Party; and

(h) any other Disposition approved by the Bankruptcy Court and approved by Required Lenders.

Section 7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, except:

(a) to the extent constituting a Restricted Payment, the payment of fees of non-insider directors to the extent permitted in an Approved Bankruptcy Court Order and the reimbursement of reasonable expenses;

(b) the Subsidiaries of the Borrower may make direct or indirect Restricted Payments to the Borrower and other Subsidiaries of the Borrower that are Loan Parties, either by direct payment or for the Swiss Loan Party as a consequence of a liquidation or restructuring of its share capital, including by share capital reduction; and

(c) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person (other than Disqualified Equity Interests).

Section 7.07 Change in Nature of Business. Except as required by the Bankruptcy Code or as set forth in any order of the Bankruptcy Court, engage in any line of business other than those lines of business conducted by the Borrower and its Subsidiaries on the date hereof or any business reasonably related or ancillary thereto.

Section 7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower or its Subsidiaries, whether or not in the ordinary course of business, other than:

(a) transactions to the extent permitted pursuant to an Approved Bankruptcy Court Order;

(b) transactions contemplated by the Restructuring Support Agreement;

(c) any transactions expressly permitted under Section 7.02, Section 7.04 and Section 7.06; provided that all parties to such transactions are Loan Parties or their Wholly-owned Subsidiaries;

(d) so long as it has been approved by the Borrower's or its applicable Subsidiary's board of directors or other governing body to the extent required in accordance with applicable law, (i) customary indemnifications of non-officer directors of the Loan Parties and their respective Subsidiaries and (ii) the payment of reasonable and customary compensation and indemnification arrangements and benefit plans for officers and employees of the Loan Parties and their respective Subsidiaries in the ordinary course of business, in each case to the extent permitted in an Approved Bankruptcy Court Order and approved by all independent directors of the Borrower's board of directors; and

(e) transactions under the agreements existing on the Closing Date and listed on Schedule 7.08.

Section 7.09 Prepayments and Modifications of Certain Agreements. (a) Amend or modify any of the terms of any Indebtedness in an outstanding amount exceeding the Threshold Amount of any of the Loan Parties or their Subsidiaries arising prior to or after the Petition Date if such amendment or modification would add or change any terms in a manner adverse to the Loan Parties or the Lenders, or shorten the final maturity or average life to maturity of any such Indebtedness

or require any payment to be made sooner than originally scheduled or increase the interest rate applicable thereto.

(b) Make any payment of any Indebtedness or any claim arising prior to the Petition Date except as permitted pursuant to the Financing Orders or other order of the Bankruptcy Court and otherwise not prohibited by the terms of this Agreement, or make any voluntary, optional or other non-scheduled payment, prepayment, redemption, acquisition for value, refund, refinance or exchange of any Indebtedness of such Loan Party arising after the Petition Date (including, without limitation, any interest, premium or other amounts owing in respect thereof), in each case whether or not mandatory, except (i) with respect to Indebtedness under the Loan Documents and (ii) for payments made pursuant to the applicable Financing Order.

(c) Amend or modify, or permit the amendment, modification or waiver of, any provision of any Material Contract to which any Loan Party or any Subsidiary thereof is a party or by which it or any of its property or assets is bound, in each case after the original execution and delivery thereof (or, if later, the date hereof) in any substantive manner that would be adverse to the Lenders' interests hereunder, without the written consent of the Required Lenders.

Section 7.10 Negative Pledge. Enter into or suffer to exist, or permit any of its Subsidiaries to enter into or suffer to exist, (x) any agreement prohibiting or conditioning the creation or assumption of any Lien upon any of its property or assets except (a) agreements in favor of the Agent or (b) prohibitions or conditions by reason of customary provisions restricting pledges, assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets subject to such leases, licenses or similar agreements, as the case may be) or (iii) any Indebtedness outstanding on the Closing Date (including, for the avoidance of doubt, the Indebtedness under the Existing Agreements) or (y) any agreement or arrangement limiting the ability of any of its Subsidiaries to declare or pay dividends or other distributions in respect of its Equity Interests or repay or prepay any Indebtedness owed to, make loans or advances to, or otherwise transfer assets to or make Investments in, the Borrower or any of its Subsidiaries of the Borrower (whether through a covenant restricting dividends, loans, asset transfers or investments, a financial covenant or otherwise), except (a) the Loan Documents and (b) any Indebtedness outstanding on the Closing Date (including, for the avoidance of doubt, the Indebtedness under the Existing Agreements).

Section 7.11 Amendments to Organization Documents. Amend, or permit any of its Subsidiaries to amend, its certificate of incorporation or bylaws or other Organization Documents, without the written consent of the Required Lenders, except any liquidation or share capital reduction by the Swiss Loan Party.

Section 7.12 Use of Proceeds. (a) Use, directly or indirectly, the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, to fund, finance, or facilitate any activities, business, or transaction of or with any Sanctioned Person, or in any Sanctioned Country, in a manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise).

(b) Use any part of the proceeds of the Loans directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law.

Section 7.13 Accounting Changes. Make any change in (a) accounting policies or reporting practices, except as required by GAAP or (b) Fiscal Year.

Section 7.14 OFAC. (a) Become a Sanctioned Person, (b) become organized, resident or located in a Sanctioned Country, or (c) engage in any transactions or dealings with a Sanctioned Person or in a Sanctioned Country in violation of Sanctions.

Section 7.15 Ownership of Subsidiaries. Notwithstanding any other provisions of this Agreement to the contrary, organize, create, acquire or permit to exist after the Petition Date any Subsidiaries of the Borrower other than those existing on the Petition Date and set forth on Schedule 5.14.

Section 7.16 Compliance with Financing Orders and Approved Budget Except as otherwise provided herein or approved by the Required Lenders, the Loan Parties shall not use any cash or the proceeds of any Loans or Collateral in a manner or for a purpose other than in accordance with the applicable Financing Order and the Approved Budget, subject to the Permitted Variances. Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, in no event shall the Loan Parties make any expenditures, payments, repayments or prepayments, dividends, distributions, reimbursements or similar transaction to equity owners of the Borrower or any Subsidiary thereof (excluding Borrower and any Subsidiary thereof) during the term of this Agreement unless expressly permitted pursuant to an Approved Bankruptcy Court Order and set forth in the Approved Budget.

Section 7.17 Compliance With Certain Laws.

(a) (i) Violate any Anti-Terrorism Laws, (ii) engage in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of prohibited offenses designated by the Organization for Economic Co-operation and Development's Financial Action Task Force on Money Laundering or (iii) permit any of their respective Affiliates to violate these laws or engage in these actions.

(b) (i) Deal in, or otherwise engage in any transaction related to, any property or interests in property blocked pursuant to any Anti-Terrorism Law, (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempt to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(c) Become an "investment company" or a company controlled by an "investment company" under the Investment Company Act of 1940, as amended.

Section 7.18 Chapter 11 Claims. Incur, create, assume, suffer to exist or permit any administrative expense, unsecured claim or other super-priority claim or lien which is pari passu with or senior to the claims or liens, as the case may be, of the Collateral Agent or the Secured Parties against the Loan Parties hereunder, or apply to the Bankruptcy Court for authority to do

so, except for the Carve-Out and as expressly permitted by the Financing Orders, an Approved Bankruptcy Court Order or the Required Lenders.

Section 7.19 Revision of Orders; Applications to Bankruptcy Court.

(a) Seek, consent to or suffer to exist any modification, stay, vacation or amendment of the applicable Financing Order that is adverse to the interests of the Lenders, except for any modifications and amendments agreed to in writing by the Administrative Agent and the Required Lenders.

(b) Apply to the Bankruptcy Court for authority to take any action prohibited by this Article VII (except to the extent such application and the taking of such action is conditioned upon receiving the written consent of the Agent and the Required Lenders or all Lenders, as applicable).

Section 7.20 Adequate Protection. Except as permitted in the Financing Orders, incur, create, assume, suffer to exist or permit any obligation to make adequate protection payments, or otherwise provide adequate protection.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. Any of the following events referred to in this Section 8.01 shall constitute an "Event of Default":

(a) Non-Payment. Any Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or (ii) within three (3) Business Days after the same becomes due in cash, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(b) Specific Covenants. The Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01(d), Section 6.01(f), Section 6.03(a), Section 6.05, Section 6.07, Section 6.10(b), Section 6.12, Section 6.19, Section 6.20, Section 6.22, Section 6.23 or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) Cross-Default. Except to the extent resulting or arising from the Chapter 11 Case, any Loan Party or any Subsidiary (A) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any post-Petition Date Indebtedness (other than Indebtedness hereunder) having an aggregate principal amount of not less than the Threshold Amount, unless such failure to pay is a result of the Chapter 11 Case, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, in each case, unless such failure to observe or perform is a result of the Chapter 11 Case; or

(f) Material Adverse Effect; There occurs an event that has resulted in a Material Adverse Effect; or

(g) Judgments. After the Petition Date, there is entered against any Loan Party or any Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer has been notified of such judgment or order and does not deny or fail to confirm coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(h) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in liability of any Loan Party under Title IV of ERISA in an aggregate amount which would reasonably be expected to exceed the Threshold Amount, (ii) any Loan Party, any Subsidiary or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount which would reasonably be expected to exceed the Threshold Amount, or (iii) any Loan Party, any Subsidiary or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA, and as a result of such reorganization or termination the aggregate annual contributions of the Loan Parties, the Subsidiaries and the ERISA Affiliates to all Multiemployer Plans that are then in reorganization or being terminated have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such reorganization or termination occurs by an aggregate amount which would reasonably be expected to exceed the Threshold Amount; or

(i) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery or entry (with respect to the applicable Financing Order) and for any reason other than as expressly permitted hereunder

or thereunder or the satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document (other than as a result of the Termination of the DIP Financing), purports to revoke or rescind any Loan Document or asserts (including by commencing or joining in any legal proceeding) that any Collateral Document is invalid or unenforceable or contests in any manner that any Loan Document constitutes a valid and enforceable agreement against it; or

(j) Change of Control; Structure. There occurs any (i) Change of Control or (ii) any change to the ownership of direct and indirect Subsidiaries of the Borrower from the ownership structure set forth on Schedule 5.14; or

(k) Liens. Any Collateral Document shall for any reason cease to create a valid and perfected Lien (having the priorities specified in the applicable Financing Order) on and security interest in the Collateral; or

(l) Dissolution or Liquidation. Any Loan Party voluntarily or involuntarily dissolves or is dissolved, liquidates or is liquidated or files a motion with the Bankruptcy Court seeking authorization to dissolve or liquidate, except a liquidation and/or a share capital reduction of the Swiss Loan Party; or

(m) Failure to Conduct Business. If any Loan Party is enjoined, restrained or in any way prevented by court order (other than an Approved Bankruptcy Court Order) from continuing to conduct all or any material part of its business affairs or any Loan Party or any of their respective Subsidiaries' cessation of all or any material part of its business operations (other than in connection with a sale of assets permitted by the Loan Documents or otherwise consented to by the Required Lenders); or

(n) Independent Directors. With respect to the board of directors of the Borrower, the independent directors no longer constitute 50% of such board of directors; or

(o) Financial Advisor. The Borrower no longer retains Ducera Partners LLC as its financial advisor unless replaced with a financial advisor acceptable to the Required Lenders; or

(p) Financing Order. The Bankruptcy Court fails to (i) enter the Interim Order within five (5) days of the Petition Date (with such changes as the Administrative Agent and the Required Lenders may agree to), or (ii) enter the Interim Order within twenty-nine (29) days of the Petition Date (with such changes as the Administrative Agent and the Required Lenders may agree to) or the Bankruptcy Court enters an order (other than one subject to a stay) that reverses, vacates or stays for a period in excess of ten (10) days the effectiveness of the applicable Financing Order whether on appeal or otherwise, in each case without the written consent of the Required Lenders; or

(q) Certain Orders. An order with respect to the Chapter 11 Case shall be entered by the Bankruptcy Court (or any of the Loan Parties shall file any pleading or

motion requesting entry of an order) (i) appointing a trustee under Section 1104 of the Bankruptcy Code, (ii) appointing an examiner with enlarged powers (beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) relating to the operation of the business under Section 1106(b) of the Bankruptcy Code, or (iii) dismissing or converting the Chapter 11 Case to a Chapter 7 case; or

(r) Non-Compliance with Financing Order. Any Loan Party fails or neglects to comply with any provision of the (x) Interim Order or (y) Final Order; or

(s) Filing of Unapproved Plan. Any Person other than a Loan Party shall have filed a plan of reorganization or liquidation in the Chapter 11 Case following termination of the Loan Parties' exclusivity periods under Section 1121 of the Bankruptcy Code, unless approved by the Required Lenders; or

(t) Entry of Unapproved Order. (i) An order (other than one subject to a stay and the super priority claims granted to Stalking Horse Bidder (as defined in the First Day Declaration referred to in the applicable Financing Order) with respect to the Chapter 11 Case shall be entered by the Bankruptcy Court (A) permitting any administrative expense claim or any other claim (now existing or hereafter arising, of any kind or nature whatsoever) to have priority as to any of the Loan Parties that is pari passu or senior to the Obligations, other than the Carve-Out or other claims expressly permitted to have priority over the Obligations under the applicable Financing Order; (B) granting or permitting the grant of a Lien on the Collateral (other than a Permitted Lien); or (ii) an order shall be entered by the Bankruptcy Court dismissing the Chapter 11 Case which does not provide for (x) the Termination of the DIP Financing and (y) until the Termination of the DIP Financing, the continuity and priority of the Liens of the Collateral Agent in the Collateral, the super-priority administrative expense claim status of the Obligations to the same extent as is provided in the applicable Financing Order upon such dismissal; or

(u) Relief from the Automatic Stay. The Bankruptcy Court enters an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code for any reason to any Person holding a Lien upon any pre-petition or post-petition assets of any Loan Party with respect to any Collateral as to which the Collateral Agent has been granted a first priority Lien, or any other assets of any Loan Party where the aggregate value of the property subject to all such order or orders is greater than the Threshold Amount; or

(v) Motion against the Lenders. Any of the Loan Parties shall seek to, or shall support (whether by way of motion or other pleadings filed with the Bankruptcy Court or any other writing executed by any Loan Party or by oral argument) any other Person's motion to, (i) disallow in whole or in part any of the Obligations arising under this Agreement or any other Loan Document or (ii) challenge the validity and enforceability of the Liens or security interests granted under any of the Loan Documents or in the applicable Financing Order in favor of the Collateral Agent; or

(w) Prohibited Payment. Any of the Loan Parties shall make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any

claim or Indebtedness arising prior to the Petition Date other than those payments in respect of adequate protection permitted pursuant to the terms of the applicable Financing Order and payments authorized by the Bankruptcy Court in respect of (i) any payments required and/or permitted in the "first day orders" or any subsequent Approved Bankruptcy Court Order or (ii) accrued payroll and related expenses as of the Petition Date; or

(x) Other Bankruptcy Matters. (i) An order shall have been entered modifying the adequate protection obligations granted in the applicable Financing Order without the prior written consent of the Agent or Required Lenders, (ii) an order shall have been entered by the Bankruptcy Court avoiding or requiring disgorgement by the Agent and the Required Lenders of any amounts received in respect of the Obligations, (iii) any Loan Party shall file with the Bankruptcy Court a motion seeking authority to use any cash proceeds of any of the Collateral to the extent prohibited hereunder, without the written consent of the Required Lenders and the Agent or (iv) any Loan Party shall file a motion or other request with the Bankruptcy Court seeking any financing under Section 364(d) of the Bankruptcy Code secured by any of the Collateral that does not require (x) the Termination of the DIP Financing and (y) until the Termination of the DIP Financing, the continuity and priority of the Liens of the Collateral Agent in the Collateral, the super-priority administrative expense claim status of the Obligations to the same extent as is provided in the applicable Financing Order; or

(y) Restructuring Support Agreement. The Restructuring Support Agreement (i) is no longer in effect or (ii) is amended, modified or subject to a waiver, in the case of clause (ii), in a manner adverse to the interests of the Lenders without the consent of the Required Lenders.

Section 8.02 Remedies Upon Event of Default. (a) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, but subject to the applicable Financing Order, if any Event of Default occurs and is continuing, the Agent shall, at the request of the Required Lenders, by written notice to the Borrower, take any or all of the following actions without further order of, or application to, the Bankruptcy Court:

(i) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments shall be terminated;

(ii) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(iii) set-off against any outstanding Obligations amounts held for the account of the Loan Parties as cash collateral or in the accounts of any Loan Party maintained by or with the Agent, any Lender or their respective Affiliates; and

(iv) take any action or exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law.

(b) If an Event of Default has occurred and is continuing: (i) the Agent shall have for the benefit the Secured Parties, in addition to all other rights of the Agent and the Lenders, the rights and remedies of a secured party under the Uniform Commercial Code; (ii) the Agent (at the direction of the Required Lenders) may, at any time, take possession of the Collateral and keep it on any Loan Party's premises, at no cost (including any charge pursuant to Section 506(c) of the Bankruptcy Code) to the Agent or any Lender, or remove any part of it to such other place or places as the Agent (at the direction of the Required Lenders) may desire, or the Borrower shall, upon the Agent's demand, at the Borrower's cost, assemble the Collateral and make it available to the Agent at a place or places reasonably convenient to the Agent; and (iii) the Agent (at the direction of the Required Lenders) may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Agent deems advisable at the direction of the Required Lenders, and may, if the Agent at the direction of the Required Lenders deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, the Loan Parties agree that any notice by the Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to the Loan Parties if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt to the Borrower, at least ten (10) Business Days prior to such action to the Borrower's address specified herein. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Agent or the Lenders receive payment, and if the buyer defaults in payment, the Agent may resell the Collateral without further notice to the Loan Parties. In the event the Agent (at the direction of the Required Lenders) seeks to take possession of all or any portion of the Collateral by judicial process, the Loan Parties irrevocably waives: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Agent retain possession and not dispose of any Collateral until after trial or final judgment. The Loan Parties agree that the Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Agent is hereby granted a license or other right to use, without charge, but subject to the terms of the of licenses to the Loan Parties with respect to Intellectual Property licensed to the Loan Parties, the Loan Parties' Intellectual Property and advertising matter, or any similar property, in completing production of, advertising or selling any Collateral, provided, that such licenses to be granted hereunder with respect to trademarks and service marks shall be subject to the maintenance of quality standards with respect to the goods and services on which such trademarks and service marks are used sufficient to preserve the validity and enforceability of such trademark and service marks and the applicable Loan Party's rights under all licenses and all franchise agreements shall inure to the Agent's benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including attorneys' fees, and then to the Obligations in accordance with Section 8.03. Following the Termination of the DIP Financing, the Agent will deliver any excess proceeds of the Collateral in accordance with the applicable order of the Bankruptcy Court. The Loan Parties shall remain liable for any deficiency.

(c) Upon the occurrence and during the continuance of an Event of Default, subject solely to the giving of five (5) Business Days' prior written notice as set forth in clause (d) below, the automatic stay arising pursuant to Bankruptcy Code Section 362 shall be vacated and terminated in accordance with the applicable Financing Order r without further action or order of the Bankruptcy Court, without the need for filing any motion for relief from the automatic stay or any other pleading so as to permit the Agent and the Lenders full exercise of all of their rights and remedies based on the occurrence of an Event of Default, including, without limitation, all of their rights and remedies with respect to the Collateral and the Guarantors. With respect to the Agent's and Lenders' exercise of their rights and remedies, the Loan Parties agree, waive and, release, and shall be enjoined from attempting to contest, delay, or otherwise dispute the exercise by the Agent and the Lenders of their rights and remedies before the Bankruptcy Court or otherwise.

(d) Notwithstanding the foregoing, any exercise of remedies is subject to the giving of five (5) Business Days' prior written notice in accordance with the terms of the applicable Financing Order. For the avoidance of doubt, it is understood and agreed that the giving of five (5) Business Days' prior written notice as set forth above is a one-time requirement and is not required to be delivered with any exercise of remedies after the first such exercise.

Section 8.03 Application of Funds. If the circumstances described in Section 2.09(f) have occurred, or after the exercise of remedies provided for in Section 8.02 any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order (after giving effect to the Carve-Out and any other payments required pursuant to the applicable Financing Order):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs payable under Section 10.04 and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest (including, but not limited to, post-petition interest), ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal or face amounts of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the payment of all other Obligations of the Loan Parties that are due and payable to the Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, as required by the applicable order of the Bankruptcy Court.

The Loan Parties shall remain liable for any deficiency.

ARTICLE IX

ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 9.01 Appointment and Authorization. (a) Each Lender hereby irrevocably appoints, designates and authorizes the Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained in this Agreement or in any other Loan Document, the Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall the Agent have or be deemed to have any fiduciary relationship with any Lender or Participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Notwithstanding any provision contained in this Agreement providing for any action in the Agent's reasonable discretion or approval of any action or matter in the Agent's reasonable satisfaction, the Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) which may be delivered by electronic transmission (including e-mail by such Lenders or counsel to the Required Lenders (which on the date hereof is King & Spalding LLP); provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable Law and shall, in the Agent's sole discretion, be accompanied by indemnity or security satisfactory to the Agent and subject to the indemnification set forth in Section 9.07. The Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any other Loan Party or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Agent or any other Agent-Related Person in any capacity.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or

observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral or collectability of any Obligations, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

(b) The Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (in its capacity as a Lender) hereby irrevocably appoints and authorizes the Agent to act as the agent of (and to hold any security interest, charge or other Lien created by the Collateral Documents for and on behalf of or on trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Agent, as "collateral agent" (and any co-agents, sub-agents and attorneys-in-fact appointed by the Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Agent), shall be entitled to the benefits of all provisions of this Article IX (including Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as If set forth in full herein with respect thereto.

(c) The Agent shall be entitled to request written instructions, or clarification of any instruction, from the Required Lenders (or, if the relevant Loan Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those written instructions or that clarification. In the absence of written instructions, Agent, as applicable, may act (or refrain from acting) as it considers to be in the best interests of the Lenders. Whenever in the administration of the Loan Documents the Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, may conclusively rely upon instructions from the Required Lenders. The Agent may request that the Required Lenders or other parties deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to the Loan Documents. The duties of the Agent under the Loan Documents are solely mechanical and administrative in nature.

(d) The Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

(e) The Agent shall not be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or as to the existence or

possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing, or (ii) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that such Agent is instructed in writing to exercise by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided).

Section 9.02 Delegation of Duties. The Agent may execute any of its duties under this Agreement or any other Loan Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder) by or through Affiliates, agents, employees or attorneys-in-fact, such sub-agents as shall be deemed necessary by the Agent, and shall be entitled to advice of counsel, both internal and external, and other consultants or experts concerning all matters pertaining to such duties. The Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction.

Section 9.03 Liability of the Agent. (a) No Agent-Related Person shall (x) be liable to any Lender for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final nonappealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), or (y) be responsible in any manner to any Lender or Participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or Participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof. The Agent shall not be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. In no event shall the 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, pandemics or epidemics, or acts of God and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; *it being understood* that the Agent shall use reasonable efforts consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances. Calculation of any prepayment premium shall not be a duty or obligation of Agent or "collateral agent." In no event shall the Agent be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if such loss

or damage was foreseeable or it has been advised of the likelihood of such loss or damage and regardless of the form of action. Except with respect to its own gross negligence or wilful misconduct, the Agent shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, any security document or any other instrument or document furnished pursuant thereto.

(b) Beyond the exercise of reasonable care in the custody thereof, the Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords similar collateral and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee. The Agent shall have no responsibility for or liability with respect to monitoring compliance of any other party to the Loan Documents or any other document related hereto or thereto. The Agent has no duty to monitor the value or rating of any Collateral on an ongoing basis.

Section 9.04 Reliance by the Agent. (a) The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by the Agent. The Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Agent shall be justified in taking any action reasonably believed to it to be required by any order of the Bankruptcy Court. The Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with any order of the Bankruptcy Court or in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b) For purposes of determining compliance with the conditions specified in Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 9.05 Notice of Default. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Agent for the account of the Lenders, unless the Agent shall have received written notice from a Lender or the Borrower referring to this Agreement, describing such Default and stating that such notice is a "notice of default". The Agent will promptly notify the Lenders of its receipt of any such notice. The Agent shall take such action with respect to any Event of Default as may be directed by the Required Lenders in accordance with Article VIII; provided that unless and until the Agent has received any such direction, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

Section 9.06 Credit Decision; Disclosure of Information by the Agent. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by the Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to the Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Agent herein, the Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

Section 9.07 Indemnification of the Agent. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities to the extent incurred by it; provided that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final non-appealable judgment of a court of competent jurisdiction; provided that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07. In the case

of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of the Borrower; provided that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto, if any. The language in this Section 9.07 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation or removal of the Agent.

Section 9.08 The Agent in its Individual Capacity. The Agent and its Affiliates may, but has no obligation to, make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though the Agent were not the Agent hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, the Agent or its Affiliates may receive information regarding any Loan Party or any Affiliate of a Loan Party (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that the Agent shall not be under any obligation to provide such information to them. With respect to its Loans, the Agent shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the Agent, and the terms "Lender" and "Lenders" include Cantor Fitzgerald Securities in its individual capacity.

Section 9.09 Successor Agents. The Agent may resign as the Agent upon thirty (30) days' notice to the Lenders and the Borrower. If the Agent resigns under this Agreement, the Required Lenders shall appoint a successor agent for the Lenders. If no successor agent is appointed prior to the effective date of the resignation of the Agent, the retiring Agent may appoint, after consulting with the Lenders, a successor agent from among the Lenders. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent", shall mean such successor administrative agent and/or Supplemental Agent, or collateral agent and/or supplemental collateral agent, as the case may be, and the retiring Agent's appointment, powers and duties as the Agent shall be terminated. After the retiring Agent's resignation hereunder as the Agent, the provisions of this Article IX and Section 10.04 and Section 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Agent under this Agreement. If no successor agent has accepted appointment as the Agent by the date which is thirty (30) days following the retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of the Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Lenders assuming the role of Agent as specified in the immediately preceding sentence shall assume the rights and obligations of the Agent (including the indemnification provisions set forth in Section 9.07) as if each such Lender were the Agent. Upon the acceptance of any appointment as the Agent hereunder by a successor and upon the execution and filing or recording of such financing

statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may reasonably request, in order to continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, the successor Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under the Loan Documents.

Section 9.10 Agent May File Proofs of Claim. The Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove an administrative claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agent and their respective agents and counsel and all other amounts due the Lenders and the Agent under Section 2.06 and Section 10.04 or otherwise hereunder) allowed in an applicable proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and

(c) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due to the Agent under Section 2.06 and Section 10.04 or otherwise hereunder.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.11 Release of Collateral and Guarantee. The Lenders irrevocably agree and authorize the Collateral Agent:

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon the Termination of the Obligations, (ii) upon any permitted sale, lease, transfer or other disposition of any item of Collateral of any Loan Party (including, without limitation, as a result of the sale, in accordance with the terms of the Loan Documents, of the Loan Party that owns such Collateral) in accordance with the terms of the Loan Documents, (iii) subject to Section 10.01, if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders, (iv) if the property

subject to such Lien is owned by a Guarantor, upon release of such Guarantor from its obligations under this Agreement pursuant to clause (b) below, or (v) in accordance with an order of the Bankruptcy Court; and

(b) in the case of any Subsidiary, such Person ceasing to be subject to Section 6.11 as a result of a transaction permitted hereunder (as certified by a Responsible Officer) and the Borrower notifying the Collateral Agent in writing that it wishes such Guarantor to be released from its obligations under this Agreement.

The Collateral Agent will, at the Borrower's expense, execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of Collateral pursuant to this Section 9.11 from the assignment and security interest granted under the Collateral Documents (or the release of the Guarantor from its Guarantee Obligations in respect of the Obligations) in accordance with the terms of the Loan Documents (provided that the Borrower shall have delivered to the Collateral Agent a certificate of a Responsible Officer certifying that such transaction has been consummated in compliance with the Loan Documents and the execution and delivery of such documents are authorized and permitted under the Loan Documents, and the Collateral Agent may conclusively rely on such certification without further inquiry). Upon request by the Collateral Agent at any time, the Required Lenders will confirm in writing the Collateral Agent's authority to release its interest in particular types or items of property in accordance with this Section 9.11.

Section 9.12 Other Agents; Arrangers and Managers. None of the Lenders shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders shall have or be deemed to have any fiduciary relationship with any other Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the other Lenders in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 9.13 Appointment of Supplemental Agent. (a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Agent deems in its reasonable discretion that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Agent is hereby authorized to appoint an additional individual or institution selected by the Agent in its sole discretion as a separate trustee, co-trustee, Agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a "Supplemental Agent" and collectively as "Supplemental Agents").

(b) In the event that the Agent appoints a Supplemental Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Agent

to the extent, and only to the extent, necessary to enable such Supplemental Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Agent shall run to and be enforceable by either the Agent or such Supplemental Agent, and (ii) the provisions of this Article IX and of Section 10.04 and Section 10.05 that refer to the Agent shall inure to the benefit of such Supplemental Agent and all references therein to the Agent shall be deemed to be references to the Agent and/or such Supplemental Agent, as the context may require.

(c) Should any instrument in writing from any Loan Party be required by any Supplemental Agent so appointed by the Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Agent. In case any Supplemental Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Agent, to the extent permitted by Law, shall vest in and be exercised by the Agent until the appointment of a new Supplemental Agent.

Section 9.14 Certain Bankruptcy Matters.

(a) Except to the extent provided otherwise in the applicable Financing Order and subject to the Carve-Out, the Borrower hereby agrees that the Obligations shall (i) constitute super-priority allowed administrative expense claims in the Bankruptcy case having priority pursuant to Section 364(c)(1) of the Bankruptcy Code over all administrative expense claims and unsecured claims against any Loan Party now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code and all super-priority administrative expense claims granted to any other Person, the establishment of which super-priority shall have been approved and authorized by the Bankruptcy Court and (ii) be secured pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code subject to the priority set forth in the applicable Financing Order and, to the extent provided in the applicable Financing Order, shall not be subject to claims against the Collateral pursuant to Section 506(c) of the Bankruptcy Code.

(b) The Collateral Agent's Liens and the super-priority administrative expense claim priority granted pursuant to clause (a) above have been independently granted by the Loan Documents, and may be independently granted by other Loan Documents heretofore or hereafter entered into. The Collateral Agent's Liens and the administrative expense claim priority granted pursuant to clause (a) above, this Agreement, the applicable Financing Order and the other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Lenders and the Collateral Agent hereunder and thereunder are cumulative. In the event of a direct conflict between the applicable Financing Order and any other Loan Document, the applicable Financing Order shall control.

(c) Notwithstanding anything to the contrary contained herein or elsewhere:

(i) The Collateral Agent's Liens on Collateral of the Loan Parties shall be deemed valid and automatically perfected by entry of the applicable Financing Order,

which entry shall have occurred on or prior to the Closing Date. The Collateral Agent and the Lenders shall not be required to file, register or publish any financing statements, mortgages, hypothecs, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or perfect the Liens on Collateral granted by or pursuant to this Agreement, the applicable Financing Order or any other Loan Document. If the Collateral Agent (at the direction of the Required Lenders) or the Required Lenders shall, in its or their sole discretion, from time to time elect to file, register or publish any such financing statements, mortgages, hypothecs, notices of Lien or similar instruments, take possession of any Collateral, or take any other action to validate, render enforceable or perfect all or any portion of the Collateral Agent's Liens on Collateral, all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date the applicable Financing Order is entered.

(ii) The Liens, lien priorities, super-priority administrative expense claims and other rights and remedies granted to the Collateral Agent and the Lenders pursuant to this Agreement, the applicable Financing Order or the other Loan Documents (specifically including, but not limited to, the existence, perfection, enforceability and priority of the Liens provided for herein and therein, and the administrative expense claim priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of debt by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of the Chapter 11 Case, or by any other act or omission whatsoever. Without limiting the generality of the foregoing, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(A) no costs or expenses of administration which have been or may be incurred in the Chapter 11 Case or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of any Lender or the Collateral Agent against the Borrower in respect of any Obligation;

(B) the Collateral Agent's Liens on Collateral shall constitute valid, enforceable and perfected Liens with the priority set forth in the applicable Financing Order; and

(C) the Collateral Agent's Liens on the Collateral shall continue to be valid, enforceable and perfected without the need for the Agent or any Lender to file, register or publish any financing statements, mortgages, hypothecs, notices of Lien or similar instruments or to otherwise perfect the Collateral Agent's Liens under applicable nonbankruptcy law.

Section 9.15 Erroneous Payments.

(a) If the Agent (x) notifies a Lender or Secured Party, or any Person who has received funds on behalf of a Lender or Secured Party (any such Lender, Secured Party or other recipient (and each of their respective successors and assigns), a "Payment Recipient") that the

Agent has determined in its reasonable discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Agent) received by such Payment Recipient from the Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof) (*provided*, that, without limiting any other rights or remedies (whether at law or in equity), the Agent may not make any such demand under this clause (a) with respect to an Erroneous Payment unless such demand is made within 5 Business Days of the date of receipt of such Erroneous Payment by the applicable Payment Recipient), such Erroneous Payment shall at all times remain the property of the Agent pending its return or repayment as contemplated below in this Section 9.15 and held in trust for the benefit of the Agent, and such Lender or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Agent may, in its sole discretion, specify in writing), return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received) and a rate determined by the Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender, Secured Party or any Person who has received funds on behalf of a Lender, or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Lender, or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause

(z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, or Secured Party shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Agent pursuant to this Section 9.15(b).

For the avoidance of doubt, the failure to deliver a notice to the Agent pursuant to this Section 9.15(b) shall not have any effect on a Payment Recipient's obligations pursuant to Section 9.15(a) or on whether or not an Erroneous Payment has been made.

(c) Each Lender or Secured Party hereby authorizes the Agent to set off, net and apply any and all amounts at any time owing to such Lender or Secured Party under any Loan Document, or otherwise payable or distributable by the Agent to such Lender or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Agent has demanded to be returned under immediately preceding clause (a).

(d) (i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver

any Notes evidencing such Loans to the Borrower or the Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to Section 10.07 (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Agent) and (y) may, in the sole discretion of the Agent, be reduced by any amount specified by the Agent in writing to the applicable Lender from time to time.

(e) The parties hereto agree that (x) irrespective of whether the Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender or Secured Party, to the rights and interests of such Lender or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "Erroneous Payment Subrogation Rights") (*provided* that the Loan Parties' Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Obligations in respect of Loans that have been assigned to the Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party; *provided* that this Section 9.15 shall not be interpreted

to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Agent; *provided*, *further*, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from the Borrower for the purpose of making such Erroneous Payment.

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine.

(g) Each party's obligations, agreements and waivers under this Section 9.15 shall survive the resignation or replacement of the Agent, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

Section 9.16 Collateral.

(a) Where a Guarantor is required to promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and take such further actions as are necessary and as the Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction within the United States with respect to the security interests created hereby (the "Recording Requirements"), such Guarantor shall perform the Recording Requirements without the written request of the Collateral Agent. Notwithstanding anything in the Loan Documents to the contrary, the Agent shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the perfection or maintenance of any security interest created hereunder.

(b) No provision of this Agreement, or any of the other Loan Documents shall require the Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Agreement, any of the other Loan Documents or the exercise of any of its rights or powers. If it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability including an advance of moneys necessary to perform work or to take the action requested is not reasonably assured to it, the Agent may decline to act unless it receives indemnity satisfactory to it in its sole discretion, including an advance of moneys necessary to take the action requested.

(c) The Agent shall be under no obligation or duty to take any action under this Agreement, any of the other Loan Documents or otherwise if taking such action (i) would subject the Agent to a tax in any jurisdiction where it is not then subject to a tax or (ii) would require the Agent to qualify to do business in any jurisdiction where it is not then so qualified.

(d) Notwithstanding anything else to the contrary herein, whenever reference is made in this Agreement to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction, reasonable satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Agent, it is understood that in all cases the Agent shall be fully justified in failing or refusing to take any such action under this Agreement if it shall not have received such written instruction, advice or concurrence of the Agent, as it deems appropriate. This provision is intended solely for the benefit of the Agent and the Agent's successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto.

(e) Agent will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any agent selected by the Agent in good faith. Agent will have no additional duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Agent will not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens on the Collateral

ARTICLE X

MISCELLANEOUS

Section 10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that:

(a) no amendment, waiver or consent shall, unless in writing and signed by all of the Lenders, do any of the following at any time:

(i) change the number of Lenders or the percentage of (x) the Commitments or (y) the aggregate unpaid principal amount of Loans that, in each case, shall be required for the Lenders or any of them to take any action hereunder (including pursuant to any change to the definition of "Required Lenders"),

(ii) release one or more Guarantors (or otherwise limit such Guarantors' liability with respect to the Obligations owing to the Agent and the Lenders under this

Agreement), if such release or limitation is in respect of all or substantially all of the value represented by this Agreement to the Lenders,

(iii) release, or subordinate the Collateral Agent's Liens in, all or substantially all of the Collateral in any transaction or series of related transactions (other than as expressly permitted herein or in the applicable Financing Order), or

(iv) amend any provision of this Section 10.01;

(b) no amendment, waiver or consent shall, unless in writing and signed by each Lender specified below for such amendment, waiver or consent:

(i) increase the Commitments of a Lender without the consent of such Lender;

(ii) reduce the principal of, or stated rate of interest on, the Loans owed to a Lender or any fees or other amounts stated to be payable hereunder or under the other Loan Documents to such Lender without the consent of such Lender; provided if the Required Lenders agree to waive, or forbear from exercising remedies with respect to, any Event of Default and such waiver or forbearance is effective in accordance with this Section 10.01 or if the Required Lenders agree to change any financial definitions that would reduce the stated rate of interest or any fees or other non-principal amounts stated to be payable hereunder or under the other Loan Documents pursuant to any amendment, waiver or consent not being effected in order to reduce the stated rate of interest or such fees or other amounts, then only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate in connection with such Event of Default or reduce the stated rate of interest or such fees in connection with such amendment, waiver or consent described in this proviso to clause (b)(ii), as applicable; or

(iii) except as provided in the definition of "Maturity Date", postpone any date scheduled for any payment of principal of, or interest on, the Loans pursuant to Section 2.04 or Section 2.05, any date scheduled for payment or for any date fixed for any payment of fees hereunder in each case payable to a Lender without the consent of such Lender; or

(iv) modify Section 8.03 in any manner that adversely affects the Lenders without the consent of each Lender directly and adversely affected thereby; or

(v) modify Section 2.10 without the consent of each Lender directly and adversely affected thereby;

provided further that no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Agent under this Agreement or the other Loan Documents.

Section 10.02 Notices and Other Communications; Facsimile and Electronic Copies. (a) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Loan Document shall be in writing (including by facsimile transmission) (and, as to service of process, only in writing and in accordance with applicable law) and, to the extent set forth in Section 10.02(e), in an electronic medium and delivered as set forth in Section 10.02(e). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Loan Party:

c/o Acorda Therapeutics, Inc.
2 Blue Hill Plaza, 3rd Floor
Pearl River, NY United States 10965
Attention:
E-mail:

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

Baker & McKenzie LLP
452 Fifth Avenue
New York, New York 10018
Attention:
E-mail:

(ii) if to the Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties from time to time; and

(iii) if to any other Lender, to the address, facsimile number or electronic mail address specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a written notice to the Borrower and the Agent.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of Section 10.02(b)), when delivered; provided that notices and other communications to the Borrower and the Administrative Agent pursuant to Article II shall not be effective until actually received by such Person during the Person's normal business hours. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

(b) Effectiveness of Facsimile Documents and Signatures. Loan Documents may be transmitted and/or signed by facsimile or other electronic transmission (including a .pdf or .tif copy); provided that original copies are delivered promptly thereafter (it being understood that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by facsimile or electronic transmission).

(c) Reliance by the Agent and Lenders. The Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) in good faith purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct by such Agent-Related Person or such Lender as determined by a final non-appealable judgment.

(d) Notice to other Loan Parties. The Borrower agrees that notices to be given to any other Loan Party under this Agreement or any other Loan Document may be given to the Borrower in accordance with the provisions of this Section 10.02 with the same effect as if given to such other Loan Party in accordance with the terms hereunder or thereunder.

(e) The Borrower hereby agrees that it will provide to the Agent all information, documents and other materials that it is obligated to furnish to the Agent pursuant to the Loan Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a new Loan, (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default or Event of Default under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Loan hereunder (all such non-excluded communications being referred to herein collectively as "Communications"), by transmitting the Communications in an electronic/soft medium in a format acceptable to the Agent to an electronic mail address specified by the Agent to the Borrower. In addition, the Borrower agrees to continue to provide the Communications to the Agent in the manner specified in the Loan Documents but only to the extent requested by the Agent. The Borrower further agrees that the Agent may make the Communications available to the Lenders by posting the Communications on IntraLinks or a substantially similar electronic transmission system (the "Platform").

(f) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENT PARTIES IN CONNECTION WITH THE COMMUNICATIONS

OR THE PLATFORM. IN NO EVENT SHALL THE AGENT OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS OR REPRESENTATIVES (COLLECTIVELY, "AGENT PARTIES") HAVE ANY LIABILITY TO THE BORROWER, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THE BORROWER'S OR THE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE PLATFORM, EXCEPT TO THE EXTENT THE LIABILITY OF ANY AGENT PARTY IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(g) The Agent agrees that the receipt in accordance with Section 10.02 of the Communications by the Agent at its e-mail address set forth on Schedule 10.02 shall constitute effective delivery of the Communications to the Agent for purposes of the Loan Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees (i) to notify the Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address. Nothing herein shall prejudice the right of the Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

(h) Each Loan Party hereby acknowledges that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to any Loan Party or its securities) (each, a "Public Lender"). Each Loan Party hereby agrees that (i) Communications that are to be made available on the Platform to Public Lenders who notify the Borrower and the Agent of such Lender's status as a Public Lender shall be clearly and conspicuously marked by such Loan Party as "PUBLIC," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Communications "PUBLIC," each Loan Party shall be deemed to have authorized the Agent and the Lenders to treat such Communications as either publicly available information or not material information (although it may contain sensitive business information and remains subject to the confidentiality undertakings of Section 10.08) with respect to such Loan Party or its securities for purposes of United States Federal and state securities laws, (iii) all Communications marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information," and (iv) the Agent shall be entitled to treat any Communications that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

(i) EACH LENDER ACKNOWLEDGES THAT UNITED STATES FEDERAL AND STATE SECURITIES LAWS PROHIBIT ANY PERSON WITH MATERIAL, NON-PUBLIC INFORMATION ABOUT AN ISSUER FROM PURCHASING OR SELLING SECURITIES OF SUCH ISSUER OR, SUBJECT TO CERTAIN LIMITED EXCEPTIONS, FROM COMMUNICATING SUCH INFORMATION TO ANY OTHER PERSON. EACH

LENDER AGREES TO COMPLY WITH APPLICABLE LAW AND ITS RESPECTIVE CONTRACTUAL OBLIGATIONS WITH RESPECT TO CONFIDENTIAL AND MATERIAL NON-PUBLIC INFORMATION. Each Lender that is not a Public Lender confirms to the Agent that such Lender has adopted and will maintain internal policies and procedures reasonably designed to permit such Lender to take delivery of Restricting Information (as defined below) and maintain its compliance with applicable law and its respective contractual obligations with respect to confidential and material non-public information. A Public Lender may elect not to receive Communications and Information that contains material non-public information with respect to the Loan Parties or their securities (such Communications and Information, collectively, "Restricting Information"), in which case it will identify itself to the Agent as a Public Lender. Such Public Lender shall not take delivery of Restricting Information and shall not participate in conversations or other interactions with the Agent Parties, any Lender or any Loan Party in which Restricting Information may be discussed. No Agent Party, however, shall by making any Communications and Information (including Restricting Information) available to a Lender (including any Public Lender), by participating in any conversations or other interactions with a Lender (including any Public Lender) or otherwise, be responsible or liable in any way for any decision a Lender (including any Public Lender) may make to limit or to not limit its access to the Communications and Information. In particular, no Agent Party shall have, and the Agent, on behalf of all Agent Parties, hereby disclaims, any duty to ascertain or inquire as to whether or not a Lender (including any Public Lender) has elected to receive Restricting Information, such Lender's policies or procedures regarding the safeguarding of material nonpublic information or such Lender's compliance with applicable laws related thereto. Each Public Lender acknowledges that circumstances may arise that require it to refer to Communications and Information that might contain Restricting Information. Accordingly, each Public Lender agrees that it will nominate at least one designee to receive Communications and Information (including Restricting Information) on its behalf and identify such designee (including such designee's contact information) on such Public Lender's Administrative Questionnaire. Each Public Lender agrees to notify the Administrative Agent in writing from time to time of such Public Lender's designee's address to which notice of the availability of Restricting Information may be sent. Each Public Lender confirms to the Agent and the Lenders that are not Public Lenders that such Public Lender understands and agrees that the Agent and such other Lenders may have access to Restricting Information that is not available to such Public Lender and that such Public Lender has elected to make its decision to enter into this Agreement and to take or not take action under or based upon this Agreement, any other Loan Document or related agreement knowing that, so long as such Person remains a Public Lender, it does not and will not be provided access to such Restricting Information. Nothing in this Section 10.02(i) shall modify or limit a Lender's (including any Public Lender) obligations under Section 10.08 with regard to Communications and Information and the maintenance of the confidentiality of or other treatment of Communications or Information.

Section 10.03 No Waiver; Cumulative Remedies. No failure by any Lender or the Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 10.04 Costs and Expenses. The Borrower agrees (a) to pay or reimburse the Agent and Lenders for all reasonable and documented out-of-pocket costs and expenses incurred before, on or after the Closing Date in connection with the preparation, execution, delivery and administration of this Agreement and the other Loan Documents, and any amendment, waiver, consent or other modification of the provisions hereof and thereof requested by the Borrower or negotiated in consultation with Borrower (in each case, whether or not the transactions contemplated thereby are consummated), including all Attorney Costs, (b) to pay or reimburse the Agent and each Lender for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all Attorney Costs and other costs and expenses incurred in connection with any workout or restructuring in respect of the Loans and all such costs and expenses incurred during any legal proceeding, including any proceeding in the Chapter 11 Case and (c) without limiting the generality of the foregoing, to pay all reasonable and documented out-of-pocket fees and expenses of any financial advisory, appraisers or accounting firm retained by or for the benefit of the Agent or Lenders or by King & Spalding LLP, as counsel to the Agent or Lenders, as applicable, including, without limitation, the fees and expenses of the Financial Advisor. The Borrower's obligation to pay all such reasonable and documented out-of-pocket costs, expenses and charges includes, without limitation, any such costs, expenses and charges that accrue after any conversion of the Chapter 11 Case to proceedings administered under Chapter 7 of the Bankruptcy Code. The foregoing costs and expenses shall include all reasonable search, filing, recording and title insurance charges and fees related thereto, and other reasonable and documented out-of-pocket expenses incurred by the Agent. The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within ten (10) Business Days of receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Agent in its sole discretion.

Section 10.05 Indemnification by the Borrower. (a) Whether or not the transactions contemplated hereby are consummated, the Borrower shall indemnify and hold harmless the Agent, each Agent-Related Person (including without limitation, King & Spalding LLP), each Lender and their respective Affiliates, directors, officers, employees, counsel, agents, trustees, advisors and attorneys-in-fact (including without limitation, King & Spalding LLP and Perella Weinberg Partners LLC) (collectively the "Indemnitees") from and against any and all liabilities, obligations, losses, taxes, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including one counsel to the Agent and a separate counsel to the Lenders, taken as a whole) (and, in the event of any actual conflict of interest, additional counsel to the affected parties) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Commitment or Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on, at, under or from any property currently or formerly owned or operated by the Borrower, any Subsidiary or any other Loan Party, or any Environmental Liability related to the Borrower, any Subsidiary or any other Loan Party, or (iv)

any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) (any of the foregoing described in this clause (iv), a "Proceeding") (all the foregoing described in clauses (ii) to (iv), collectively, the "Indemnified Liabilities"), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee and whether brought by an Indemnitee, a third party or by the Borrower or any other Loan Party or any of the Borrower's or such Loan Party's directors, shareholders or creditors, and regardless of whether any Indemnitee is a party thereto and whether or not any of the transactions contemplated hereby are consummated; provided that such indemnity shall not, as to any Indemnitees, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from the gross negligence or willful misconduct of such Indemnitee or of any affiliate, director, officer, employee, counsel, agent or attorney-in-fact of such Indemnitee as determined by a final non-appealable judgment of a court of competent jurisdiction. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through the Platform, nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document. All amounts due in respect of costs, expenses and disbursements under this Section 10.05 shall be paid within ten (10) Business Days after demand therefor; provided, that each Indemnitee receiving any such reimbursement shall repay such amounts to the relevant Loan Party in the event that such Indemnitee shall not be entitled thereto pursuant to the provisions hereof. The agreements in this Section 10.05 shall survive the resignation or removal of the Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

(c) The Borrower shall not be liable for any settlement of any Proceedings effected without its consent (which consent shall not be unreasonably withheld or delayed), but if settled with the Borrower's consent or if there is a final judgment for the plaintiff in such Proceedings, the Borrower shall indemnify and hold harmless each Indemnitee from and against any Indemnified Liabilities in accordance with the foregoing clause (a). The Borrower shall not, without the prior written consent of an Indemnitee (which consent shall not be unreasonably withheld or delayed), effect any settlement or consent to the entry of any judgment of any pending or threatened Proceedings in respect of which indemnity could have been sought hereunder by such Indemnitee unless (i) such settlement includes an unconditional release of such Indemnitee in form and substance satisfactory to such Indemnitee from all liability on claims that are the subject matter of such Proceedings, (ii) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnitee and (iii) contains customary confidentiality and non-disparagement provisions.

(d) In the event that an Indemnitee is requested or required to appear as a witness in any action brought by or on behalf of or against the Borrower or any of its Subsidiaries or Affiliates in which such Indemnitee is not named as a defendant, the Borrower shall reimburse such Indemnitee for all reasonable and documented expenses incurred by it in connection with such Indemnitee's appearing and preparing to appear as such a witness, including without limitation, the reasonable and documented fees and expenses of its legal counsel.

Section 10.06 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Agent or any Lender, or the A Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding in the Chapter 11 Case or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its applicable share of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Applicable Rate.

Section 10.07 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.07(b), (ii) by way of participation in accordance with the provisions of Section 10.07(d), (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(e) or (iv) to an SPC in accordance with the provisions of Section 10.07(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its Commitment and/or the Loans at the time owing to it (and its rights and obligations under this Agreement relating thereto); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $1,000,000 unless the Administrative Agent consents (such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned.

(iii) Required Consents. Any such assignment shall require the prior written consent of the Borrower, which consent shall not be unreasonably withheld, conditioned, delayed or burdened; provided, however, that (A) no consent of the Borrower shall be required for an assignment to a Lender, to an Affiliate of a Lender, to an Approved Fund or, if an Event of Default has occurred and is continuing, to any other assignee, and (B) the Borrower shall be deemed to have consented to any such assignment unless it objects thereto by written notice delivered to the Administrative Agent within ten (10) Business Days after having received notice thereof.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and the tax documentation required pursuant to Section 3.01.

(v) [Reserved].

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue

to be entitled to the benefits of Sections 3.01, 3.04, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of its Commitment and/or the Loans at the time owing to it (and its rights and obligations under this Agreement relating thereto); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 9.07 with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in Section 10.01(a) or Section 10.01(b) that directly and adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 and 3.04 (subject to the requirements and limitations therein, including the requirements under Section 3.01(g) (it being understood that the documentation required under Section 3.01(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.07(b) with respect to any Participant. To the extent permitted by applicable Law, each Participant also shall be entitled

to the benefits of Section 10.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.10 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The Participant Register shall be available for inspection by the Administrative Agent and any Lender at any reasonable time and from time to time upon reasonable prior notice. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or central bank having jurisdiction over such Lender; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) SPCs. Notwithstanding anything to the contrary contained herein, any Lender (a "Granting Lender") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Agent and the Borrower (an "SPC") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01 or 3.04), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable and such liability shall remain with the Granting Lender, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Agent, assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding

of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee Obligation or credit or liquidity enhancement to such SPC.

(g) Notwithstanding anything to the contrary contained herein, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; provided that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

Section 10.08 Confidentiality. Each of the Agent and the Lenders agrees to maintain the confidentiality of the Information and to not use or disclose such information, except that Information may be disclosed (a) to its Affiliates and its and its Affiliates' directors, officers, employees, trustees, investment advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any Governmental Authority or examiner regulating any Lender or the Agent; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) to any pledgee referred to in Section 10.07(e) or Section 10.07(g), Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (f) with the written consent of the Borrower; (g) to the extent such Information becomes publicly available other than as a result of a breach of this Section 10.08 by the disclosing party; (h) to any rating agency when required by it (it being understood that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender); (i) to the extent not known by it to consist of non-public information, (j) for purposes of establishing a "due diligence" defense or (k) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder. In addition, the Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to the Agent and the Lenders in connection with the administration and management of this Agreement, the other Loan Documents, the Commitments and the Loans. For the purposes of this Section 10.08, "Information" means all information received from any Loan Party or its Affiliates or its Affiliates' directors, officers, employees, trustees, investment advisors or agents, relating to the Borrower or any of their Subsidiaries or their business, other than any such information that is publicly available to the Agent or any Lender prior to disclosure by any Loan Party other than as a result of a breach of this Section 10.08, including, without limitation, information delivered pursuant to Section 6.01, 6.02 or 6.03 hereof.

Section 10.09 Setoff. In addition to any rights and remedies of the Agent and the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, subject to the applicable Financing Order, each Lender and its Affiliates and the Agent and its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and its Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates or the Agent and its Affiliates, as the case may be, to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Lender and its Affiliates or the Agent and its Affiliates hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not the Agent or such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender and the Agent agrees promptly to notify the Borrower and the Agent after any such set off and application made by such Lender or the Agent, as the case may be; provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Agent and each lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that the Agent and such Lender may have.

Section 10.10 Counterparts. This Agreement and each other Loan Document may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by facsimile transmission or other electronic transmission (including a .pdf or .tif copy) of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document; provided that original signatures shall be promptly delivered thereafter, it being understood that that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by facsimile or electronic transmission.

Section 10.11 Integration. This Agreement comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter. In the event of any conflict or inconsistency between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Agent or the Lenders in any other Loan Document shall not be deemed a conflict or inconsistency with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

Section 10.12 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any

Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.13 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.14 GOVERNING LAW. (a) THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE (EXCEPT, WITH RESPECT TO ANY OTHER LOAN DOCUMENT, AS OTHERWISE EXPRESSLY PROVIDED THEREIN); PROVIDED THAT THE AGENT AND THE LENDERS SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, SHALL, EXCEPT AS OTHERWISE SET FORTH IN THE LOAN DOCUMENTS, BE BROUGHT EXCLUSIVELY IN THE BANKRUPTCY COURT, AND IF THE BANKRUPTCY COURT DOES NOT HAVE OR ABSTAINS FROM JURISDICTION, THE COURTS OF THE STATE OF NEW YORK LOCATED IN NEW YORK COUNTY OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER, THE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE JURISDICTION OF THOSE COURTS. THE BORROWER, THE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO.

Section 10.15 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.15 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT

OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.16 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Agent, and the Administrative Agent shall have been notified by each Lender that each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent and each Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Required Lenders.

Section 10.17 Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Collateral Agent. The provision of this Section 10.17 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

Section 10.18 PATRIOT Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the PATRIOT Act. The Borrower agrees to provide, and to cause each other Loan Party to provide, such information promptly upon request.

Section 10.19 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges and agrees that it has informed its other Affiliates, that: (i) (A) no fiduciary, advisory or agency relationship between any of the Borrower and its Subsidiaries and the Agent or any Lender is intended to be or has been created in respect of any of the transactions contemplated hereby and by the other Loan Documents, irrespective of whether the Agent or any Lender has advised or is advising any of the Borrower and its Subsidiaries on other matters, (B) the arranging and other services regarding this Agreement provided by the Agent and the Lenders are arm's-length commercial transactions between the Loan Parties, on the one hand, and the Agent and the Lenders, on the other hand, (C) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (D) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agent and each of the Lenders is and has been acting solely as a principal and, except as may otherwise be expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) none of the Agent or any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the

Borrower and its Affiliates, and none of the Agent or any Lender has any obligation to disclose any of such interests and transactions to the Borrower or any of its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 10.20 Acknowledgement and Consent to Bail-In of Affected Financial Institution. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 10.21 Conflicts with Financing Orders. In the event of a conflict between any provision of this Agreement and any Financing Order, such Financing Order shall govern.

Section 10.22 Limitations for Swiss Loan Parties.

(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the fulfilment of any obligation of, and the application of proceeds from the enforcement of any security interest or guarantee granted by, any Swiss Loan Party under this Agreement or under any other Loan Document to satisfy obligations of another Loan Party (other than obligations of any of that Swiss Loan Party's wholly-owned direct or indirect subsidiaries) ("**Swiss Restricted Obligations**") shall be limited to the maximum amount permitted by law at the time of fulfilment or enforcement (as the case may be) ("**Swiss Limitation**").

(b) The Swiss Limitation shall not release any Swiss Loan Party from the fulfilment of its obligations or the application of enforcement proceeds in excess of the Swiss Limitation, but merely postpone the performance date thereof until such time as it is again

permitted notwithstanding the Swiss Limitation. Each Swiss Loan Party shall take all action and cause all action to be taken to enable the fulfilment of its obligations or the application of enforcement proceeds as soon as possible and in an amount as large as possible notwithstanding the Swiss Limitation. In particular, to the extent permitted by law and Swiss accounting standards and upon request by the Administrative Agent, each Swiss Loan Party shall:

(i) write up or sell any of its assets that are shown in its balance sheet with a book value that is significantly lower than the market value of the assets, in case of a sale, however, only if such assets are not necessary for the Swiss Loan Party's business (*nicht betriebsnotwendig*); and

(ii) reduce its share capital to the minimum allowed under then applicable law.

(c) To the extent that the fulfilment of any obligation or the application of proceeds from the enforcement of any security or guarantee to satisfy Swiss Restricted Obligations are subject to Swiss Withholding Tax, the Swiss Loan Party:

(i) Shall:

(A) use its best efforts to procure that the fulfilment of such obligation or the application of such enforcement proceeds can be made without deduction of Swiss Withholding Tax by discharging the liability of such tax by notification pursuant to applicable law rather than payment of the tax;

(B) if the notification procedure pursuant to sub-paragraph (A) above does not apply, deduct the Swiss Withholding Tax at such rate (i) as in force from time to time or (ii) as provided by any applicable double tax treaties, from the respective amount to be paid and promptly pay any such Swiss Withholding Tax deducted to the Swiss Federal Tax Administration; and

(C) provide the Administrative Agent with evidence that such a notification of the Swiss Federal Tax Administration has been made or, as the case may be, such Swiss Withholding Tax deducted has been paid to the Swiss Federal Tax Administration;

(ii) shall use its best efforts to procure that any person who is entitled to a full or partial refund of the Swiss Withholding Tax deducted pursuant to this paragraph (ii):

(A) requests a refund of the Swiss Withholding Tax under applicable law as soon as possible; and

(B) pays to the Administrative Agent upon receipt any amount so refunded to cover any outstanding part of the Restricted Obligation;

(iii) notwithstanding anything to the contrary in any Loan Document, shall not be required to gross up, indemnify or hold harmless any Finance Party for the deduction of Swiss Withholding Tax in an amount exceeding the Swiss Limitation, provided that this should not in any way limit any obligations of any other Loan Party under the Loan Documents to indemnify the Finance Parties in respect of the deduction of the Swiss Withholding Tax.

The Administrative Agent shall deduct the amount necessary for payment of the Swiss Withholding Tax (at the expense of the Finance Parties) from the net proceeds from the enforcement of any security interest or guarantee which is subject to the Swiss Limitation and shall pay, on behalf of the Swiss Loan Party, such amount to the Swiss Federal Tax Administration. The Swiss Loan Party shall provide to the Administrative Agent (or shall procure that the Administrative Agent will be provided with) any evidence and/or documents requested by the Swiss Federal Tax Administration in connection with the deduction of such Swiss Withholding Tax.

ARTICLE XI

GUARANTEE

Section 11.01. Guarantee. Subject to the Financing Orders, each Guarantor unconditionally guarantees, jointly with the other Guarantors and severally, to the Agent for the ratable benefit of the Secured Parties, as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Obligations. Each Guarantor further agrees that the Obligations may be extended or renewed, in whole or in part, or amended or modified, in each case, in accordance with the terms of the Loan Documents, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal, or amendment or modification, of any Obligation. Each Guarantor waives promptness, presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. Capitalized terms used but not defined in this Article IXX shall have the meaning set forth in the New York UCC.

Section 11.02. Guarantee of Payment and Performance; Continuing Guarantee. Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment and performance when due (whether at the stated maturity, by acceleration or otherwise) and not merely of collection, and waives any right to require that any resort be had by the Agent or any other Secured Party to any security held for the payment of any of the Obligations or to any balance of any Deposit Account or credit on the books of the Agent or any other Secured Party in favor of any Loan Party or any other person. The obligations of each Guarantor hereunder are independent of the obligations of the Borrower or any other Guarantor, and a separate action or actions may be brought and prosecuted against each Guarantor whether or not action is brought against the Borrower or any other Guarantor and whether or not the Borrower or any other Guarantor is joined in any such action or actions. Each Guarantor agrees that its guarantee hereunder is continuing in nature and applies to all of the Obligations, whether currently existing or hereafter incurred.

Section 11.03. No Limitations, Etc. (a) Except for termination of a Guarantor's obligations hereunder as expressly provided for in this Agreement, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations, any impossibility in the performance of any of the Obligations or otherwise. Without limiting the generality of the foregoing, except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of this Agreement (but without prejudice to Section 11.04), the obligations of each Guarantor hereunder, to the fullest extent permitted by applicable law, shall not be discharged or impaired or otherwise affected by, and each Guarantor hereby waives any defense to the enforcement hereof by reason of:

(i) the failure of the Agent or any other Secured Party to assert any claim or demand or to exercise or enforce any right or remedy under the provisions of any Loan Document or otherwise;

(ii) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement;

(iii) the failure to perfect any security interest in, the impairment of or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party for the Obligations;

(iv) any default, failure or delay, willful or otherwise, in the performance of the Obligations;

(v) any other act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a discharge of any Guarantor as a matter of law or equity;

(vi) any illegality, lack of validity or enforceability of any Obligation or any Loan Document;

(vii) any change in the corporate existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy, reorganization or similar proceeding affecting any Loan Party or its assets or any resulting release or discharge of any of the Obligations;

(viii) the existence of any claim, set-off or other rights that any Guarantor may have at any time against the Borrower, the Agent, any other Secured Party or any other person, whether in connection herewith, the other Loan Documents or any unrelated transactions;

(ix) this Agreement having been determined (on whatsoever grounds) to be invalid, non-binding or unenforceable against any other Guarantor *ab initio* or at any time after the Closing Date;

(x) the fact that any person that, pursuant to the Loan Documents, was required to become a party hereto may not have executed or is not effectually bound by this Agreement, whether or not this fact is known to the Secured Parties;

(xi) any action permitted or authorized hereunder;

(xii) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, the Borrower or any Guarantor or any other guarantor or surety (other than the payment in full in cash or immediately available funds of the Obligations (without prejudice to Section 11.04)); or

(xiii) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the Borrower, any other Guarantor or any other person under any Loan Document, by operation of law or otherwise.

Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Obligations or take any other actions permitted by the Loan Documents, all without affecting the obligations of any Guarantor hereunder.

(b) To the fullest extent permitted by applicable law and except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of this Agreement (but without prejudice to Section 11.04), each Guarantor waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than, after all Commitments have been terminated, the payment in full in cash or immediately available funds of all the Obligations (other than Unasserted Contingent Obligations) (but without prejudice to Section 11.04). The Agent and the other Secured Parties may, at their election, exercise any right or remedy available to them against any other Loan Party pursuant to this Agreement or the other Loan Documents, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent that after giving effect thereto all Obligations have been terminated and paid in full (other than Unasserted Contingent Obligations) (but without prejudice to Section 11.04). To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election or exercise by any Secured Party even though such election or exercise operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Loan Party, or any security, including, without limitation, the Collateral. To the fullest extent permitted by applicable law, each Guarantor waives any all suretyship defenses.

Section 11.04. Reinstatement. Each Guarantor agrees that its guarantee hereunder shall continue to be effective or be reinstated, as the case may be, if, at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by the Agent or any other Secured Party upon the bankruptcy or reorganization (or analogous proceeding in any jurisdiction)

of the Borrower or any other Loan Party or otherwise. The provisions of this Section 11.04 shall survive the termination of this Agreement.

Section 11.05. Agreement To Pay; Contribution; Subrogation. In furtherance of the foregoing and not in limitation of any other right that the Agent, or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Obligation when and as the same shall become due, whether an amortization payment, at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Agent for distribution to the applicable Secured Parties in cash or other immediately available funds the amount of such unpaid Obligation. Subject to the foregoing, to the extent that any Guarantor shall, under this Agreement or the Credit Agreement as a joint and several obligor, repay any of the Obligations constituting Loans or other advances made to or reimbursement obligations owed by another Loan Party under the Credit Agreement (an "Accommodation Payment"), then the Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors; provided that such rights of contribution and indemnification shall be subordinated to the discharge of Obligations. As of any date of determination, the "Allocable Amount" of each Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder and under the Credit Agreement without (a) rendering such Guarantor "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA"), (b) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA. Upon payment by any Guarantor of any sums to the Agent as provided above, all rights of such Guarantor against the Borrower, any other Loan Party or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article VI hereof.

Section 11.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of the Borrower and each other Loan Party and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that no Secured Party will have any duty or obligation to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 11.07. Maximum Liability. Each Guarantor, and by its acceptance of this guarantee, each Secured Party hereby confirms that it is the intention of all such persons that this guarantee and the Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the UFCA, the UFTA or any similar foreign, federal or state law to the extent applicable to this guarantee and the Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Agent, the other Secured Parties and the

Guarantors hereby irrevocably agree that the Obligations of Guarantor under this guarantee at any time shall be limited to the maximum amount as will result in the Obligations of such Guarantor under this guarantee not being void or voidable under applicable law, including under Section 548 of the Bankruptcy Code or any comparable provisions under any other applicable law.

Section 11.08. Taxes. The provisions of Section 3.01 of this Agreement shall apply to each Guarantor *mutatis mutandis*.

ARTICLE XII

PLEDGE OF SECURITIES

Section 12.01 Pledge. Subject to the Financing Orders, as security for the payment or performance, as the case may be, in full of its Obligations, each Pledgor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Pledgor's right, title and interest in, to and under:

(a)(i) the Equity Interests directly owned by it (including those Equity Interests listed on Schedule II) and (ii) any other Equity Interests obtained in the future by such Pledgor and, in each case, the certificates representing all such Equity Interests (the foregoing clauses (i) and (ii), collectively, the "Pledged Equity Interests"); provided that the Pledged Equity Interests shall not include any Equity Interests constituting an amount greater than 65% of the voting Equity Interests of any "first tier" Foreign Subsidiary that are controlled financial corporations (collectively, the "Excluded Equity Interests");

(b)(i) all Indebtedness and the promissory notes and any instruments evidencing such Indebtedness owned by it as of the Closing Date (including those listed opposite the name of such Pledgor on Schedule II) and (ii) any promissory notes and instruments and any Indebtedness in the future issued to such Pledgor (the foregoing clauses (i) and (ii) collectively, the "Pledged Debt Securities"), in each case including all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all Pledged Debt Securities;

(c) all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in clauses (a) and (b) above;

(d) all rights and privileges of such Pledgor with respect to the securities and other property referred to in clauses (a), (b) and (c) above; and

(e) all proceeds of any of the foregoing (the items referred to in clauses (a) through (e) being collectively referred to as the "Pledged Collateral").

To have and to hold the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth.

Section 12.02 Voting Rights; Dividends and Interest, Etc. (a) Unless and until an Event of Default shall have occurred and be continuing and the Collateral Agent shall have given written notice to the relevant Pledgors of the Collateral Agent's intention to exercise its rights hereunder:

(i) Each Pledgor shall be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Financing Orders, the Credit Agreement and the other Loan Documents; provided that, except as expressly permitted under the Credit Agreement and the Financing Orders, such rights and powers shall not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Financing Orders, the Credit Agreement or any other Loan Document or the bilityy of the Secured Parties to exercise the same.

(ii) The Collateral Agent shall promptly execute and deliver to each Pledgor (at such Pledgor's sole expense), or cause to be executed and delivered to such Pledgor, all such proxies, powers of attorney and other instruments as such Pledgor may reasonably request for the purpose of enabling such Pledgor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (i) above, in each case, as shall be specified in such request.

(iii) Each Pledgor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the Financing Orders, the other Loan Documents and applicable laws; provided that (A) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (B) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, shall be and become part of the Pledged Collateral, and, if received by any

Pledgor during the continuance of an Event of Default, shall not be commingled by such Pledgor with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent, for the ratable benefit of the Secured Parties, and shall be forthwith delivered to the Collateral Agent, for the ratable benefit of the Secured Parties, in the same form as so received (endorsed in a manner, or with any necessary stock or note powers or other instruments of transfer, reasonably satisfactory to the Collateral Agent).

(b) Upon the occurrence and during the continuance of an Event of Default and after written notice by the Collateral Agent to the relevant Pledgors of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Pledgor to dividends, interest, principal or other distributions that such Pledgor is authorized to receive pursuant to paragraph (a)(iii) of this Section 12.02 shall cease, and all such rights shall thereupon become vested, for the ratable benefit of the Secured Parties, in the Collateral Agent which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions, subject to the Financing Orders. All dividends, interest, principal or other distributions received by any Pledgor contrary to the provisions of this Section 12.02 shall not be commingled by such Pledgor with any of its other funds or property but shall be held separate and apart therefrom, shall be held in trust for the benefit of the Collateral Agent, for the ratable benefit of the Secured Parties, and shall be forthwith delivered to the Collateral Agent, for the ratable benefit of the Secured Parties, in the same form as so received (endorsed in a manner, or with any necessary stock or note powers or other instruments of transfer, sufficient to transfer title to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (b) shall be retained by the Collateral Agent in an account of the Collateral Agent and shall be applied in accordance with the provisions of this Agreement. After all Events of Default have been cured or waived, the Collateral Agent shall promptly repay to each Pledgor (without interest) all dividends, interest, principal or other distributions that such Pledgor would otherwise be permitted to retain pursuant to the terms of paragraph (a)(iii) of this Section 12.02 and that remain in such account, subject to the Financing Orders.

(c) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent (at the direction of the Required Lenders) shall have given written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Pledgor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section 12.02, and the obligations of the Collateral Agent under paragraph (a)(ii) of this Section 12.02, shall cease, and all such rights shall thereupon become vested in the Collateral Agent, for the ratable benefit of the Secured Parties, which shall have the sole and exclusive right and authority to exercise such voting and consensual rights and powers, subject to the Financing Orders; provided that unless otherwise directed by the Required Lenders, the Collateral Agent shall have the right from time to time following and during the continuance of an Event of Default to permit the Pledgors to exercise such rights. After all Events of Default have been cured or waived, each Pledgor shall have the right to exercise the voting and/or consensual rights and powers that such Pledgor would otherwise be entitled to exercise pursuant to the terms of paragraph (a)(i) above.

(d) In order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends

and other distributions which it may be entitled to receive hereunder, each Pledgor shall promptly execute and deliver (or cause to be promptly executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as are necessary or that the Collateral Agent (at the direction of the Required Lenders) may from time to time reasonably request in writing in accordance with the terms of this Section 12.02.

Section 12.03 Agent Not Partner or Limited Liability Company Member. Nothing contained in this Agreement shall be construed to make the Agent or any other Secured Party liable as a member of any limited liability company or as a partner of any partnership and neither the Agent nor any other Secured Party by virtue of this Agreement or otherwise (except as referred to in the following sentence) shall have any of the duties, obligations or liabilities of a member of any limited liability company or as a partner in any partnership. The parties hereto expressly agree that, unless the Agent shall become the absolute owner of any Pledged Equity Interests consisting of a limited liability company interest or a partnership interest pursuant hereto, this Agreement shall not be construed as creating a partnership or joint venture among the Agent, any other Secured Party, any Pledgor and/or any other Person.

ARTICLE XIII

SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

Section 13.01 Security Interest. Subject to the Financing Orders, as security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Obligations, each Pledgor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest (the "Security Interest") in all right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Pledgor or in which such Pledgor now has or at any time in the future may acquire any right, title or interest (collectively, the "Article 9 Collateral"):

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all cash, cash equivalents and Deposit Accounts;

(iv) all Documents;

(v) all Equipment, Fixtures and other Goods;

(vi) all General Intangibles (other than Intellectual Property);

(vii) all Instruments;

(viii) all Inventory;

(ix) all Investment Property;

(x) all Letter of Credit Rights;

(xi) all Intellectual Property, together with the right to sue or otherwise recover for any past, present and future infringement, dilution, misappropriation, or other violation or impairment thereof, and all Proceeds of the foregoing, including without limitation license fees, royalties, income, payments, claims, damages and proceeds of suit, now or hereafter due and/or payable with respect thereto;

(xii) all Commercial Tort Claims, including, without limitation, those described on Schedule V hereto;

(xiii) (1) Securities Accounts, (2) Investment Property credited to Securities Accounts or Deposit Accounts from time to time and all Security Entitlements in respect thereof, (3) all cash held in any Securities Account or Deposit Account, (4) all other demand, deposit, time, savings, cash management, passbook and similar accounts maintained by such Pledgor with any bank or other financial institution and (5) all other Money in the possession of the Collateral Agent;

(xiv) all books and Records pertaining to the Article 9 Collateral;

(xv) all Proceeds, Supporting Obligations and products of (i) any and all of the foregoing, (ii) Excluded Collateral to the extent the proceeds of such Excluded Collateral is not itself Excluded Collateral and (iii) all collateral security and guarantees given by any person with respect to any of the foregoing; and

(xvi) all other "Collateral" as defined in the Financing Orders.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a Security Interest in, and each reference to Article 9 Collateral or to any relevant type or item of property constituting Article 9 Collateral shall be deemed to exclude, the following ("Excluded Collateral"): (a) any "intent-to-use" applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed and accepted; (b) any governmental licenses or state or local franchises, charters and authorizations to the extent a security interest in such licenses, franchises, charters or authorizations is prohibited or restricted thereby (other than to the extent that any such prohibition would be rendered ineffective pursuant to any other applicable requirements of law, including pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the Code) or any other applicable anti-assignment provisions of the Code; (c) any asset the granting of a security interest in which is prohibited or restricted by applicable law; (d) any Excluded Account, (e) any lease, license, contract or other agreement of such Loan Party if the grant of a security interest in such lease, license, contract or other agreement in the manner contemplated by the Loan Documents is prohibited under the terms of such lease, license, contract or other agreement or under applicable law or would result in default thereunder, the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Loan Party's rights, titles and interests

thereunder (including upon the giving of notice or the lapse of time or both) and (f) any segregated deposits that constitute Permitted Liens and are prohibited from being subject to other Liens.

Each Pledgor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment (or the analogous legislation of each applicable jurisdiction), including (i) whether such Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor, (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of the property to which such Article 9 Collateral relates and (iii) a description of collateral that describes such property in any other manner as the Collateral Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Collateral granted under this Agreement, including describing such property as "all assets", whether now owned or hereafter acquired, or words of similar effect. Each Pledgor agrees to provide such information to the Collateral Agent promptly upon request. For the avoidance of doubt, the Agent and Lenders each shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the perfection or maintenance of any security interest created hereunder.

The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted by each Pledgor, without the signature of any Pledgor, and naming any Pledgor or the Pledgors as debtors and the Collateral Agent as secured party. For the avoidance of doubt, the Agent and Lenders each shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the perfection or maintenance of any security interest created hereunder.

Notwithstanding the foregoing authorizations, each Pledgor agrees to file and deliver to the Collateral Agent upon recording such financing statements as are or may be necessary to establish and maintain a valid, enforceable, perfected security interest in the Collateral as provided herein and the other rights and security contemplated hereby or as the Collateral Agent may from time to time reasonably request, and authorization to the Collateral Agent hereunder shall not relieve the Pledgor of its obligation to make such filings.

Section 13.02 Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Obligations or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument, (c) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or

guaranteeing all or any of the Obligations or (d) subject only to termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 hereof, any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Pledgor in respect of the Obligations or this Agreement (other than a defense of payment or performance).

All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 13.03 Binding Effect; Several Agreement. This Agreement shall become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party shall have been delivered to the Agent and a counterpart hereof shall have been executed on behalf of the Agent, and thereafter shall be binding upon such party and the Agent and their respective permitted successors and assigns, and shall inure to the benefit of such party, the Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement or any other Loan Document. This Agreement shall be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 13.04 Agent's Fees and Expenses; Indemnification. The parties hereto agree that the Agent shall be entitled to payment of fees and reimbursement of its expenses incurred hereunder pursuant to the Agent Fee Letter and to be indemnified and held harmless by each Pledgor, jointly with the other Pledgors and severally, as provided in Sections 10.04 and 10.05 of the Credit Agreement and such provisions shall be incorporated by reference herein and apply to each Pledgor *mutatis mutandis.* The Lenders, by acceptance of the benefits of this Agreement, hereby acknowledge and agree that the rights, privileges and immunities in the Credit Agreement (including without limitation Article IX thereof) and the other Loan Documents shall be incorporated by reference herein and apply to each Lender *mutatis mutandis.* This Section 13.01 shall survive the termination of this Agreement or any other Loan Document, the repayment of the Obligations, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, the resignation or removal of the Agent or any investigation made by or on behalf of any Secured Party.

Section 13.05 Collateral Agent Appointed Attorney-in-Fact. Each Pledgor hereby irrevocably appoints the Collateral Agent the attorney-in-fact of such Pledgor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof subject to the Financing Orders, which appointment is irrevocable and coupled with an interest. The Collateral Agent shall have the right, upon the occurrence and during the continuance of an Event of Default and at the direction of the Required Lenders, subject to the Financing Orders, with full power of substitution either in the Collateral Agent's name or in the name of such Pledgor, (a) to receive, endorse, assign

or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof, (b) to demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral, (c) to ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral, (d) to sign the name of any Pledgor on any invoice or bill of lading relating to any of the Collateral, (e) to send verifications of Accounts to any Account Debtor, (f) to commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral, (g) to settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral, (h) to notify, or to require any Pledgor to notify, Account Debtors to make payment directly to the Collateral Agent, and (i) to use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes; provided that nothing herein contained shall be construed as requiring or obligating the Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Agent and the other Secured Parties shall be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Pledgor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct. Each Pledgor acknowledges that the rights and responsibilities of the Agent under this Agreement with respect to any action taken by the Agent or the exercise or non-exercise by the Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Agent and the Secured Parties, be governed by the Credit Agreement and such other agreements with respect thereto as may exist from time to time among them, but, as between the Agent and the Pledgors, the Agent shall be conclusively presumed to be acting as agent for the applicable Secured Parties with full and valid authority so to act or refrain from acting, and no Pledgor shall be under any obligation, or entitlement, to make any inquiry respecting such authority. The Collateral Agent shall be entitled to all of the rights, privileges and immunities entitled to it as set forth in the Credit Agreement and the other Loan Documents, including those rights, privileges and immunities provided to the Collateral Agent and Administrative Agent, as applicable, whether or not expressly set forth herein.

Section 13.06 Additional Subsidiaries. Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto by the Credit Agreement of an instrument in the form and substance satisfactory to Collateral Agent (as directed by Required Lenders), such Subsidiary shall become a Subsidiary Loan Party hereunder with the same force and effect as if originally named as a Subsidiary Loan Party herein. The execution and delivery of any such instrument shall not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement shall remain in full force and effect notwithstanding the addition of any new party to this Agreement.

Section 13.07 Financing Orders; Matters Relating to Security.

(e) Notwithstanding anything herein to the contrary, the provisions of this Agreement are subject to the terms, covenants, conditions and provisions of the applicable Financing Order. In the event of any conflict between the terms of this Agreement and the applicable Financing Order, the terms of the applicable Financing Order, shall govern and control.

(f) The security interest granted by and pursuant to this Agreement may be independently granted by the applicable Financing Order and the Loan Documents. This Agreement, applicable Financing Order and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agent and Secured Parties hereunder and thereunder are cumulative.

(g) The security interest hereunder shall be deemed valid, binding, continuing, enforceable and fully perfected Liens on the Collateral by entry of, and subject to, applicable Financing Order. Notwithstanding anything in this Agreement, the Collateral Agent shall not be required to file any financing statements, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Liens and security interests granted by or pursuant to this Agreement, applicable Financing Order or any other Loan Document.

The security interest, the priority of the security interest, and the other rights and remedies granted to the Collateral Agent pursuant to this Agreement, applicable Financing Order, and the other Loan Documents (specifically including but not limited to the existence, validity, enforceability, extent, perfection and priority of the security interest) and the administrative superpriority provided herein and therein shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of debt by any Pledgor (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Bankruptcy case, or by any other act or omission whatsoever.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

ACORDA THERAPEUTICS, INC.

By:
Name:
Title:

CIVITAS THERAPEUTICS, INC.

By:
Name:
Title:

BIOTIE THERAPIES, LLC

By:
Name:
Title:

BIOTIE THERAPIES AG

By:
Name:
Title:

NEURONEX, INC.

By:
Name:
Title:

ACORDA THERAPEUTICS LIMITED

By:
Name:
Title:

Exhibit 21

List of Subsidiaries of the Registrant

Acorda Therapeutics Limited (UK)

Acorda Therapeutics Ireland Limited (Ireland)

Biotie Therapies AG (Switzerland)

Biotie Therapies, LLC. (Delaware)

Civitas Therapeutics, Inc. (Delaware)

Neuronex, Inc. (Delaware)

_____

Note: Acorda Therapeutics, Inc. subsidiaries may conduct business under the Acorda name as well as under their entity name or variants thereof. Acorda Therapeutics Limited and Neuronex, Inc. are dormant entities without any operations and holding no or *de minimis* assets.

Exhibit 23

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

(1) Registration Statement (Form S-3 No. 333-248738) of Acorda Therapeutics, Inc.,

(2) Registration Statement (Form S-3 No. 333-248728) of Acorda Therapeutics, Inc.,

(3) Registration Statement (Form S-3 No. 333-239519) of Acorda Therapeutics, Inc.,

(4) Registration Statement (Form S-3 No. 333-235929) of Acorda Therapeutics, Inc.,

(5) Registration Statement (Form S-8 No. 333-233177) pertaining to the 2019 Employee Stock Purchase Plan of Acorda Therapeutics, Inc.,

(6) Registration Statement (Form S-8 No. 333-131846) pertaining to the 1999 Employee Stock Option Plan and the 2006 Employee Incentive Plan of Acorda Therapeutics, Inc.,

(7) Registration Statement (Form S-8 Nos. 333-149726, 333-158085, 333-164626, 333-174785, 333-179906, 333-187091, 333-194375, and 333-202525) pertaining to the 2006 Employee Incentive Plan of Acorda Therapeutics, Inc.,

(8) Registration Statement (Form S-8 No. 333-210813) pertaining to the 2016 Inducement Plan of Acorda Therapeutics, Inc., and

(9) Registration Statement (Form S-8 Nos. 333-206346, 333-212917, and 333-226692) pertaining to the 2015 Omnibus Incentive Compensation Plan of Acorda Therapeutics, Inc., and

(10) Registration Statement (Form S-8 Nos. 333-266917) pertaining to the 2015 Omnibus Incentive Compensation Plan and 2016 Inducement Plan of Acorda Therapeutics, Inc.

of our report dated April 1, 2024, with respect to the consolidated financial statements of Acorda Therapeutics, Inc. and subsidiaries included in this Annual Report (Form 10-K) of Acorda Therapeutics, Inc. for the year ended December 31, 2023.

/s/ Ernst & Young LLP

Stamford, Connecticut
April 1, 2024

Exhibit 31.1

CERTIFICATION BY THE CHIEF EXECUTIVE OFFICER PURSUANT TO

RULE 13a-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934

I, Ron Cohen, certify that:

1. I have reviewed this annual report on Form 10-K of Acorda Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 1, 2024

/s/ Ron Cohen

Ron Cohen
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION BY THE PRINCIPAL FINANCIAL OFFICER PURSUANT TO

RULE 13a-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934

I, Michael Gesser, certify that:

1. I have reviewed this annual report on Form 10-K of Acorda Therapeutics, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 1, 2024

/s/ Michael Gesser

Michael Gesser
Chief Financial Officer
(Principal Financial Officer)

AExhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Acorda Therapeutics, Inc. (the "Company") for the fiscal year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ron Cohen, Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ RON COHEN
Ron Cohen
Chief Executive Officer
(Principal Executive Officer)
April 1, 2024

[A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Acorda Therapeutics, Inc. and will be retained by Acorda Therapeutics, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Acorda Therapeutics, Inc. (the "Company") for the fiscal year ended December 31, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Gesser, Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ MICHAEL GESSER
Michael Gesser
Chief Financial Officer
(Principal Financial Officer)
April 1, 2024

[A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Acorda Therapeutics, Inc. and will be retained by Acorda Therapeutics, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]